Federal Register

3–6–06 Monday
Vol. 71 No. 43 Mar. 6, 2006

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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2006–9 of February 7, 2006

Determination to Waive Military Coup-Related Provision of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, with respect to Pakistan

Memorandum for the Secretary of State

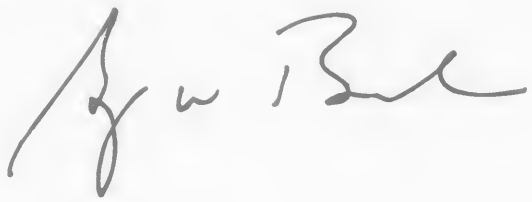
Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 534(j) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (the "Act") (Public Law 109–102), and Public Law 107–57, as amended, I hereby determine and certify, with respect to Pakistan, that a waiver of section 508 of the Act:

(a) would facilitate the transition to democratic rule in Pakistan; and

(b) is important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Accordingly, I hereby waive, with respect to Pakistan, the prohibition contained in section 508 of such Act.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 7, 2006.

[FR Doc. 06–2128
Filed 3–3–06; 8:45 am]
Billing code 4710–10–P

Federal Register
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Presidential Documents

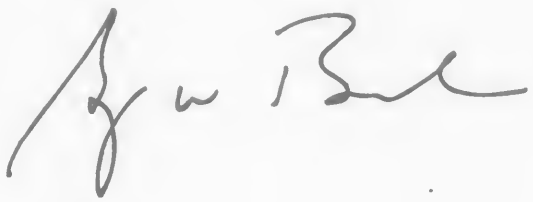
Presidential Determination No. 2006–10 of February 7, 2006

Determination to Authorize a Drawdown for Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Public Law 107–327, as amended) and section 506 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, I herby direct the drawdown of up to $16.998 million of defense articles, defense services, and military education and training from the Department of Defense for the Government of Afghanistan. This determination also amends PD 2005–19, signed January 27, 2005, by substituting "$71.502" therein for "$88.5".

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 7, 2006.

[FR Doc. 06–2129
Filed 3–3–06; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1415

RIN 0578–AA38

Grassland Reserve Program

AGENCY: Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is publishing a final rule implementing the Grassland Reserve Program (GRP). The GRP assists landowners and others in restoring and conserving eligible grassland and certain other lands through rental agreements and easements. This rule sets forth how the Secretary of Agriculture (the Secretary), using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement GRP to meet the statutory objectives of the program.

DATES: *Effective date:* March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Floyd Wood, National Program Manager, Easement Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–0242; fax: (202) 720–9689; e-mail: *floyd.wood@wdc.usda.gov*, Attention: Grassland Reserve Program. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: USDA promulgated the GRP interim final rule in the **Federal Register** on May 21, 2004 (69 FR 29173). The GRP is authorized under the Food Security Act of 1985, as amended, 16 U.S.C. 3838n–3838q. The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended Subchapter C to Chapter 2, Subtitle D, of Title XII of the Food Security Act of 1985 to authorize GRP. GRP is a voluntary program to assist landowners and agriculture operators in restoring and conserving eligible private grassland and land that contains forbs and shrublands through rental agreements and easements.

The interim final rulemaking provided a 60-day comment period that ended July 20, 2004. USDA received comments from thirty-nine entities. USDA addresses the comments received, including any changes to the final rule made as a result of the comments. Some of the comments received by the Department addressed the GRP template conservation easement deed even though the deed was not a part of the rule making. These comments may be of general interest, and the Department has decided to address those comments in the preamble as well. USDA notes, however, that it may make future changes to the easement deed without notice and comment rulemaking. Since the interim final rule was published, the statutory authority for GRP was amended by the Consolidated Appropriations Act of 2005, Pub. L. 108–447. The final rule addresses and implements this statutory change as well.

Background

Historically, grassland and shrublands occupied approximately 1 billion acres, about half the landmass of the 48 contiguous United States. Roughly 50 percent of these lands have been converted to cropland, urban land, and other land uses. Privately owned grasslands (pastureland and rangeland) cover approximately 526 million acres in this country. Grasslands provide ecological and economic benefits to local residents and society in general. Grassland importance lies not only in the immense area covered, but also in the diversity of benefits they produce. These lands provide water for urban and rural uses, livestock products, flood protection, wildlife habitat, and carbon sequestration. These lands also provide aesthetic value in the form of open space and are vital links in the enhancement of rural social stability and economic vigor, as well as being part of the Nation's history.

Grassland loss through conversion to other land uses such as cropland, parcels for rural home sites, invasive species, woody vegetation, and suburban and urban development threatens grassland resources. About 24 million acres of grasslands and shrublands were converted to cropland or non-agriculture uses between 1992 through 1997.

As noted above, GRP is a voluntary program to assist landowners and agriculture operators in restoring and protecting eligible grassland and land that contains forbs and shrublands through rental agreements and easements. The 2002 Farm Bill provided that $254 million would be made available through FY 2007 to enroll no more than 2 million acres of restored or improved grassland, rangeland, shrubland and pastureland. USDA will consider all enrolled native and naturalized grasslands, both restored and existing, towards the 2 million acre cap. The statute requires that 40 percent of the program funds be used for 10-year, 15-year, and 20-year rental agreements, and 60 percent of the funds be used for 30-year rental agreements and easements.

The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC, to the Chief, Natural Resources Conservation Service (NRCS), who is CCC Vice President, and the Administrator, Farm Service Agency (FSA), who is the CCC Executive Vice President. NRCS has the lead responsibility on regulatory matters, technical issues, and easement administration, and FSA has the lead responsibility for rental agreement administration and financial activities. The agencies will consult on regulatory and policy matters pertaining to both rental agreements and easements. The Secretary also delegated authority to the Forest Service to hold easements, at the option of the landowner, on properties adjacent to USDA Forest Service lands. At the State level, the NRCS State Conservationist and the FSA State Executive Director will determine how best to utilize the human resources of both agencies to deliver the program and implement National policies in an efficient manner given the general responsibilities of each agency.

This final rule describes the various enrollment options through rental agreements and easements, the

compensation rates for each, the manner in which USDA establishes criteria to evaluate and rank applications at the State level, and the various protections and enhancements that rental agreements and easements would provide to grassland resources.

Summary of Comments

Approximately, one-half of all comments received in response to the interim final rule were from livestock organizations, another one-third from State wildlife and agriculture agencies and non-governmental wildlife organizations, and the remainder from private landowners. The responses to the comments on the interim final rule are set forth below. USDA also received comments on the GRP template easement deed even though the deed was not the subject of notice and comment rule making. Those comments may be of general interest, and USDA has decided to address those comments in the preamble under a separate subsection entitled "GRP Easement Deed." In addition to responding to the comments, USDA made nonsubstantive changes to the text of the final rule for purpose of clarity and improved organization. In the subsequent section, USDA provides a section-by-section description of the substantive changes.

State Allocations

Under § 1415.2 of the interim final rule, USDA used a national allocation formula to provide GRP funds to USDA State offices with the direction to emphasize support for biodiversity of plants and animals, protection of grasslands under the greatest threat of conversion, and support for grazing operations. The interim final rule at § 1415.2 also identified that the allocation formula would include a factor representing program "demand" which could be expressed in terms of applications received, acres offered, funding needs, or a combination of these elements.

USDA received eight comments from entities which asserted that allocations to States should be based on grassland resource needs and not program demand. These commenters were concerned that the "demand" factor could result in less funding for States with the most critical grassland protection needs. USDA received an almost equal number of comments supporting the use of an allocation formula based partially on program demand.

USDA did not intend for a demand factor to interfere with the ability to fund the most critical grassland resource needs. To avoid any misinterpretation, USDA has not included the language in the final rule concerning a program demand factor. The remaining provisions of the regulations provide for the allocation of funds consistent with meeting the most critical grassland resource needs and additional factors related to improving program implementation. For example, the regulations provide for allocations based on emphasis for "support of biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations."

Conservation Plan

The interim final rule required that participants in GRP implement a conservation plan approved by USDA to preserve, and if necessary restore and enhance, the viability of the grassland enrolled in the GRP. USDA received comments from entities both supporting and opposing requirements for landowners to establish a conservation plan. A conservation plan is designed to document the present and planned grassland characteristics and other conservation values, current and future land practices for the property, and the specific conservation requirements that would apply to the landowner's property based on the implementation of the provisions of the regulations. USDA believes a conservation plan is necessary to ensure that the landowner fully understands how the provisions of the final rule apply to their particular property enrolled in the GRP. In order to clarify USDA policy and terminology regarding GRP conservation plans, the Department has included in the final rule definitions for "conservation values" and "enhancement," and has modified the definition of "conservation plan," "restoration " and "restored grassland." USDA made no changes in the final rule related to conservation plan requirements.

Right of Access

The regulations at § 1415.4(d) provide that the easement or rental agreement shall grant USDA or its representatives a right of access to the easement or rental agreement area. Commenters asserted that USDA should be allowed to enter such property only after prior notification to landowners. To address this comment, USDA will strive to provide prior notice, except when it believes that there has been a violation of the terms of the easement deed or rental agreement. USDA determined that an exception to the notification requirement is warranted in cases where the Department believes that there is an easement or rental agreement violation, in order to ensure protection of the resource.

Industrial Windmills

16 U.S.C. 3838o provides that an easement or rental agreement shall prohibit activities, other than common grazing and cultural practices, including those necessary to restore or maintain grasslands, which would disturb the surface of the land covered by the easement or rental agreement. Based on this authority, in the interim final rule, USDA prohibited the installation of industrial windmills for commercial energy use on GRP enrolled lands. Eight entities opposed this action while six entities supported it. The entities in opposition questioned why GRP policy was different than CRP regarding the installation of windmills, while the entities in support asserted the prohibition was necessary to protect grassland-dependent bird populations.

USDA adopted a different policy in GRP than CRP, because the CRP statute specifically authorized the installation of industrial-like windmills under particular circumstances while the GRP statute does not provide for such authority. Without explicit authority similar to CRP, and given the general prohibition against disturbing the soil surface, USDA has determined that the installation of industrial windmills on lands enrolled in GRP should be prohibited. Consequently, USDA made no changes in this rule to allow the installation of industrial windmills.

Hay, Mow, or Harvest for Seed

The interim final regulations at § 1415.4(h)(2) provided for the State Conservationist to establish certain restrictions on haying, mowing, or harvesting for seed production as necessary to protect nesting habitat for grassland-dependent bird populations that are in significant decline or are conserved in accordance with Federal or State law. Commenters asserted that the State Conservationist should consult with local work groups and appropriate State and Federal agencies when establishing such restrictions. We made no changes to the final rule based on these comments because this type of expertise is already being provided to the State Conservationist through consultation with the State technical committees.

New Livestock Facilities

16 U.S.C. 3838o(b) provides that an easement or rental agreement shall permit common grazing practices, including necessary cultural practices, but prohibit activities, other than those necessary to restore or maintain

grasslands, that would disturb the surface of the land covered by the easement or rental agreement. Based on its original interpretation of this authority, USDA prohibited the installation of new livestock facilities on GRP enrolled land under the interim final rule at § 1415.4(i). Commenters asserted that the installation of new facilities may often be essential for conducting necessary livestock operations.

In promulgating this final rule, USDA has reconsidered its interpretation of the statute and agrees with commenters that new livestock facilities, including corrals, watering troughs and tanks, barns or other minor infrastructure necessary to conduct common grazing practices and operations, may be authorized. Specifically, the common meaning given to the word "cultural" includes fostering animal growth, and production of forage and seed. In order to foster animal growth such as cattle and the related production of forage and seed, the infrastructure related to feeding, watering, shelter, and storage of hay, seed, and feed is necessary. As previously indicated, USDA believes that conditions must be placed on their installation to ensure that the facilities are "consistent with maintaining the viability of grassland, forb, and shrub species common to that locality" as required by 16 U.S.C. 3838o(b)(1), and to minimize adverse impacts to biodiversity and other conservation values associated with the conservation easement or rental agreement. Accordingly, USDA has modified §§ 1415.4(h) and (i) of this final rule to incorporate this new, limited flexibility for the installation of corrals and other new livestock facilities. As a related matter, the Department has included in the final rule definitions of both common grazing practices and cultural practices in order to clarify the USDA's policy on permitted infrastructure.

Establishing Priority for Enrollment of Properties

The interim final rule at § 1415.8, provided that USDA at the State-level, with advice from the State technical committee, establishes criteria to evaluate and rank applications for easement and rental agreements based upon, among other things, threat of conversion to non-grassland uses. When developing ranking criteria for prioritizing applications, commenters asserted that State-level decision makers should also consider additional factors which emphasize enrollment of grasslands that:

- Are located outside urban areas,
- Contain (or will be restored to) native plant communities,
- Provide the greatest support for plant and animal biodiversity,
- Are most subject to conversion to cropland—especially lands classified as prime farmland,
- Are threatened by encroachment from invasive species,
- Will be protected for the longest duration,
- Are the "most-likely to be converted" from any source, and
- Are recognized as having high potential for conversion to industrial wind mills.

USDA at the State-level may include, but is not limited to, consideration of all these factors when developing State ranking criteria for GRP. Accordingly, USDA did not make any changes from the interim final rule to this section.

Native Versus Natural Grasses

With respect to establishing ranking criteria to be used for funding priorities, 16 U.S.C. 3838o(c)(2) states that USDA "shall emphasize support for (A) Grazing operations; (B) plant and animal biodiversity; and (C) grassland, land that contains forbs, and shrubland under the greatest threat of conversion." Consistent with this authority, the regulations at § 1415.8 state that ranking criteria will emphasize support, among other things, for "native and natural grassland" and activities that will "maintain and improve plant and animal diversity."

USDA received comments asserting that only native grasslands and lands to be restored to native species should be eligible for enrollment, or require that lands containing native species receive priority enrollment over lands with non-natives species, consistent with the Conservation Reserve Program. Commenters also asserted that USDA should require funds to be used first for protection of rare and declining native plant communities.

The provisions of 16 U.S.C. 3838n(c)(1) allow for the enrollment of improved rangeland and pastureland. The State-level ranking criteria may prioritize enrollment of native grassland over non-native grassland. However, the recommendation for establishing funding priorities based solely for protection of rare and declining native plant communities would be inconsistent with the statutory direction for program emphasis.

USDA made no changes to this rule based on these comments.

Calculation of Easement Values

16 U.S.C. 3838p requires that an easement payment for a permanent easement will be an amount equal to the fair market value of the land, less the grazing value of the land encumbered by the easement. USDA implemented this statutory formula in the interim final rule at § 1415.10 by using the term "grassland value" instead of "grazing value." However, in the final rule, USDA has changed the term "grassland value" to "grazing value" to more accurately state the statutory formula. As used in the context of determining easement value, "grazing value" is ascertained through the appraisal process. This is different from the usage of the term "grazing value" in the rental context as discussed below.

USDA received comments from entities who responded to the provision regarding easement compensation rates. These commenters expressed concern that the current appraisal procedures for calculating grazing values result in not adequately compensating landowners for restrictions placed upon their exercise of ranching and recreational activities. These commenters asserted that, unless compensation was provided for the restrictions placed on these activities, landowners in rural areas where the fair market value is typically comprised largely of grazing and recreational values, would be discouraged from participating in the easement option.

First, the USDA notes that those non-developed recreational activities that are consistent with maintaining the conservation values are still permitted on GRP enrolled lands and that the statutory method of computing compensation essentially results in the purchasing of development rights. To the extent a property is not under development pressure, the rights purchased will not result in nearly as high a compensation amount as those rights purchased on property that is in an area that is impacted by sprawl or that is urbanizing. Even so, USDA reviews its GRP appraisal instructions to ensure that the Department provides adequate compensation when it purchases conservation easements, consistent with the GRP statutory formula.

The interim final rule at § 1415.10(e) stated that "For easements, to minimize expenditures on individual appraisals and expedite program delivery, USDA may complete a programmatic appraisal to establish regional average market values and grazing values." Paragraph (e) further stated that "The programmatic appraisals would remove the need to conduct appraisals on each parcel selected for funding." Commenters asserted that programmatic appraisals should not be utilized

because they might result in lower compensation rates. USDA made no changes based on these comments. USDA will only use the programmatic appraisals in those instances where the grazing value would not vary significantly from one parcel to the next, and therefore, would result in an accurate appraisal of each parcel. In any event, the Department believes that use of this alternative appraisal methodology will be limited.

Rental Agreement Rates

16 U.S.C. 3838p(b)(2) requires that annual payments under a rental agreement be not more than 75 percent of the grazing value of the land covered by the rental agreement. This is also reflected in the regulations at § 1415.10. For the purpose of determining rental agreement rates only, USDA determines grazing values administratively based on compensation rates for the Conservation Reserve Program (authorized at 7 CFR part 1410) for each county. In fiscal years 2003, 2004, and 2005, USDA utilized a 75 percent grazing value for rental agreements of all durations.

USDA received comments regarding the utilization of grazing values for rental agreements. These commenters recommended that rental agreements with longer duration should receive higher payment rates than those with shorter-term duration. For example, a 30-year rental agreement would receive 75 percent of the grazing value in an annual payment while perhaps a 10-year rental agreement would receive only 50 percent of the grazing value in an annual payment.

USDA agrees with the commenters and believes that it should have flexibility to adjust rental agreement rates, not to exceed the statutory limits, to provide an incentive for longer-term protection of grassland resources. Grasslands protected for longer durations of time typically provide for significantly greater gains in biodiversity. Therefore, USDA has modified § 1415.10(b) to allow USDA to adjust rental agreement rates based on duration of agreement.

Commenters also recommended that USDA increase the rental rates for irrigated lands compared to non-irrigated lands and increase the rental rates as appropriate because of restrictions on haying and grazing land. USDA will endeavor to make the rental agreement rates reflect local prevailing rates based on consideration of all relevant factors that could affect the rate.

Title to GRP Easements

16 U.S.C. 3838q provides that the Secretary may allow a private conservation or land trust organization to "hold and enforce an easement" entered into under GRP. Commenters argued that USDA incorrectly interpreted this statutory provision in § 1415.17 of the interim final rule, because the Department interpreted the statute as only permitting third parties to manage and enforce, but not hold title to, GRP easements. The commenters interpreted the statute to provide that third parties could actually take title to GRP easements and that landowners would be more receptive to participation if land trusts could assume legal ownership.

Since the interim final rule was published, section 797 of the *Consolidated Appropriations Act of 2005*, Pub. L. 108–447, was passed which amended section 3838q (a) and (d) of the GRP statute to clearly provide for the Secretary to "transfer title of ownership" of easements to third parties. In addition, the new statutory language provided that if entities holding such easements dissolve or fail to enforce the terms of the easement, the easement shall revert to the Secretary. Accordingly, USDA has modified § 1415.17 in this final rule to provide for qualified third parties to own title of easements and to remove the provisions providing for easement management that was set forth in the interim final rule. This change effectively addresses the commenters' concerns.

Commenters also asserted that third parties should be compensated for holding easements based on the conclusion that third parties would have no incentive to hold and administer easements without compensation. USDA has determined that there is no authority for paying compensation to third parties for voluntarily administering such easements. USDA has also determined that there is no authority for compensation where USDA transfers title of easement ownership to third parties. Therefore, USDA made no changes in response to these comments.

Statutory Matters

Commenters asserted that information provided by applicants and program participants should be held confidential. USDA made no changes based on these comments because information submitted to USDA concerning the GRP program is already subject to the confidentiality provisions of 16 U.S.C. 3844.

Commenters stated that State-owned land should be eligible for GRP. USDA made no changes based on these comments. The provisions of 16 U.S.C. 3838n(c) clearly limit GRP to private lands.

Commenters asserted that improved pastureland should not be eligible for GRP. We made no changes based on these comments. The provisions of 16 U.S.C. 3838n(c) specifically state that improved pastureland is eligible for GRP.

Commenters asserted that 99-year easements should be treated as permanent easements and compensated similarly. USDA made no changes based on these comments because the clear meaning of the statutory provisions in 16 U.S.C. 3838p makes a distinction between permanent easements and term easements.

Commenters asserted that the 40-acre minimum for GRP should be changed to a 10-acre minimum. USDA made no changes based on these comments because the statute at 16 U.S.C. 3838n already addresses this matter by providing that 40 contiguous acres is the minimum enrollment size unless the Secretary grants a waiver.

Commenters also asserted that the regulations should delete or limit the ability of USDA to waive the 40-acre minimum for eligibility in GRP. Because this waiver process is provided by statute at 16 U.S.C. § 3838n., USDA does not have the authority to waive or delete such a provision.

Conservation Easement Deed

Water Rights

Comments were received on the deed arguing that the prohibitions in the deed regarding the transfer of water rights might usurp State water law. Although a conservation easement might encumber the ability of a landowner to sell the water rights associated with the property, the provisions of the easement deed are not contrary to State water laws. However, USDA recognizes that retention of all water rights associated with a particular property may not be necessary to protect the conservation purposes for which it acquired the easement. Therefore, USDA changed the easement deed to provide greater flexibility for landowners relating to water rights where appropriate.

Hay, Mow, or Harvest for Seed

The easement deed provided that the landowner shall not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations that USDA determines are in significant decline. Commenters asserted that these

provisions were too onerous. USDA made no changes to the conservation easement deed based on these comments. The provisions in the deed merely reflect statutory requirements at 16 U.S.C. § 3838o.

Routine Activities

Commenters asserted that certain prohibitions in the conservation easement deed placed onerous restrictions on a landowner's rights to conduct routine activities, such as the installation of new underground utilities and other activities that result in minimal disturbances to the surface of the land. Based upon these comments, USDA has reconsidered its interpretation of the provision in the statute prohibiting disturbing of the soil surface, and has determined that this provision was not meant to impede the practical administration of enrolled lands where no significant harm would result to the grassland values. Accordingly, USDA has modified the deed and final rule (*see* § 1415.4(i)(3)) to allow for certain activities that disturb the surface of the land when such disturbances are only temporary in nature, and USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. By "temporary in nature," the Department means a limited extent of time, typically not to exceed a short-term period, ordinarily necessary to complete a specific activity, as determined by USDA. In addition, the nature of the disturbance must be such that the area affected is limited in scope and impact and is capable of being (and is) completely restored to its requisite grassland functions and values, as determined by NRCS.

Section by Section Description of Changes

Changes to the sections from the interim final rule are as follows:

Section 1415.1 Purpose

This section sets forth the purpose and objectives of the program. In the interim final rule, USDA used the term "natural" grasslands to include grasslands that are dominated by introduced, desirable forage species that are ecologically adapted to the site and can sustain itself in the vegetative community without frequent cultural treatment. Without changing the meaning, USDA has changed this term to "naturalized" to avoid confusion with the term "native."

Section 1415.2 Administration

This section includes language on general program administration and policy that relates to the role of the State technical committee in the development of criteria for ranking and selecting applications and addressing related technical and policy matters in the implementation of the program. USDA amended this section from the interim final rule to remove the demand factor, as described earlier in the preamble. USDA also amended this section to clarify that USDA is responsible for approving the conservation practices that are eligible for cost-share. USDA also added the term "unfunded" to paragraph (i) of this section to clarify the applications that would remain on file until funding became available.

Section 1415.3 Definitions

This section defines terms used throughout the rule. Without changing the substance of this regulation, USDA replaced the term "natural" with "naturalized." USDA also substituted the term "naturalized" for the term "natural" wherever it appeared in the interim final rule.

Section 1415.4 Program Requirements

In this section, USDA identifies the requirements for participation in GRP. USDA modified paragraphs (h) and (i) of this section to clarify, among other things, that facilities and land use activities that are common grazing practices, including maintenance and necessary cultural practices, are permissible.

Section 1415.5 Land Eligibility

The language in this section identifies eligible land as defined in the GRP statute. USDA made editorial changes to clarify the language in paragraph (b).

Section 1415.6 Participant Eligibility

This section sets forth the eligibility for participation in GRP. USDA made no changes to this provision from the interim final rule.

Section 1415.7 Application Procedures

This section provides general information about the application process. USDA made no changes to this provision from the interim final rule.

Section 1415.8 Establishing Priority for Enrollment of Properties

This section sets forth policy for developing the ranking and evaluation criteria. USDA made no changes to this provision from the interim final rule.

Section 1415.9 Enrollment of Easements and Rental Agreements

This section describes the process for enrollment in GRP and makes reference to a number of documents. USDA clarified the language in paragraphs (d), (e), and (f) to ensure that the reader would not confuse one of these documents for another.

Section 1415.10 Compensation for Easements and Rental Agreements

This section sets forth the methodology for determining compensation for both easements and rental agreements. As discussed above under the heading "compensation for easements," USDA changed the term "grassland value" to "grazing value" in paragraph (a) to more accurately state the statutory formula for determining easement values. As discussed above under the heading "Rental Agreement Rates," USDA changed paragraph (c) to allow the adjustment of the rental agreement rates based on the duration of the agreements.

Section 1415.11 Restoration Agreements

This section sets forth the terms and conditions under which USDA will enter into a restoration agreement. USDA modified paragraphs (b), (c), and (d) to clarify that only those practices and measures that it has determined eligible and approved for cost share will be eligible to receive reimbursement under GRP.

Section 1415.12 Modifications

This section describes when easements and rental agreements may be modified. USDA did not make any changes to this section from the interim final rule.

Section 1415.13 Transfer of Land

This section discusses the impact of transferring ownership or control of land enrolled in GRP. USDA modified paragraph (f) by adding the adjective "GRP conservation" to the term easement to clarify which easement would be binding upon a landowner and any person claiming under the landowner.

Sections 1415.14 Through 1415.20

These sections contain standard administrative policy associated with contract violations and remedies, payments not subject to claims, assignment of payments, and appeals. Section 1415.17 contained the provision regarding transferring easement title to third parties. USDA made changes to § 1415.17 to comport with the amendments to the GRP authorizing

statute, which provide authority for USDA to transfer title to GRP easements to qualified third parties. USDA did not make any substantive changes to these sections from the interim final rule, except for those required by statute.

Executive Order 12866

The Office of Management and Budget (OMB) determined that this final rule is significant and must be reviewed by the Office of Management and Budget under Executive Order 12866. USDA conducted a cost-benefit analysis of the potential impacts associated with this final rule. Copies of the analysis may be obtained from Skip Hyberg, Agricultural Economist, Economic Analysis Staff, Farm Service Agency, Room 2745, Mail Stop 0519, 1400 Independence Ave., SW., Washington, DC 20250–0519; telephone: (202) 720–9222; fax: (202) 720–4265; e-mail: *skip.hyberg@usda.gov*, Attention: Grassland Reserve Program. The analysis is also available at the following Internet address: *http://www.nrcs.usda.gov/programs/GRP*.

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

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

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

An Environmental Assessment (EA) has been prepared to assist in determining whether this final rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the EA, USDA is issuing a Finding of No Significant Impact (FONSI). Copies of the EA and FONSI may be obtained from Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. The GRP EA and FONSI are also available at the following Internet address: *http://www.nrcs.usda.gov/programs/GRP*.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

Government Paperwork Elimination Act

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

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the issuance of this rule will not result in adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis may be obtained from Floyd Wood, National Program Manager, Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/GRP*.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive. To the extent State and local laws are inconsistent with this rule, this rule preempts such provisions. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act of 1995

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

List of Subjects in 7 CFR Part 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grassland, Grassland protection, Grazing land protection.

■ For the reason stated in the preamble, Chapter XIV of 7 CFR is amended by revising part 1415 to read as follows:

PART 1415—GRASSLAND RESERVE PROGRAM

Sec.

Authority: 16 U.S.C. 3838n–3838q.

§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners in protecting, conserving, and restoring grassland resources on private lands through short and long-term rental agreements and easements.

(b) The objectives of GRP are to:

(1) Emphasize preservation of native and naturalized grasslands and shrublands;

(2) Protect grasslands and shrublands from the threat of conversion;

(3) Support grazing operations; and

(4) Maintain and improve plant and animal biodiversity.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction; development of the State allocation formula, and development of broad national ranking criteria.

(2) Use a national allocation formula to provide GRP funds to USDA State offices that emphasizes support for biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population(s) of a grassland-dependent bird(s) or animal(s).

(3) Ensure the National, State, and local level information regarding program implementation is made available to the public.

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction.

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

(1) Identifying State priorities for project selection, based on input from the State technical committee;

(2) Identifying USDA employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment.

(3) Developing program outreach materials at the State and local level to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program.

(4) Approving conservation practices eligible for cost-share and cost-share rates.

(5) Developing conservation plans and restoration agreements.

(6) Administering and enforcing the terms of easements and rental agreements unless this responsibility is transferred to a third party as provided in § 1415.17.

(7) With advice from the State technical committee, developing criteria for ranking eligible land, consistent with national criteria and program objectives and State priorities. USDA, at the State level, has the authority to accept or reject the State technical committee recommendations; however, USDA will give consideration to the State technical committee's recommendations.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Secretary may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part which is required by law may be waived.

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

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. NRCS and FSA at the State level will establish cut-off periods to rank and select applications. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded, eligible applications will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

(j) The services of other third parties as provided for in 7 CFR part 652 may be used to provide technical services to participants.

§ 1415.3 Definitions.

Administrator means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

Chief means the Chief of the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

Common grazing practices means those grazing practices, including those related to forage and seed production common to the area of the subject ranching or farming operation, and the application of routine management activities necessary to maintain the viability of forage resources, that are common to the locale of the subject ranching or farming operation.

Conservation District means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "resource conservation district," "land conservation committee," or similar name.

Conservation plan means a record of the GRP participants' decisions and supporting information for protection and treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide criteria for each natural resource concern (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the conservation values of the grassland and schedule of operations and activities required to solve identified natural resource problems and take advantage of opportunities at a conservation management system level. The needs of the participant, the resources, Federal,

State, and local requirements will be met by carrying out the plan.

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

Conservation values means those natural resource attributes identified by USDA as having significant importance to maintaining the natural functions and values of the grassland area, including but not limited to, habitat for declining species of grassland-dependent birds and animals.

Cultural practice means those practices such as the installation of fences, watering, feeding, and sheltering facilities necessary for the raising of livestock, including related forage and seed production.

Department means United States Department of Agriculture.

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

Easement area means the land encumbered by an easement.

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

Enhancement means to increase or improve the viability of grassland resources, including habitat for declining species of grassland-dependent birds and animals.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information for the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forb means any herbaceous plant other than those in the grass family.

Grantor is the term used for the landowner who is transferring land rights to the United States through an easement.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, and forbs. The definition of grassland as used in the context of this rule includes shrubland, land that contains forbs, pastureland, and rangeland.

Grazing value is a term used in the calculation of compensation for both rental agreements and easements. For easements, this value is determined through an appraisal process. For rental agreements, USDA determines the grazing value based upon an administrative process.

Improved grassland, pasture, or rangeland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Landowner means a person or persons holding fee title to the land.

Native means a species that is a part of the original fauna or flora of the area.

Naturalized means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. For the purposes of this regulation, the term "naturalized" does not include noxious weeds.

Participant means a landowner, operator, or tenant who is a party to a GRP agreement. The term "agreement" in this context refers to GRP rental agreements and option agreements to purchase easements. Landowners of land subject to a GRP easement are also considered participants regardless of whether such landowner conveyed the easement to the Federal Government.

Pastureland means a land cover/use category of land managed primarily for the production of desirable, introduced, perennial forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, renovation, and control of grazing.

Permanent easement means an easement that lasts in perpetuity.

Private land means land that is not owned by a governmental entity.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Rental agreement means an agreement where the participant will be paid annual rental payments for the length of the agreement to maintain and/or restore grassland functions and values under the Grassland Reserve Program.

Restoration means implementing any conservation practice (vegetative, management, or structural) that restores functions and values of grassland and shrubland (native and naturalized plant communities).

Restoration agreement means an agreement between the program participant and the United States Department of Agriculture to restore or improve the functions and values of grassland and shrubland.

Restored grassland means land that is reestablished through vegetative, management, or structural practices, to grassland and shrubland, according to criteria in the NRCS Field Office Technical Guide.

Secretary means the Secretary of Agriculture.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits direct intervention to halt further decline, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

Similar function and value means plants that are alike in growth habitat, environmental requirements, and provide substantially the same ecological benefits.

State technical committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. § 3861.

USDA means the Chief, NRCS, and the Administrator, FSA.

§ 1415.4 Program requirements.

(a) Only landowners may submit applications for easements. For rental agreements, the prospective participant must provide evidence of control of the property for the duration of the rental agreement.

(b) The easement and rental agreement will require that the area be

maintained in accordance with GRP goals and objectives for the duration of the term of the easement or rental agreement, including the conservation, protection, enhancement, and, if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a conservation plan approved by USDA to conserve, protect, enhance, and, if necessary, restore the viability of the grassland enrolled into the program. The conservation plan documents the conservation values, characteristics, current and future use of the land, and practices that need to be applied along with a schedule for application.

(d) The easement and rental agreement must grant USDA or its representatives a right of ingress and egress to the easement and rental agreement area. For easements, this access is legally described by the conservation easement deed. Access to rental agreement areas is identified in the GRP conservation plan.

(e) Easement participants are required to convey title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Easement participants are required to use a standard GRP conservation easement deed developed by USDA. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental agreement and comply with all terms and conditions of the conservation plan and any associated restoration agreement.

(h) Easements and rental agreements allow the following activities:

(1) Common grazing practices, including maintenance and cultural practices on the land in a manner that is consistent with maintaining the viability of native and naturalized grass and shrub species;

(2) Haying, mowing, or harvesting for seed production, except that such uses shall have certain restrictions as determined by the NRCS State Conservationist, in consultation with the State technical committee, in order to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences, corrals, watering facilities, seedbed preparation and seeding, and any other related facilitating practices, as determined by USDA, needed to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for:

(1) Common grazing management practices which are carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices,

(2) Maintenance and necessary cultural practices associated with common grazing practices, and

(3) Other activities that result in only a temporary disturbance to the surface of the land where USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. Such a temporary disturbance, being of a short duration and, not to exceed the extent of time ordinarily necessary for completing an activity, as determined by USDA.

(j) Rental agreement contracts may be terminated by USDA without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert rental agreements to an easement, provided that the easement is for a longer duration than the rental agreement, funds are available, and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed terminated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly-owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including native and naturalized rangeland and pastureland); or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs, and the State Conservationist, with advice from the State technical committee, determines that it has potential to provide habitat for animal or plant populations of significant ecological value, if the land is—

(i) Retained in the current use of the land; or

(ii) Restored to a native or naturalized grassland conditions.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage eligible for enrollment in GRP. However, less than 40 acres may be accepted if the USDA, with advice from the State technical committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement other than the statutory baseline level of 40 acres to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract or easement. This land becomes eligible for enrollment in GRP when the existing contract expires or is terminated and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the prospective GRP participant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP an applicant:

(a) Must be a landowner for easement participation or be a landowner or have general control of the eligible acreage being offered for rental agreement participation;

(b) Agree to provide such information to USDA that the Department deems necessary or desirable to assist in its determination of eligibility for program

benefits and for other program implementation purposes:

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400; and

(d) Meet the conservation compliance requirements found in 7 CFR part 12.

§ 1415.7 Application procedures.

(a) Any owner or operator or tenant of eligible land that meets the criteria set forth in § 1415.6 of this part may submit an application through a USDA Service Center for participation in the GRP. Applications are accepted throughout the year.

(b) By filing an Application for Participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for the USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental agreement for which they seek to enroll their land. Rental agreements may be for 10-years, 15-years, 20-years, or 30-years; easements may be for 30-years, permanent, or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to USDA offices at the State level, broad national guidelines for establishing State specific project selection criteria.

(b) USDA, at the State level, with advice from the State technical committee, establishes criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

(1) Native and naturalized grassland;

(2) Protection of grassland from the threat of conversion;

(3) Support for grazing operations; and

(4) Maintenance and improvement of plant and animal biodiversity.

(d) When funding is available, USDA, at the State level, will periodically select for funding the highest ranked applications based on applicant and land eligibility and the State-developed ranking criteria.

(e) States may utilize one or more ranking pools, including a pool for special project consideration such as establishing a pool for projects that receive restoration funding from non-USDA sources.

(f) The USDA, with advice from the State technical committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State technical committee, will select applications for funding.

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

§ 1415.9 Enrollment of easements and rental agreements.

(a) Based on the priority ranking, USDA will notify applicants in writing of their tentative acceptance into the program for either rental agreement or conservation easement options. The participant has 15 calendar days from the date of notification to sign and submit a letter of intent to continue. A letter of intent to continue from the applicant authorizes USDA to proceed with the enrollment process and evidences a good faith intent on the part of the applicant to participate in the program.

(b) An offer of tentative acceptance into the program does not bind the USDA to acquire an easement or enter into a rental agreement, nor does it bind the participant to convey an easement, enter into a rental agreement, or agree to restoration activities.

(c) For easement projects, land is considered enrolled after the landowner signs the intent to continue. For rental agreements, land is considered enrolled after a GRP contract is approved by USDA and signed by the participant.

(d) USDA provides the applicant with a description of the easement or rental area; the easement terms or rental terms and conditions; and other terms and conditions for participation that may be required by CCC.

(e) For easements, after the land is enrolled, USDA will proceed with the development of the conservation plan and obtain an appraisal. If the landowner accepts the appraisal offer from USDA, the landowner signs an option agreement to purchase for the appraisal amount. USDA will then proceed with other easement acquisition activities, which include a survey of the easement, securing necessary subordination agreements, procuring title insurance, developing a baseline data report, and conducting other activities necessary to record the easement.

(f) Prior to execution by USDA and the participant of the rental agreement or easement, USDA may withdraw its offer anytime due to lack of available funds, title concerns for easements, or other reasons. For easements, the appraisal offer to the participant shall be void if the easement is not executed by the participant within the time specified in the option agreement to purchase.

§ 1415.10 Compensation for easements and rental agreements.

(a) Compensation for easements will be based upon:

(1) The fair market value of the land, less the grazing value encumbered by the easement as determined by an appraisal for permanent easements; and

(2) Thirty percent of the value determined in paragraph (a)(1) of this section for 30-year easements or for an easement for the maximum duration permitted under State law.

(b) For 10-, 15-, 20-, and 30-year rental agreements, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the agreement, as determined by USDA. USDA may adjust rental agreement rates, not to exceed the statutory limits, based on duration of agreement, inflation, and other economic considerations associated with grazing lands.

(c) In order to provide for better uniformity among States, the FSA Administrator and the NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental agreements.

(d) For easements, to minimize expenditures on individual appraisals and to expedite program implementation, USDA may complete a programmatic appraisal to establish regional average market values and grazing values if acceptable under federally recognized real property valuation standards.

(e) Easement or rental agreement payments received by participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction

with easements and rental agreements. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration agreement identifies conservation practices and measures necessary to restore or improve the functions and values of the grassland. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental agreement through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) Restoration practices are those land management, vegetative, and structural conservation practices and measures that will restore or improve the grassland ecological functions and values on native and naturalized plant communities. The NRCS State Conservationist, with advice from the State technical committee and in consultation with FSA, determines the conservation practices, measures, payment rates, and cost-share percentages, not to exceed statutory limits, available under GRP. A list of restoration practices approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS, working through the local conservation district with the program participant, determines the terms of the restoration agreement. The conservation district may assist NRCS with determining eligible restoration practices and approving restoration agreements. Restoration agreements do not extend past the date of a GRP rental agreement or easement.

(c) Only NRCS approved restoration practices and measures are eligible for cost sharing. Payments under GRP restoration agreements may be made to the participant of not more than 90 percent for the cost of carrying out conservation practices and measures on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland on land that at one time was cultivated.

(d) Restoration plans are entered into for restoring either native or naturalized plant communities. When seeding is determined necessary for restoration, USDA gives priority to using native seed. However, when native seed is not available, or returning the land to native conditions is determined impractical by USDA, plant propagation using species that provide similar functions and values may be utilized.

(e) Cost shared practices must be maintained by the participant for the life of the practice, as identified in the restoration agreement. The life of the practice must be consistent with other USDA cost shared or easement programs. Failure to maintain the practice is dealt with under the terms of the restoration agreement and may involve repayment of the Federal cost share plus interest.

(f) All conservation practices must be implemented in accordance with the NRCS Field Office Technical Guide.

(g) Technical assistance is provided by NRCS, or an approved third party.

(h) If the participant is receiving cost share for the same practice from State or local government, NRCS will adjust the GRP cost share rate so that the combined cost share received by the participant does not exceed 100 percent of the total actual cost of the restoration. In addition, the participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice.

(i) Cost share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(j) Restoration practices identified in the restoration plan may be implemented by the participant or other designee. Cost-share payments will not be made for practices applied prior to submitting an application to participate in the program.

(k) Cost share payments will not be made for practices implemented or initiated prior to the approval of a rental agreement or easement acquisition unless a written waiver is granted by USDA at the State level prior to installation of the practice.

§ 1415.12 Modifications to easements and rental agreements.

(a) After an easement has been recorded, no modification will be made to the easement except by mutual agreement by the Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of the General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of the General Counsel. Minor modifications are those that do not affect the substance of the conservation easement deed. Such modifications include, typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.

(c) Approved modifications will be made only in an amendment to an easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(d) The Chief, NRCS, may approve modifications on easements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was acquired or other terms of the easement.

(e) NRCS State Conservationists may approve modifications for restoration agreements and conservation plans as long as the modifications do not affect the provisions of the easement or rental agreement and meets GRP program objectives.

(f) USDA may approve modifications on rental agreements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to the participant's acceptance into the program shall void the offer of enrollment, unless at the option of USDA at the State level, an offer is extended to the new participant and the new participant agrees to the same easement or rental agreement terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original landowner unless USDA receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner or contract successor is responsible for complying with the terms of the recorded easement or rental agreement and for assuring

completion of all measures and practices required by the associated restoration agreement. Eligible cost share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

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

(f) The rights granted to the United States in an easement shall apply to any of its agents or assigns. All obligations of the landowner under the GRP conservation easement deed also binds the landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental agreements may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by USDA to be eligible to participate in GRP and must assume full responsibility under the agreement. USDA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental agreement, and the new owner or controller is not eligible to participate in the program or declines to assume responsibility under the agreement.

§ 1415.14 Misrepresentation and violations.

(a) Contract violations:

(1) Contract violations, determinations, and appeals are handled in accordance with the terms of the program contract or agreement and attachments thereto.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part is not entitled to contract payments and must refund to CCC all payments, plus interest in accordance with 7 CFR part 1403.

(3) In the event of a violation of a rental agreement, the participant will be given notice and an opportunity to voluntarily correct the violation within 30-days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental agreement.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, USDA has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement or remedy deficiencies or violations. When USDA believes there may be a violation of the terms of the GRP conservation easement, USDA may enter the property without prior notice. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement.

(c) USDA may require the participant to refund all or part of any payments received by the participant or pay liquidated damages as may be required under the program contract or agreement.

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

(e) Under a GRP conservation easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

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

§ 1415.16 Assignments.

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

(b) If a participant that is entitled to a payment dies, becomes incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Easement transfer to third parties.

(a) USDA may transfer title of ownership to an easement to an approved private conservation or land trust organization or State agency with the consent or written request of the landowner and upon a determination by the Secretary, or his or her designee, that granting permission will promote protection of grassland. Such entities must be a qualified organization under 16 U.S.C. § 3838q that the Secretary determines has the appropriate authority, expertise, and resources necessary to assume title ownership of the easement. Rental agreements will not be transferred.

(b) USDA has the right to conduct periodic inspections and enforce the easement and associated restoration agreement for any easements transferred pursuant to this section.

(c) The private organization, State, or other Federal agency must assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land to the extent that such restoration or rehabilitation is above and beyond that required by the GRP conservation plan and restoration agreement. Any additional restoration must be consistent with the purposes of the easement.

(d) A private organization or State agency that seeks to hold title to a GRP easement must apply to the NRCS State Conservationist for approval. The State Conservationist shall consult with FSA State Executive Director prior to rendering its determination.

(e) For a private organization to be qualified to be an easement holder, the private organization must be organized as required by 28 U.S.C. § 501(c)(3) of the Internal Revenue Code of 1986 or be controlled by an organization described in section 28 U.S.C. § 509(a)(2). In addition, the private organization must provide evidence to USDA that it has:

(1) Relevant experience necessary to administer grassland and shrubland easements;

(2) A charter that describes the commitment of the private organization to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) The human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter; and

(4) Sufficient financial resources to carry out easement administrative and enforcement activities.

(f) In the event that the easement holder fails to enforce the terms of the easement, as determined in the discretion of the Secretary, the Secretary, his or her successors and assigns, shall have the right to enforce the terms of this easement through any and all authorities available under Federal or State law or, at the option of the Secretary, to have all right, title, or interest in this easement revert to the United States of America. Further, in the event the easement holder dissolves or attempts to terminate the easement, then all right, title, and interest shall revert to the United States of America.

(g) Should this easement be transferred pursuant to this section, all warranties and indemnifications provided for in this Deed shall continue to apply to the United States. Subsequent to the transfer of this easement, the easement holder shall be responsible for conservation planning and implementation and will adhere to the NRCS Field Office Technical Guide for maintaining the viability of grassland and other conservation values.

(h) Due to the Federal interest in the GRP easement, the easement interest cannot be condemned.

§ 1415.18 Appeals.

(a) Applicants or participants may appeal decisions regarding this program in accordance with part 7 CFR part 614, 11, and 780 of this Title.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

§ 1415.19 Scheme or device.

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

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

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

§ 1415.20 Confidentiality.

The release of appraisal information shall be disclosed at the discretion of USDA in accordance with applicable law.

Signed in Washington, DC on February 21, 2006.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. 06–2091 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD; Amendment 39–14502; AD 2006–05–05]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GmbH Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. This AD requires overhauling the propeller blades of these propellers within 30 days after the effective date of the AD. This AD also requires performing initial and repetitive visual inspections of affected propeller blades. This AD also requires removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and installing any missing or damaged polyurethane protective strips. This AD results from reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades with damaged or missing polyurethane protective strips (PU-protection tape) due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals. We are issuing this AD to prevent erosion sheath separation leading to damage of the airplane.

DATES: This AD becomes effective April 10, 2006.

ADDRESSES: You can get the service information identified in this AD from MT-Propeller USA, Inc., 1180 Airport Terminal Drive, Deland, FL 32724; telephone (386) 736–7762, fax (386) 736–7696 or visit *http://www.mt-propeller.com.*

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. We published the proposed AD in the **Federal Register** on April 6, 2005 (70 FR 17359). That action proposed to require overhaul of the propeller blades on these propellers by December 31, 2005. That action also proposed to require performing initial and repetitive visual inspections of those propeller blades. That action also proposed to require removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and to install any missing or damaged polyurethane protective strips.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Changes to Blade Overhaul Paragraph

Although paragraph (j) of the proposed AD states to overhaul all affected blades by December 31, 2005, for clarification, we changed that paragraph in this AD to read "Overhaul all propeller blades of propellers listed in the applicability, within 30 days after the effective date of the AD". We also changed the codification and moved this paragraph to paragraph (f).

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

We estimate that 103 of these MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers installed on aircraft of U.S. registry will be affected by this AD. We also estimate that it will take about 2 work hours to inspect and install the polyurethane protective strip of each affected propeller and 4 work hours to remove each affected propeller, and that the average labor rate is $65 per work hour. Required parts to inspect and install the polyurethane protective strip of each affected propeller will cost about $20. We estimate that 10% (20) of the propellers will require blade overhaul, at an average cost of $1,500 per propeller. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $45,780.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–05–05 MT-Propeller Entwicklung GmbH: Amendment 39–14502. Docket No. FAA–2005–20856; Directorate Identifier. 2004–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to MT-Propeller Entwicklung GmbH, models MT, MTV–1, MTV–2, MTV–3, MTV–5, MTV–6, MTV–7, MTV–9, MTV–10, MTV–11, MTV–12, MTV–14, MTV–15, MTV–17, MTV–18, MTV–20, MTV–21, MTV–22, MTV–24, and MTV–25 propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. These propellers may be installed on but not limited to, Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55; and Technoavia SM–92 airplanes.

Unsafe Condition

(d) This AD results from reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades with damaged or missing polyurethane protective strips (PU-protection tape) due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals. We are issuing this AD to prevent erosion sheath separation leading to damage of the airplane.

Compliance

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

Note 1: Information about inspection procedures and acceptable limits can be found in Table 1 of this AD.

Overhaul of Propeller Blades

(f) Overhaul all propeller blades of propellers listed in the applicability, within 30 days after the effective date of this AD.

Initial Visual Inspection of the Propeller Blade

(g) During the next preflight inspection or 100-hour inspection, whichever occurs first, after the effective date of this AD, inspect all MT and MTV propellers by doing the following:

(1) Determine if the erosion sheath of any propeller blade is cracked or loose; and

(2) Determine if any propeller blade has other damage out of acceptable limits.

(3) Before the next flight, remove from service those propeller blades with a cracked or loose erosion sheath, or other damage affecting airworthiness.

TABLE 1.—SERVICE INFORMATION

For propeller model . . .	See operation and installation manual . . .
MT	No. E–112, issued Nov. 1993 or later.
MTV–1, MTV–7, MTV–10, MTV–17, MTV–18, MTV–20.	No. E–118, issued March 1994 or later.
MTV–5, MTV–6, MTV–9, MTV–11, MTV–12, MTV–14, MTV–15, MTV–21, MTV–22, MTV–25.	No. E–124, issued March 1994 or later.
MTV–2, MTV–3	No. E–148, issued March 1994 or later.
MTV–24	No. E–309, issued March 1994 or later.

Initial Visual Inspection of the Propeller Blade Polyurethane Strip

(h) During the next pilot's preflight inspection after the effective date of this AD, if the polyurethane protective strip on the leading edge of the inner portion of the blade is found to be damaged or missing, the polyurethane protective strip must be replaced or installed within 10-flight hours.

If electrical de-icing boots are installed, no polyurethane protective strips are required.

Repetitive Visual Inspection of the Propeller Blade

(i) If after the effective date of this AD, any propeller blade erosion sheath found to be cracked or loose during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be repaired, replaced, or overhauled before the next flight.

Repetitive Visual Inspection of the Propeller Blade Polyurethane Strip

(j) If after the effective date of this AD, any propeller blade polyurethane protective strip found to be damaged or missing during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be replaced or installed within 10-flight hours. If electrical de-icing boots are installed, polyurethane protective strips are not required.

Alternative Methods of Compliance

(k) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(l) Special flight permits are prohibited.

Related Information

(m) MT-Propeller Entwicklung GmbH, Service Bulletin No. 8A, dated July 4, 2003, pertains to the subject of this AD. LBA airworthiness directive 1994–098/2, dated September 24, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 24, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–1957 Filed 3–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23605; Directorate Identifier 2005–NE–48–AD; Amendment 39–14500; AD 2006–05–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD requires initial and repetitive borescope inspections of the high pressure-intermediate pressure (HP–IP) turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking, and removing tubes from service if found with any cracks beyond serviceable limits. This AD also requires installation of a new or modified HP–IP turbine bearings support as terminating action for the repetitive borescope inspections. This AD results from two reports of RR RB211 Trent 700 series engines found with the HP–IP internal oil vent tube and scavenge tube fretted by damaged heat shields on the tubes. We are issuing this AD to prevent oil ejecting from the HP–IP turbine bearings chamber and igniting. Burning oil can cause the intermediate pressure (IP) shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine.

DATES: Effective March 27, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 27, 2006.

We must receive any comments on this AD by May 5, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site: Go to http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified us that an unsafe condition might exist on RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. The CAA advises that two RB211 Trent 700 series engines were removed due to high oil consumption. Investigation revealed that damaged heat shields caused fretting of the HP–IP internal oil vent tube and scavenge tube. A previous service incident revealed that ingestion of HP cooling air into either the scavenge tube or the vent tube can over pressurize the HP–IP turbine bearing chamber. The overpressure can cause oil to eject from the rear of the chamber. If the ejected oil ignites, the fire can trigger fracture of the IP shaft, overspeed of the IP turbine, and uncontained engine failure.

Relevant Service Information

We have reviewed and approved the technical contents of RR Alert Service Bulletin RB.211–72–AE792, dated July 8, 2005, that describes procedures for initial and repetitive borescope inspections of the HP–IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking. We have also reviewed and approved the technical contents of RR Service Bulletin RB.211–72–E708, Revision 2, dated September 6, 2005, that describes procedures for installing a new or modified HP–IP turbine bearings support. The CAA classified these service bulletins as mandatory and issued AD G–2005–0016 in order to ensure the airworthiness of these RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines in the UK.

Bilateral Airworthiness Agreement

These RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines are manufactured in the UK and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these RR RB211 Trent 768–60, Trent 772–60,

and Trent 772B–60 turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design. We are issuing this AD to prevent oil ejecting from the HP–IP turbine bearings chamber and igniting. Burning oil can cause the IP shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine. This AD requires:

- Initial and repetitive borescope inspections of the HP–IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking; and
- Removing tubes from service if found with any cracks beyond serviceable limits; and
- As terminating action to the repetitive inspections required by the AD, at the next IP (05) module overhaul, but before May 31, 2010, removing the HP–IP bearings support introduced prior to Rolls-Royce Modification 72–E708, and replacing with serviceable parts.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA–2006–23605; Directorate Identifier 2005–NE–48–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–05–03 Rolls-Royce plc: Amendment 39–14500. Docket No. FAA–2006–23605; Directorate Identifier 2005–NE–48–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to, Airbus A330–243, A330–341, A330–342, and A330–343 airplanes.

Unsafe Condition

(d) This AD results from two reports of RR RB211 Trent 700 series engines found with the high pressure-intermediate pressure (HP–IP) internal oil vent tube and scavenge tube fretted by damaged heat shields on the tubes. Burning oil can cause the intermediate pressure (IP) shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine. We are issuing this AD to prevent oil ejecting from the HP–IP turbine bearings chamber and igniting.

Compliance

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

Initial Borescope Inspection

(f) Perform an initial borescope inspection of the HP–IP turbine bearing internal oil vent and scavenge tubes and tube heat shields before the thresholds listed in Table 1 of this AD, or within 4 months after the effective date of this AD, whichever occurs later. To do the inspections, use either the on-wing or the in-shop inspection procedures in the Accomplishment Instructions of RR Alert Service Bulletin (ASB) RB.211–72–AE792, dated July 8, 2005.

TABLE 1.—INSPECTION CRITERIA

Action	Inspection threshold
(1) Initial inspection	10,000 hours time-since-new (TSN) or time-since-overhaul (TSO), or 2,500 cycles-since-new (CSN) or cycles-since-overhaul (CSO), whichever occurs first.
(2) Repetitive inspection interval for tubes with no visible damage to outer heat shields on the tubes.	10,000 hours time-since-last-inspection (TSLI), or 2,500 cycles-since-last-inspection (CSLI), whichever occurs first.
(3) Repetitive inspection interval for tubes with cracking up to 90 degrees around tube circumference or 10 millimeters along the length of either outer heat shield.	6,400 hours TSLI or 1,600 CSLI, whichever occurs first.
(4) Repetitive inspection interval for tubes with cracking greater than (3) above, but less than 360 degrees around the tube circumference.	1,600 hours TSLI or 400 CSLI, whichever occurs first.

Repetitive Borescope Inspections

(g) Repeat the borescope inspections of the HP–IP turbine bearing internal oil vent and scavenge tubes within the applicable intervals listed in Table 1 of this AD. To do the inspections, use either the on-wing or the in-shop inspection procedures in the Accomplishment Instructions of RR ASB RB.211–72–AE792, dated July 8, 2005.

Removal of Damaged Tubes

(h) Within 10 CSLI, remove tubes with cracking around the complete circumference of either outer heat shield, or if any material is missing from either outer heat shield, or if either tube is fretted by loose heat shield material.

Terminating Action

(i) As terminating action to the repetitive inspections required by paragraph (g) of this AD, at the next IP (05) module overhaul, but before May 31, 2010, remove the HP–IP bearings supports introduced prior to Rolls-Royce Modification 72–E708 and replace with serviceable parts. Information on Rolls-Royce Modification 72–E708 can be found in RR Service Bulletin RB.211–72–E708, Revision 2, dated September 6, 2005.

Definition

(j) For the purposes of this AD, serviceable parts are new or reworked bearings supports which reduce the adverse effects of HP3 cooling air turbulence on the HP–IP turbine bearing internal oil vent and scavenge tubes and tube heat shields, as described in Rolls-Royce Modification 72–E708.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) Civil Aviation Authority airworthiness directive G–2005–0016, dated July 6, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the service information specified in Table 2 of this AD to perform the inspections and installations required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 2.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
RB.211–72–AE792 Total Pages: 22	All	Original	July 8, 2005.
Appendix A of RB.211–72–AE792 Total Pages: 3	All	Original	July 8, 2005.

Issued in Burlington, Massachusetts, on February 24, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–1965 Filed 3–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–213–AD; Amendment 39–14479; AD 2006–03–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, that requires modification of the escape slide/raft pack assembly and cable release sliders, as applicable. The actions specified by this AD are intended to prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Effective April 10, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 10, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 23, 2005 (70 FR 49207). That action proposed to require modification of the escape slide/raft pack assembly and cable release sliders, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change Paragraph (a)(1)

One commenter, the manufacturer, disagrees with the language specified in paragraph (a)(1) of the supplemental NPRM as written. The commenter reiterates that paragraph and states that it disagrees with the content. The commenter states that, if Boeing Service Bulletin 747–25–2666, Revision 2, dated April 24, 2003; and Goodrich Service Bulletin 25–238, Revision 1, dated January 31, 2003; have been incorporated, the Door 3 ramp slide pack (two-piece slide) will have been replaced with a one-piece slide pack, which does not have the cable assemblies addressed by Boeing Service Bulletin 747–25–3274, Revision 3, dated December 16, 2004 (referenced in the supplemental NPRM for accomplishing certain actions). The one-piece slides installed by Goodrich Service Bulletin 25–238 are specified in that service bulletin.

We agree with the commenter and have revised paragraph (a)(1) (re-identified as paragraph (a)(2) of the final rule) as follows: "For airplanes on which the modification of Door 3, as specified in Boeing Special Attention Service Bulletin 747–25–2666, Revision 2; and Goodrich Service Bulletin 25–238, Revision 1; has been accomplished: No further action is required for Door 3 only."

Request To Exclude Certain Airplanes From the Applicability

One commenter asks that we change the applicability section specified in the supplemental NPRM. The commenter states that not all the airplanes listed in the applicability section are equipped with the affected escape slide/raft pack assembly components. The commenter notes that it operates several Model 747–100 series airplanes that do not have the affected equipment installed. The commenter adds that those airplanes were originally designed and manufactured with the cool gas generator escape slide inflation system, which does not include the affected escape slide/raft pack assembly components. Additionally, Boeing Special Attention Service Bulletin 747–25–3274 does not include those airplanes in the effectivity, nor does it include procedures for those airplanes. The commenter asks that the applicability section be changed to be similar to that in AD 2004–03–17, amendment 39–13461 (69 FR 6536, February 11, 2004), which includes both the affected airplane models and those equipped with affected components.

We agree with the commenter and have changed the applicability section in this AD to exclude those airplanes that do not have the affected equipment installed, as follows: "Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; certificated in any category; equipped with an escape slide/raft pack assembly; as identified in Boeing Special Attention Service Bulletin 747–25–3274, Revision 3, dated December 16, 2004."

Another commenter asks that the final rule include a statement to the effect that Model 747 airplanes converted to the all-cargo configuration by any FAA-approved modification are excluded from accomplishing the modification of the slide required by the AD on any main door that has had the slide removed. The commenter suggests that this would reduce the number of requests submitted to the FAA for alternative methods of compliance (AMOC), thus reducing the use of FAA resources. The commenter also states that airplanes on which the escape slides for the upper deck crew door have been removed, in accordance with Supplemental Type Certificate (STC) ST01539SE, should be excluded from the applicability section of the AD.

We agree with the commenter that airplanes with an FAA-approved modification of the main doors that have the slides removed are not affected by the unsafe condition and should not be subject to this AD. Therefore, we have changed the applicability section in this AD to specify airplanes "equipped with an escape slide raft/pack assembly"; which, in turn, excludes airplanes on which the escape slides for the upper deck crew door have been removed in accordance with STC ST01539SE.

Revised Service Information

After the supplemental NPRM was issued, Boeing released Service Bulletin 747–25–3274, Revision 4, dated February 23, 2006. We have reviewed the service bulletin and it is substantially similar to Revision 3, which was referred to in the supplemental NPRM as the acceptable source of service information for accomplishing the actions specified in paragraph (a)(1). We have revised paragraph (a)(1) of this AD to refer to Revision 4 of the service bulletin as the acceptable source of service information for accomplishing the actions, and to give credit for accomplishing the actions specified in Revision 3 before the effective date of this AD.

Clarification of AMOC Paragraph

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

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 592 airplanes of the affected design in the worldwide fleet. We estimate that 187 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per escape slide to accomplish the new modification of the escape slide/raft pack assembly, at an average labor rate of $65 per work hour. Required parts will cost between $8,354 and $30,688 per airplane. Based on these figures, the cost impact of the modification of the escape slide/raft pack assembly required by this AD on U.S. operators is estimated to be between $1,586,508 and $5,762,966, or between $8,484 and $30,818 per airplane.

Should an operator be required to accomplish the overhaul of the cable release sliders, it will take approximately 2 work hours to accomplish the overhaul, at an average labor rate of $65 per work hour. Required parts cost will be negligible. Based on these figures, the cost impact of the overhaul of the cable release sliders in this AD on U.S. operators is estimated to be $130 per escape slide and $260 per airplane.

Should an operator be required to accomplish the replacement of the cable release sliders, it will take approximately 1 work hour to accomplish the replacement, at an average labor rate of $65 per work hour. Required parts will cost approximately $2,940 per escape slide. Based on these figures, the cost impact of the replacement of the cable release sliders in this AD on U.S. operators is estimated to be $3,005 per escape slide or $6,010 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2006–03–15 Boeing: Amendment 39–14479. Docket 2001-NM–213–AD.

Applicability: Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; certificated in any category; equipped with an escape slide/raft pack assembly; as identified in Boeing Service Bulletin 747–25–3274, Revision 4, dated February 23, 2006.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) Modify the escape slide/raft pack assembly (includes removing the slide packs, replacing the cover release pin cable assemblies with new assemblies, and removing the cable guard bracket, as applicable). Do the modification in accordance with Boeing Service Bulletin

747–25–3274, Revision 4, dated February 23, 2006. Previously accomplishing the modification in accordance with Boeing Special Attention Service Bulletin 747–25–3274, Revision 1, dated January 9, 2003; Revision 2, dated August 26, 2004; or Revision 3, dated December 16, 2004; is acceptable for compliance with this paragraph, except as specified in paragraph 1.D, "Description", of Revision 4 of the service bulletin.

(2) For airplanes on which the modification of Door 3, as specified in Boeing Special Attention Service Bulletin 747–25–2666, Revision 2; and Goodrich Service Bulletin 25–238, Revision 1; has been accomplished: No further action is required for Door 3 only.

Concurrent Modification

(b) For Groups 2, 5, 6, 7, 8, 11, 12, 13, 14, and 15 airplanes: Prior to or concurrently with accomplishment of paragraph (a) of this AD, modify the outboard cover panel of the cable release sliders of the floor-mounted upper deck slide pack assembly, as specified in Figure 2 of Boeing Service Bulletin 747–25–3307, Revision 2, dated July 8, 2004.

Alternative Methods of Compliance

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

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin 747–25–3274, Revision 4, dated February 23, 2006; and Boeing Service Bulletin 747–25–3307, Revision 2, dated July 8, 2004; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on April 10, 2006.

Issued in Renton, Washington, on February 24, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1983 Filed 3–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. CIV 105; AG Order No. 2807–2006]

RIN 1105–AA82

Minimum Qualifications for Annuity Brokers in Connection With Structured Settlements Entered Into by the United States

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule sets forth the minimum qualifications an individual annuity broker must meet in order to be included on the list of annuity brokers, established by the Attorney General, for the provision of annuity brokerage services in connection with structured settlements entered into by the United States. The final rule also sets forth the procedures that annuity brokers must follow in order to be included on the list.

DATES: This rule is effective on April 5, 2006.

FOR FURTHER INFORMATION CONTACT: Roger D. Einerson, Assistant Director, Torts Branch, FTCA Staff, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044. 202–616–4250.

SUPPLEMENTARY INFORMATION: This rule implements section 11015(a) of Public Law 107–273, the 21st Century Department of Justice Appropriations Act, which provides: "Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States." The Attorney General published an interim rule implementing section 11015(a) on April 15, 2003, at 68 FR 18119. Public comments were due by no later than July 14, 2003. On May 1, 2003, the Department of Justice transmitted to all United States Attorneys the first list of annuity brokers who had submitted timely Declarations demonstrating that they met the minimum qualifications for providing annuity brokerage services in connection with structured settlements entered into by the United States. The Department has transmitted new calendar-year lists since the original calendar-year list, as well as updates of each calendar-year list.

The Department of Justice received four written comments and a number of oral comments in response to the interim rule. The comments were received from annuity brokers, an association representing annuity brokers, a federal agency, and several United States Attorneys' offices. The written comments were, for the most part, unrelated to either the minimum qualifications established by the Attorney General pursuant to section 11015(a) of Public Law 107–273, or the mandatory procedures that annuity brokers must follow in order to be included on the list or any updated list. The oral comments related almost exclusively to the organization of the May 1, 2003 list that was transmitted to all United States Attorneys' offices, the effective date of that list, and the application of that list.

Rather than respond to each comment individually, the Department will respond to the subject matter of the concerns raised. The Department of Justice has considered the comments and responds as follows:

1. One commenter suggested that the minimum qualifications established by the Attorney General should be more stringent in order to better protect the interests of the United States. The commenter suggested that an annuity broker should be required to be licensed with more than one annuity company in order to meet minimum qualifications, so that the United States could take advantage of competitive annuity pricing from more than one annuity company. The commenter also suggested that the minimum qualifications should require an annuity broker to be licensed with companies that qualify under the Uniform Periodic Payment of Judgments Act. While these may be valid considerations in selecting an annuity broker for a particular case, the qualifications established by the Attorney General, pursuant to section 11015(a) of Public Law 107–273, were only minimum qualifications. The enhanced qualifications suggested by the commenter go beyond minimum qualifications. The United States Attorneys or their designees may consider additional criteria in selecting a broker, including those suggested by the commenter. However, these suggestions will not be incorporated into the final rule as mandatory minimum qualifications.

2. Some of the commenters noted that section 11015 and the interim rule did

not make clear which persons in the United States Attorneys' offices are authorized to select annuity brokers. Section 11015(b) provides: "In any structured settlement that is not negotiated exclusively through the Civil Division of the Department of Justice, the United States Attorney (or his designee) involved in any settlement negotiations shall have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements." Therefore, in any case that is being negotiated exclusively by the United States Attorney's office, the United States Attorney (or his or her designee) has exclusive authority to select a broker, provided that the broker appears on the list current at the time of the selection.

3. Several commenters asked whether a plaintiff is permitted to make the selection of an annuity broker on behalf of the United States, or whether a plaintiff may insist that the United States Attorney's office use an annuity broker already selected by the plaintiff as his or her annuity broker in the case. Section 11015(b) clearly confers authority to select the broker to the United States Attorney or his or her designee. Nothing in section 11015(b) or any other law entitles a plaintiff to select an annuity broker on behalf of the United States, or to require that the United States use an annuity broker already selected by the plaintiff. As is true with any party in litigation, the United States has the right to select its own experts and consultants, including annuity brokers, and to engage in frank and confidential discussions with its experts and consultants.

4. Several commenters questioned whether the United States Attorneys' offices may refuse to consider an annuity broker who appears on the list solely on the ground that the annuity broker has offered his or her services to plaintiffs in other cases in the past. Nothing in the rule either requires or prevents the selection of such an annuity broker by the United States Attorney or his or her designee.

5. Some commenters asked whether the United States Attorneys' offices may select annuity brokers who do not appear on the list that is current at the time of the selection. It is clear that Congress intended section 11015 to limit the selection of brokers to the "list of such brokers established by the Attorney General." Accordingly, as a matter of Department policy, the Attorney General expects United States Attorneys or their designees to select only brokers who appear on the list that is current at the time of the selection.

The purpose of establishing a new list each calendar year, and updating the list during the calendar year, is to provide United States Attorneys with the names of annuity brokers who have demonstrated minimum qualifications by submitting a Declaration during the calendar year, and who have maintained those minimum qualifications during the year. With the transmittal of each new calendar year's list or of any update, all prior lists are superseded, and the most current list available is to be used when selecting a broker. The Civil Division's Web site will post the current list or current updated list. (The Civil Division's Web site is accessible by the public, including annuity brokers, at (*http://www.usdoj.gov/civil/home.html*).)

Although United States Attorneys or their designees should select from only those brokers whose names appear on the current list at the time of selection, they need not necessarily cease using a broker whose name does not appear on a subsequent list. For example, if a broker appeared on the May 1, 2003 list and was selected to work on a case while the May 1, 2003 list was the current list, section 11015(b) would create no impediment to the broker's continuing to work on that case even if the broker does not appear on a subsequent list. Similarly, if a broker was selected to work on a case before the May 1, 2003 list was established, the broker may continue to work on that case even if the broker did not appear on the May 1, 2003 list or any subsequent list.

6. Several commenters inquired about the reason for organizing the May 1, 2003 list by state. The state-by-state format was employed because it was believed to be more useful to the United States Attorneys' offices than an alphabetical list of brokers. However, in practice, the organization by state appears to have caused considerable confusion. There was a concern that the state-by-state listing implied that United States Attorneys or their designees could select from only those annuity brokers who resided within their respective districts or states. Neither section 11015 nor the interim rule imposes such a limitation on the authority of United States Attorneys or their designees to select any broker who appears on a current list. In order to eliminate this concern and avoid any future confusion, annuity brokers will be listed in alphabetical order (*i.e.*, last name, first name, middle name or initial), followed by each broker's city and state if that information is provided on the Declaration.

7. Another question was whether an annuity broker who appears on the list must be selected. The list consists of annuity brokers who currently meet the minimum qualifications. In each case, the United States Attorney or his or her designee may consider a variety of factors in attempting to select the broker whom he or she believes will best serve the interests of the United States. Nothing in section 11015 or any other law entitles an individual broker to be selected.

8. At least one commenter questioned whether the United States Attorney's office assigned to handle a case for trial purposes must select the annuity broker if the actual negotiations are to be handled by a Civil Division attorney. By its terms, section 11015(b) applies only to structured settlements that are not negotiated exclusively through the Civil Division of the Department of Justice. Therefore, in a case where the negotiations are being handled exclusively by the Civil Division, the Civil Division attorney may select the annuity broker.

9. At least one commenter suggested that the requirements of section 11015 be made to apply to other components of the Department of Justice, and not just to the United States Attorneys' offices. Section 11015 on its face does not require Department of Justice components other than the United States Attorneys' offices to select brokers from the list. Accordingly, like section 11015 itself, the interim rule designed to implement that provision applies only to the selection of brokers by the United States Attorneys' offices.

10. Some of the commenters questioned whether the Department's selection of annuity brokers violates federal procurement laws. The Department of Justice does not pay the annuity brokers it selects for the purpose of assisting in the settlement of a claim or suit against the United States. The annuity broker is paid a commission by the annuity company that issues an annuity contract in the event a settlement is reached that includes the purchase of an annuity. In addition, annuity brokers provide highly technical and professional services.

11. There were comments regarding the longstanding practice of the United States to insist, in appropriate cases, that the United States retain a reversionary interest in some part of a settlement. These comments do not relate to either the minimum qualifications or the procedures for

inclusion on the list, and thus are beyond the scope of the interim rule.

12. Some commenters questioned the Department's use of standardized settlement documents. These comments likewise do not relate to either the minimum qualifications or the procedures for inclusion on the list, and thus are beyond the scope of the interim rule. Indeed, these comments appear to contradict section 11015(b), which affords United States Attorneys the exclusive authority to select a broker from the list, "provided that all documents related to any settlement comply with Department of Justice requirements."

13. Finally, some commenters raised questions about the Department's valuation of settlements. These comments likewise do not relate to either the minimum qualifications or the procedures for inclusion on the list, and thus are beyond the scope of the interim rule.

In summary, the only comment that addressed the minimum qualifications established by the interim rule suggested that the qualifications should be more stringent. Because section 11015(a) requires only that the Attorney General establish a list of annuity brokers who meet minimum qualifications, the Attorney General is adopting the interim rule as a final rule without amendment. The other comments concerned the operation or effect of the interim rule and, for the most part, are addressed by the language of section 11015. The format of the annuity broker list has been changed from an alphabetical listing by state to an alphabetical listing by the last name of the broker.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1(b), "The Principles of Regulation." The Attorney General has determined that this rule is a significant regulatory action under section 3(f), "Definitions," and accordingly this rule has been reviewed by the Office of Management and Budget. The Attorney General also has assessed both the costs and benefits of this rule as required by section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this connection included the costs attendant to the submission of declarations by annuity brokers who desire to make their services available to United States Attorneys in connection with structured settlements entered by the United States. Costs considered also included the establishing and maintaining of a list of brokers and the transmitting of the lists, including updated lists, to United States Attorneys. The benefits of the rule clearly outweigh the costs because the costs are the lowest costs feasible to comply with the requirement that a list be established, as required under section 11015(a) of Public Law 107–273.

Executive Order 13132

This rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Civil Justice Reform

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement contained in this final rule has been submitted to the Office of Management and Budget for review and approval under 5 CFR 1320.13.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), certifies that this rule will not have a significant economic impact on a substantial number of small entities. The cost of completing the declaration required by this rule will be minimal. Brokers are required to submit a new declaration each calendar year if they want to be included on the list. The declaration is a two-page document that requires the broker to (i) review the minimum qualification criteria in the rule; (ii) complete the declaration by providing his or her name and address, and by signing and dating the declaration; and (iii) mail the document to the Department of Justice. The economic impact is not expected to be significant for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Annuities, and Brokers.

PART 50—[AMENDED]

Accordingly, the interim rule amending 28 CFR part 50, which was published at 68 FR 18119 on April 15, 2003, is adopted as a final rule without change.

Dated: February 28, 2006.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 06–2079 Filed 3–3–06; 8:45 am]

BILLING CODE 4410–19–P

POSTAL SERVICE

39 CFR Part 230

Office of Inspector General; Technical Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule makes editorial corrections to the Office of Inspector General regulations pertaining to subpoenas served on employees of the Office of Inspector General.

DATES: *Effective Date:* March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Gladis Griffith, Deputy General Counsel, Office of Inspector General, (703) 248–4683.

SUPPLEMENTARY INFORMATION: The Postal Service has previously published rules, at 68 FR 57372, that govern compliance with subpoenas, summonses, and court orders served on Office of Inspector General employees. This notice corrects a faulty cross-reference in the earlier published text.

List of Subjects in 39 CFR Part 230

Administrative practice and procedure.

■ For the reasons stated, the Postal Service amends 39 CFR as follows:

PART 230—OFFICE OF INSPECTOR GENERAL

■ 1. The authority citation for part 230 continues to read as follows:

Authority: 5 U.S.C. App. 3; 39 U.S.C. 401(2) and 1001.

■ 2. Section 230.24 is amended by revising paragraph (a) to read as follows:

§ 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General.

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.10(b) shall be made in writing and conform to the requirements outlined in paragraph (b) of this section.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 06–2030 Filed 3–3–06; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the enforcement provisions of the rules for conduct on Postal Service property to restate the statutory basis for the powers of members of the Postal Service security force, and the authority of postal installation heads to enter into agreements with state and local law enforcement agencies for the enforcement of those rules. Repeal and replacement of the law formerly cited as defining these powers and authority necessitates this amendment. The Postal Service intends no substantive change to the referenced powers and authority.

DATES: *Effective Date:* March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Lawrence Katz, Inspector in Charge, Office of Counsel, U.S. Postal Inspection Service, 202–268–7732.

SUPPLEMENTARY INFORMATION: As the law enforcement arm of the Postal Service, the U.S. Postal Inspection Service is responsible for enforcing the rules governing conduct on Postal Service property. The rules are published in 39 CFR 232.1. With regard to the enforcement of these rules, subsection (q) provides that (1) they are enforced by the Postal Service security force, (2) postal installation heads and postmasters may enter into agreements with state and local law enforcement agencies to enforce these rules, and (3) certain other designated persons may likewise enforce the rules.

The security force is a component of the Postal Inspection Service and comprises those armed employees whom the Postal Service has since 1971 been authorized by 39 U.S.C. 1201 to employ as guards for the protection of postal premises. In lieu of a provision for the specific police powers of such guards in permanent legislation, their powers have been provided through a general provision in annual appropriations acts, beginning with that of 1973 (Pub. L. 92–351, 86 Stat. 471, section 612). Such general provisions have uniformly incorporated by reference the powers given to special policemen by former 40 U.S.C. 318, *et seq.* The most recent act to do so was the Consolidated Appropriations Act for 2005 (Pub. L. 108–447, 118 Stat. 2809, section 611). However, those sections of title 40, United States Code were repealed in 2002 (Pub. L. 107–217, 116 Stat. 1062, section 6) and ultimately replaced by new provisions in the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, section 1706). In the annual appropriations act for 2006 (Pub. L. 109–115, 119 Stat. 2396, section 811), Congress for the first time cited relevant sections of the revised Title 40 U.S.C. to define the powers of members of the Postal Service security force. The enforcement provision at 39 CFR 232.1(q)(1) requires amendment accordingly.

The Postal Service assigns a security force of career postal employees at only a few of its more than 37,000 facilities—those where a need for full-time armed security for an indefinite period is identified. Postmasters and local installation heads may enter into agreements with state and local law enforcement agencies to enforce the rules for conduct on postal property. Like the powers of the security force, this authority has been provided and renewed annually through the appropriations act riders referred to above. Thus, the regulation at 39 CFR 232.1(q)(2) similarly requires amendment to cite the law that has replaced the provision of title 40, United States Code repealed in 2002.

The Postal Service intends by these amendments simply to maintain the status quo with regard to both the powers of members of the postal security force and the authority of local installation heads and postmasters, albeit through citation to current provisions of title 40, United States Code, rather than to repealed sections.

List of Subjects in 39 CFR Part 232

Authority delegations (Government agencies), Crime, Federal buildings and facilities, Government property, Intergovernmental relations, Law enforcement officers, Postal Service, Security measures, State and local governments.

■ In view of the considerations discussed above, the Postal Service adopts the following amendment to 39 CFR part 232.

PART 232—CONDUCT ON POSTAL PROPERTY

■ 1. The authority citation for part 232 is revised to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 1315; Sec. 811, Pub. L. 109–115, 119 Stat. 2396.

■ 2. In § 232.1, paragraphs (q)(1) and (2) are revised to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(q) Enforcement. (1) Members of the U.S. Postal Service security force shall exercise such special police powers provided by 40 U.S.C. 1315(b)(2) as have been given to the security force by the Postal Service and shall be responsible for enforcing the regulations in this section in a manner that will protect Postal Service property.

(2) Local postmasters and installation heads may, pursuant to 40 U.S.C. 1315(d)(3) and with the approval of the chief postal inspector or his designee, enter into agreements with State and local enforcement agencies to insure that these rules and regulations are enforced in a manner that will protect Postal Service property.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 06–2029 Filed 3–3–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[R08–OAR–2005–SD–0002, FRL–8039–1]

Designation of Areas for Air Quality Planning Purposes; State of South Dakota; Approval of Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a September 30, 2005 request from the designee of the Governor of South Dakota to redesignate the "Rapid City Area" under section 107 of the Clean Air Act (CAA) from unclassifiable to attainment for PM–10. EPA is approving the redesignation request because the State has adequately demonstrated that the "Rapid City Area" is in attainment of the PM–10 National Ambient Air Quality Standards (NAAQS) and has committed to the continuation of fugitive dust controls that should help ensure that the area continues to attain the PM–10 NAAQS. The requirements that will apply in the "Rapid City Area" will not change as a result of this action because, for the purposes of the requirements of the CAA, unclassifiable and attainment areas are treated the same. This action is being taken under section 107 of the Clean Air Act.

DATES: This final rule is effective April 5, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R08–OAR–2005–SD–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, 999 18th Street, Suite 200, MS 8P–AR, Denver, CO 80202, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *South Dakota* mean the State of South Dakota, unless the context indicates otherwise.

On December 9, 2005 (70 FR 73183), EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota. The NPR proposed approval of a September 30, 2005 request from the designee of the Governor of South Dakota to redesignate the "Rapid City Area" under section 107 of the Clean Air Act (CAA) from unclassifiable to attainment for PM–10. EPA proposed approving the redesignation request because the State has adequately demonstrated that the "Rapid City Area" is in attainment of the PM–10 National Ambient Air Quality Standards (NAAQS) and has committed to the continuation of fugitive dust controls that should help ensure that the area continues to attain the PM–10 NAAQS. A discussion of the State's demonstration of attainment of the PM–10 NAAQS and the fugitive dust control measures is contained in the December 9, 2005, proposed rulemaking. The requirements that will apply in the "Rapid City Area" will not change as a result of this action because, for the purposes of the requirements of the CAA, unclassifiable and attainment areas are treated the same.

I. Final Action

We received three comments on our December 9, 2005 NPR which supported the redesignation of Rapid City to attainment of the PM–10 NAAQS. EPA is approving the State of South Dakota's request for redesignation under section 107 of the CAA from unclassifiable to attainment for PM–10.

II. 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 a redesignation to attainment and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107 of the Clean Air Act is an action that affects the attainment status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves a redesignation to attainment and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a redesignation to attainment 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.

Section 12(d) of the National Technology Transfer Advancement Act

(NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS. 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 May 5, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 81

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

Dated: February 10, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 81 is amended to read as follows:

PART 81—[AMENDED]

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

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

■ 2. In § 81.342, the table entitled "South Dakota–PM–10" is amended by revising the entry for "Rapid City Area" to read as follows:

§ 81.342 South Dakota.

* * * * *

SOUTH DAKOTA–PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
Rapid City Area	04/05/06	Attainment.		
*	*	*	*	*

[FR Doc. 06–2013 Filed 3–3–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6054–28; I.D. 020606D]

RIN 0648–AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule; extension of temporary area and gear restrictions.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces the extension of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP)implementing regulations. These restrictions will continue to apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,569 nm² (5,382 km²) off southeast of Portland, Maine for an additional 15 days. The purpose of this action is to provide immediate protection to an aggregation of Northern right whales (right whales).

DATES: The area and gear restrictions were initially effective 0001 hours February 15, 2006, through 2400 hours March 1, 2006. This notice extends the restricted period from 0001 hours March 2, 2006, through 2400 hours March 16, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In

addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° 00′ N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 2, 2006, an aerial survey reported a sighting of seven right whales in the proximity 42° 59′ N. lat. and 69° 26′ W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the options and factors noted above and on February 13, 2006, published a temporary rule in the **Federal Register** (71 FR 7441) to announce the establishment of a DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15–day period. On February 23, 2006, a subsequent survey conducted over the DAM zone indicated that 4 whales were still present in the area and the DAM zone trigger of 0.04 right whales per square nautical mile (1.85 km2) continues to be met. Therefore, in order to further protect the right whales in this DAM zone, pursuant to 50 CFR 229.32(g)(3)(v), NMFS is exercising its authority to extend the restrictions on lobster trap and anchored gillnet gear for an additional 15 day period.

The DAM zone is bound by the following coordinates:

43° 18′ N. lat., 69° 53′ W. long. (NW Corner)

43° 18′ N. lat., 68° 58′ W. long.

42° 39′ N. lat., 68° 58′ W. long.

42° 39′ N. lat., 69° 53′ W. long.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: a portion of this DAM zone overlaps the year-round Cashes Ledge Closure Area found at 50 CFR 648.81(d). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all

variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours March 2, 2006, through 2400 hours March 16, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media as soon as the AA has signed the action.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to extend a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action extending the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. NMFS will endeavor to provide notice of this action to fishermen through other means as soon as the AA signs the action, thereby providing approximately 3 additional days of notice regarding the extension of the DAM zone while the Office of the Federal Register processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 28, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Services.

[FR Doc. 06–2099 Filed 3–1–06; 3:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 022806A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 28, 2006, until 1200 hrs, A.l.t., September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2006 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 15,339 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA, to be published in early March of 2006.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,839 mt, and is setting aside the remaining 1,500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 27, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 28, 2006.

James P. Burgess,

Acting Assistant Director of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–2063 Filed 2–28–06; 5:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 43
Monday, March 6, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC54

Direct Single Family Housing Loans and Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Through this action, the Rural Housing Service (RHS) is proposing homeownership education requirements. The lack of homeownership education is a well-known barrier to successful homeownership for many families. The intended effect of this action is to assure that first time homeowners financed under the Section 502 Direct program are well prepared for homeownership by assuring that they receive homeownership education.

DATES: Written comments must be received on or before May 5, 2006 to be assured for consideration.

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

- Agency Web site: *http://www.rurdev.usda.gov/regs/*. Follow the instructions for submitting comments on the Web site.
- E-Mail: *comments@wdc.usda.gov*. Include the RIN number (0575–AC54) in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- Hand Delivery/Courier: Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Janet L. Carter, Senior Loan Specialist, Rural Housing Service, Stop 0783, 1400 Independence Avenue, SW., Washington, DC 20250–0783, Telephone: 202–720–1489.

SUPPLEMENTARY INFORMATION:

Classification

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

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek the Office of management and Budget (OMB) approval of the reporting and record keeping requirements contained in this proposed regulation. These reporting and recordkeeping requirements have been previously approved under OMB control number 0575–0172.

Title: Homeownership Education.

Type of Request: Revision of a currently approved collection.

Abstract: RHS enables low and very-low income rural residents to become homeowners through the Section 502 Direct Loan Program. The burden imposed in this proposed rule is a new requirement for borrowers who will be first-time homeowners to provide documentation that they have passed a publicly available homeowner education course. This information collected will be used by the Agency to assure successful homeownership and avoid delinquencies and forecloses.

Estimate of Burden: The Agency is not recommending any particular course over another. For this reason, we believe our customers will take advantage of a variety of different sources to meet the minimum requirement. The public burden for this collection of information estimated to average 8.0 hours per response.

Respondents: Limited to eligible Loan Applicants who will obtain their first homes through the Section 502 Rural Housing Loan program.

Estimated Number of Respondents: 15,221.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 15,221.

Estimated Total Annual Burden on Respondents: 121,768.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

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 will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this proposed rule will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. A comment is best assured of having its full effect if it is received within 30 days of publication of this rule.

GPEA Statement

RHS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no

retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11 must be exhausted before b ringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandates Reform Act

Title of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Programs Affected

The programs affected by this proposed rule are 10.410, Low to Moderate Income Housing Loans and 10.417, Very Low-income Housing Repair Loans and Grants.

Intergovernmental Consultation

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V, these programs are not subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes a new requirement on Agency applicants and borrowers, however, the new requirement of homeownership education will apply solely to the individual applicants and borrowers of Section 502 Direct Single Family Housing financing and will not apply to small entities. There will be no significant information collection, or regulatory requirements imposed on small entities under this proposed rule.

Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Background

Borrower Education

There is no homeowner education requirement in 7 CFR part 3550. The goal of Rural Development is to help rural applicants and their families become successful homeowners. One identified barrier to many rural applicants in becoming successful homeowners is the complexity of the home-buying process. Many applicants are ill prepared to undertake the added responsibility of homeownership. The benefit of homeownership education prior to home purchase is supported by a Freddie Mac study, "A Little Knowledge is a Good Thing: Empirical Evidence of the Effectiveness of Pre-Purchase Homeownership Counseling", by Agdighani Hirad and Peter M. Zorn (May 22, 2001), (Study). (Available at *http://www.freddiemac.com/corporate/reports/pdf/homebuyers_study.pdf.*) The authors used data on mortgages from Freddie Mac's Affordable Gold program which is designed for borrowers who earn 100 percent or less of area median income. This study found that counseling did mitigate credit risk and that on average borrowers who receive pre-purchase counseling are 19 percent less likely to become 90-days delinquent on their mortgages than borrowers in similar situations who did not receive counseling. However, the study found that there was significant variation in the effectiveness of the counseling based on the format used to deliver the counseling—classroom, home study, individual and telephone counseling. The data indicated that borrowers receiving individual counseling had the greatest reduction in 90-day delinquency, a 34 per cent reduction. Classroom counseling reduced 90-day delinquency by 26 per cent and home study counseling reduced 90-day delinquency by 21 per cent and both were considered to be superior to telephone counseling. Telephone counseling was not found to have a statistically significant impact on borrower delinquency.

The Study concluded "that pre-purchase counseling can increase the success of affordable lending programs by helping families keep their homes, a substantial benefit to both borrowers and lenders." (Study p. 4)

Under its general rulemaking authority (42 U.S.C. 1480(k)), RHS proposes to add a requirement for applicants who are first time homebuyers to successfully complete a homeownership education course provided by a certified homeownership education counselor that includes the minimum topical components set forth below and to present documentation of their successful completion, as defined by the provider, of such course by submitting a certificate of completion or letter from the certified provider. The Agency is particularly interested in receiving comments on appropriate methods of measuring successful completion of a home study homeownership education course.

The Agency believes this requirement will result in better-prepared borrowers, which will lead to more applicants becoming successful homeowners. Often homeownership education courses are offered by non-profit community development corporations or public housing authorities at little or no cost to the borrower. However, the Agency recognizes that in some cases there will be a cost of homeownership education incurred by the prospective homeowner. The cost of homeownership education is proposed to be added as an eligible loan purpose akin to other reasonable expenses related to obtaining a loan. In instances where a fee must be paid by the prospective homeowner to obtain homeownership education, the cost can be included in the loan provided it does not exceed the reasonable fee amount for the service provider approved by the State Director.

The Agency expects, however, that such education will be available at no or little cost to the borrowers in most areas.

The Agency recognizes that there are some rural areas where homeownership education is not readily available or easily accessible. In implementing this requirement the Agency will assure that no one is turned away for consideration for a loan application solely because the required borrower education is not reasonably available in the local area as determined by the State Director. The homeownership education requirement may be waived, if the borrower demonstrates, and the State Director verifies, that no certified homeownership courses available via automated, electronic, mechanical or other technological medium and no home-study, or on-line format is available. The homeownership education requirement may be waived if the borrower documents a special needs such as a disability that would impede completing a homeownership course in any of the above mentioned formats.

Acceptable forms of homeownership education must be provided by homeownership education counselors that are certified by any of the following: The Department of Housing and Urban Development (HUD); NeighborWorks America; or the National Federation of Housing Counselors and at a minimum must include the following components:

- Preparing for Homeownership (evaluate readiness to go from rental to homeownership).
- Shopping for a home.
- Obtaining a mortgage (mortgage process, different types of mortgages).
- Loan closing (closing process, documentation, closing costs).
- Life as a homeowner (homeowner warranties, maintenance and repairs).

List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Accounting, Housing Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

For the reasons stated in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

2. The authority citation for Part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

2. Section 3550.11 is added to read as follows:

§ 3550.11 State Director Assessment of Homeowner Education.

(a) The State Director will make an assessment of the availability of certified homeowner education in their respective states and maintain a listing of providers and their reasonable costs.

(b) Acceptable forms of homeownership education must have a testing component and certificate of completion process and be provided by homeownership education counselors that are certified by an of the following:

(1) The Department of Housing and Urban Development (HUD);

(2) NeighborWorks America; or

(3) The National Federation of Housing Counselors.

(c) Acceptable forms of homeownership education at a minimum must include the following components:

(1) Preparing for Homeownership (evaluate readiness to go from rental to homeownership).

(2) Shopping for a home.

(3) Obtaining a mortgage (mortgage process, different types of mortgages).

(4) Loan closing (closing process, documentation, closing costs).

(5) Life as a homeowner (homeowner warranties, maintenance and repairs).

Subpart B—Section 502 Origination

3. Section 3550.52(d)(10) is added to read as follows:

§ 3550.52 Loan purposes.

* * * * *

(D) * * *

(10) Fees for acceptable homeownership education under § 3550.11 of this subpart provided the fee does not exceed the reasonable costs determined by the State Director under that section.

* * * * *

4. Section 3550.53(I) is added to read as follows:

§ 3550.53 Eligibility requirements.

(i) *Homeownership education.* Applicants who are first-time homebuyers must provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under § 3550.11 has been successfully completed as defined by the provider prior to loan closing. The State Director may waive the homeownership education requirement for geographic areas within the State where the borrower demonstrates and the State Director verifies that certified homeownership education is not reasonably available in the local area in either automated, electronic. mechanical or technological format. On a case-by-case basis, the State Director may waive the homeownership education requirement, provided the applicant borrower documents a special need such as a disability that would impede completing a homeownership course in the above mentioned formats.

Dated: February 24, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 06–2072 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–XV–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150 AH54

Fire Protection Program—Post-Fire Operator Manual Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing its proposed amendment to the Commission's fire protection regulations for nuclear power facilities operating prior to January 1, 1979. The proposed amendment pertained to the use of manual actions by plant operators coincident with fire detectors and an installed automatic fire suppression system in the fire area as an alternative method to achieve hot shutdown conditions in the event of fires in certain plant areas. Based on stakeholder comments, the Commission believes that the proposed rule would not achieve intended objectives of effectiveness and efficiency.

FOR FURTHER INFORMATION CONTACT: David Diec, (301) 415–2834, e-mail *dtd@nrc.gov* or Alexander Klein, (301) 415–3477, e-mail *ark1@nrc.gov* of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

SUPPLEMENTARY INFORMATION

C. Staff Regulatory Review Guidelines
D. Enforcement Action

I. Purpose

For the reasons discussed in this document, the Commission is withdrawing a proposed rulemaking that was recommended as the appropriate regulatory tool to resolve a compliance issue associated with the use of operator manual actions for post-fire safe shutdown of nuclear power plants. The Commission is initiating a closure plan to ensure continuing compliance with the fire protection regulations.

II. Background

Section 50.48(b) of the *Code of Federal Regulations* (10 CFR 50.48(b)) backfits the requirements of paragraphs III.G, III.J, and III.O of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to plants licensed to operate before January 1, 1979 (pre-1979). The NRC incorporated similar guidance and criteria into Branch Technical Position CMEB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," and section 9.5.1, "Fire Protection Program," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (also referred to as the Standard Review Plan (SRP) for plants licensed after January 1, 1979 (post-1979). Post-1979 licensees incorporated their fire protection program implementation requirements into their operating licenses as license conditions.

Paragraph III.G.2 of Appendix R to 10 CFR part 50 requires that, where cables or equipment of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located in the same fire area, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating.

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system in the fire area.

c. Enclosure of cables and equipment in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system in the fire area.

Paragraph III.G.2 of Appendix R to 10 CFR part 50 cannot be reasonably interpreted to permit reliance upon operator manual actions in lieu of the specific methods provided in subparagraphs (a), (b), and/or (c) to ensure that one of the redundant safe shutdown trains in the same fire area is free of fire damage. Therefore, any pre-1979 licensee that is using operator manual actions instead of the specific methods in subparagraphs (a), (b), and/or (c) without an NRC-approved exemption is not in compliance with the regulations.

The staff became aware that some licensees were using operator manual actions in lieu of the requirements in Paragraph III.G.2 in Appendix R to 10 CFR part 50 and initiated this rulemaking as a means to bring plants into compliance.

10 CFR 50.12, "Specific Exemptions," provides the basis for the NRC to consider exemptions from requirements in 10 CFR part 50, including the requirements in 10 CFR part 50, Appendix R.

In the past, the staff reviewed and approved a number of exemption requests for the use of operator manual actions when licensees could not meet the requirements for either separation distance, a fire barrier, or a fire suppression system as detailed under paragraphs III.G.2(a), (b), or (c) of Appendix R to 10 CFR Part 50. The staff's rationale for approving these exemptions was predicated on the type and amount of combustibles, the need for automatic fire suppression and detection capability, the effectiveness of the applicant's manual firefighting capability, and the time assumed available for plant operators to take such manual actions.

The regulations also allow licensees to use a risk-informed, performance-based approach under 10 CFR 50.48(c). This approach would allow licensees to use the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition," in lieu of seeking an exemption or license amendment or meeting the requirements of Appendix R.

III. Proposed Rulemaking

In SECY–03–0100, "Rulemaking Plan on Post-Fire Operator Manual Actions," dated June 17, 2003, the NRC staff recommended a revision to the reactor fire protection regulation contained in Appendix R to 10 CFR part 50 and associated guidance to resolve a regulatory compliance issue. The proposed rule on post-fire operator manual actions was published in the **Federal Register** on March 7, 2005 (70 FR 10901), with a 75-day comment period that ended on May 23, 2005. The proposed rule would have revised paragraph III.G.2 of Appendix R to allow licensees to implement acceptable operator manual actions combined with fire detectors and automatic fire suppression capability as an acceptable method for ensuring the capability of a licensee to bring a reactor to, and maintain it in, a hot shutdown condition. Fire detectors and automatic fire suppression requirements were included with the criteria for feasible and reliable operator manual actions to maintain fire protection defense-in-depth. The anticipated outcome of this proposed rule was to reduce unnecessary regulatory burden and maintain NRC effectiveness and efficiency by reducing the need for licensees to prepare exemption requests, and the need for NRC to review and approve these requests.

The NRC received about 80 comments from 14 individuals and organizations on the proposed rule. Industry stakeholders and the Nuclear Energy Institute (NEI) commented that the proposed rule requirement for an automatic fire suppression system is not necessary and installation of such systems would be costly without a clear safety enhancement. Industry stakeholders and NEI stated that this requirement would likely not reduce or eliminate the number of exemption requests, and thus, would not meet one of the primary purposes of the rulemaking.

Industry stakeholders further objected to the proposed rule requirement for a time margin and stated that thermal hydraulic calculations and other analyses have inherent conservatism that accounts for time margin. Industry stakeholders also objected to the time margin factor of two, stating that it is arbitrary, unprecedented, and inconsistent with requirements for other plant programs, such as emergency operating procedures.

Some industry stakeholders claim that the proposed rule is a backfit and that NRC guidance has allowed the use of operator manual actions to protect redundant safe shutdown trains.

Comments received from public interest groups and individuals generally stressed the need for the NRC to maintain the current regulations on fire protection of nuclear power plant safe shutdown capability. The Union of Concerned Scientists and the Nuclear Information and Resource Service stated that they agree with the staff's recommendation to withdraw the proposed rule.

The NRC's evaluation of the stakeholder comments is provided in

the document titled "Response to Public Comments on the Proposed Operator Manual Actions Rule." This document is available in ADAMS under ADAMS Accession No. ML053350235. ADAMS may be accessed via the NRC's Public Web site at *http://www.nrc.gov/NRC/ADAMS/index.html.*

The NRC has engaged stakeholders throughout the rulemaking process. On April 27, 2005, the NRC held a Category 3 public meeting at NRC Headquarters in Rockville, Maryland, to obtain stakeholder feedback on the proposed rule. Representatives from the industry, the Nuclear Energy Institute, industry consultants, and a public interest group attended the meeting. The feedback provided by stakeholders during the public meeting was similar in nature and consistent with those provided in written comments at the close of the 75-day public comment period.

On September 30, 2005, the NRC held a Category 2 public meeting at NRC Headquarters to discuss both the planned withdrawal of the proposed rule on post-fire operator manual actions and NRC's closure plan following withdrawal of the rule. During this meeting, the NRC received public comments on the closure plan from industry, the NEI, the Nuclear Information and Resource Service, and an industry consultant.

IV. Withdrawal of Rulemaking

Industry stakeholders and NEI stated that the proposed rule, if implemented, would require numerous exemption requests for conditions that do not satisfy the automatic fire suppression requirement, specific acceptance criteria for operator manual actions, or a combination thereof. This outcome would not be consistent with the primary purpose of the rulemaking which was to enhance effectiveness and efficiency by reducing or eliminating exemption requests. Therefore, the NRC is withdrawing the proposed rulemaking.

V. Operator Manual Actions Closure Plan

A. Ensuring Compliance

The NRC will continue to verify compliance with its regulations through scheduled inspections. The NRC expects noncompliances identified by NRC inspectors or licensees to be addressed by licensees through plant corrective actions.

The withdrawal of the operator manual actions rulemaking may require some licensees to take corrective actions that may be different from those described in the proposed rule. As such, the NRC's closure plan to deal with the rule withdrawal includes issuing a new regulatory issue summary and developing internal staff regulatory review guidelines for post-fire operator manual actions.

B. Regulatory Issue Summary

The NRC intends to issue a regulatory issue summary (RIS) to reiterate the 10 CFR part 50, Appendix R Paragraph III.G.2 compliance expectations with respect to the use of operator manual actions, discuss the means to achieve compliance, advise licensees of the date the NRC will terminate the enforcement discretion guidance in Enforcement Guide Memorandum (EGM) 98–02, "Enforcement Guidance Memorandum—Disposition of Violations Of Appendix R, Sections III.G and III.L Regarding Circuit Failures," Revision 2 issued in February 2000 (incorporated into Enforcement Manual section 8.1.7.1), and discuss potential exemption requests, compensatory measures and corrective actions pertaining to operator manual actions.

C. Staff Regulatory Review Guidelines

The NRC developed acceptance criteria as part of the proposed rule for operator manual actions and also for DG–1136, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," dated February 2005, that provided an acceptable method for complying with the proposed rule. The acceptance criteria and DG–1136 were published in 70 FR 10901. The NRC plans to update section 9.5.1, "Fire Protection Program," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" [also referred to as the Standard Review Plan (SRP)] to address post-fire operator manual actions acceptance guidance. This update to the SRP will include the knowledge gained during the proposed rule development and will enhance the NRC regulatory review process for future licensing actions, such as exemption requests.

D. Enforcement Action

In March 1998, the NRC staff issued EGM 98–02, which provides enforcement discretion guidance for issues related to fire-induced circuit failures. The most recent revision of EGM 98–02 was issued in February 2000 and can be accessed in ADAMS under ADAMS Accession Number ML003710123. This EGM, which remains in effect, discusses fire-induced circuit failure requirements and encompasses the vast majority of manual actions since manual actions are used as compensatory measures to satisfy the regulatory requirements related to fire-induced circuit failures. The EGM provides guidance for disposition of noncompliances involving fire-induced circuit failures, which could prevent operation or cause maloperation of equipment needed to achieve and maintain post-fire safe shutdown. The EGM includes guidance to provide discretion for cases where licensees do not dispute that a violation of regulatory requirements has occurred with respect to a nonconformance, take prompt compensatory actions, and take corrective actions within a reasonable time. The expectations of this EGM have been incorporated into the current NRC Enforcement Manual.

The Office of Nuclear Reactor Regulation issued a revised Inspection Procedure (IP) 71111.05T, "Fire Protection (Triennial)," in March 2003 providing inspection criteria for operator manual actions. The inspection criteria are used as guidance by NRC inspectors to determine if operator manual actions can be used as a compensatory measure while corrective actions are taken by the licensee.

The NRC plans to terminate the enforcement discretion guidance in EGM 98–02 6 months after the publication date of this **Federal Register** notice. During this 6-month period, the application of the enforcement guidance in EGM 98–02 in combination with the criteria in IP 71111.05T will ensure the adequacy and appropriateness of compensatory measures in the form of operator manual actions implemented in accordance with the licensee's fire protection program. Manual actions that fail to meet the criteria in the inspection procedure are not considered to be feasible or adequate compensatory measures. The continuation of enforcement discretion guidance for six months is intended to provide a reasonable amount of time for licensees that have implemented feasible and reliable operator manual actions as compensatory measures to initiate corrective actions. The corrective actions could involve compliance with III.G.2 or III.G.3; adoption of NFPA 805 through 10 CFR 50.48(c); or submission of exemption requests or license amendments.

Licensees that have initiated corrective actions within the 6-month period, for noncompliances involving operator manual actions used to address fire-induced circuit failures, will receive enforcement discretion for those noncompliances provided licensees complete the corrective actions in a timely manner. The NRC expects timely completion of the corrective actions

consistent with RIS 2005–20, "Revision to Guidance Formerly Contained in NRC Generic Letter 91–18," dated September 26, 2005 (ADAMS Accession No. ML052020424) not to exceed 3 years from the date of this **Federal Register** notice, or consistent with the licensee's NFPA 805 transition schedule.

The Commission believes that the proposed rule would not achieve its objective. Therefore, the Commission has decided to withdraw the proposed rule.

Dated at Rockville, Maryland this 28th day of February, 2006.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–3128 Filed 3–3–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–004]

RIN 1625–AA09

Drawbridge Operation Regulations; Connecticut River, East Haddam, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Route 82 Bridge, mile 16.8, across the Connecticut River at East Haddam, Connecticut. This proposed rule would allow the Route 82 Bridge to operate on a fixed opening schedule from April 1, 2006 through June 30, 2006. The bridge would open at all times for commercial vessels after at least a 24-hour advance notice and a 2-hour confirmation is given by calling the number posted at the bridge. This rule is necessary to facilitate rehabilitation construction at the bridge.

DATES: Comments and related material must reach the Coast Guard on or before March 27, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–06–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Regulatory Information

We anticipate making this temporary rule effective in less than 30 days after publication in the **Federal Register**.

Under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** as the Route 82 Bridge repairs currently scheduled to begin on April 1, 2006, are vital necessary repairs that must be performed with all due speed to assure the continued safe and reliable operation of the bridge. Any delay in making this rule effective as soon as possible would not be in the best interest of public safety and the marine interests that use the Connecticut River. Failure to start the rehabilitation repairs on time could result in an unscheduled bridge operation failure.

However, the Coast Guard desires to allow as much time as possible for public participation and comment during this rulemaking process. Thus, we are allowing the comment period to run into the 30 day time period normally included between publication and the effective date.

Public Meeting

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

Background and Purpose

The Route 82 Bridge has a vertical clearance of 22 feet at mean high water, and 25 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.205(c), require the bridge to open on signal at all times; except that, from May 15 to October 31, 9 a.m. to 9 p.m., the bridge is required to open for recreational vessels on the hour and half hour only. The bridge is required to open on signal at all times for commercial vessels.

The bridge owner, Connecticut Department of Transportation, has requested a temporary rule to facilitate electrical and mechanical rehabilitation at the Route 82 Bridge.

Under this temporary rule the Route 82 Bridge would open from April 1, 2006, through June 30, 2006, on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily. The bridge would open for commercial vessels at any time after a 24-hour notice with a 2-hour confirmation is given by calling the number posted at the bridge.

Discussion of Proposed Rule

This proposed change would amend 33 CFR 117.205 by suspending paragraph (c) and adding a new temporary paragraph (d) that would list the temporary bridge opening schedule for the Route 82 Bridge.

This temporary rule is necessary to facilitate the rehabilitation construction at the Route 82 Bridge in order to maintain the bridge in good operable condition.

This proposed change would allow the Route 82 Bridge to open from April 1, 2006, through June 30, 2006, at 5:30 a.m., 1:30 p.m., and 8 p.m., daily. The bridge would open at any time for commercial vessels after a 24-hour notice, with a 2-hour confirmation, is given by calling the number posted at the bridge.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of

potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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

This conclusion is based on the fact that vessel traffic will still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the present and anticipated needs of navigation.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that vessel traffic will still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the present and anticipated needs of navigation.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact us in writing at, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under

figure 2–1, paragraph (32)(e) of the Instruction, from further environment documentation because this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the instruction, an "Environmental Analysis Checklist" is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From April 1, 2006 through June 30, 2006, § 117.205 is amended by suspending paragraph (c) and adding a temporary paragraph (d) to read as follows:

§ 117.205 Connecticut River.

* * * * *

(d) The draw of the Route 82 Bridge, mile 16.8, at East Haddam, shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily. The draw shall open on signal for commercial vessels at any time after at least a 24-hour advance notice and a 2-hour confirmation is given by calling the number posted at the bridge.

Dated: February 24, 2006.

David P. Pekoske,

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

[FR Doc. 06–2105 Filed 3–3–06; 8:45 am]

BILLING CODE 4910–05–P

Notices

Federal Register
Vol. 71, No. 43
Monday, March 6, 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

Agricultural Research Service

Notice of Intent To Request an Extension, and Revision, of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 04–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to seek approval to collect information in support of research and related activities.

DATES: Comments on this notice must be received by April 28, 2006, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Jill Philpot, ARS Webmaster, 5601 Sunnyside Avenue, Beltsville, MD 20705.

FOR FURTHER INFORMATION CONTACT: Jill Philpot, ARS Webmaster (301) 504–5683.

SUPPLEMENTARY INFORMATION:

Title: Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

Type of Request: Extension, and a Revision, of a Currently Approved Information Collection.

OMB Number: 0518–0032.

Expiration Date: N/A.

Abstract: Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Title XVII, require agencies, by October 21, 2003, to provide for the option of electronic submission of information by the public. To advance GPEA goals, online forms are needed to allow the public to request from the Agricultural Research Service (ARS) research data, models, materials, and publications as well as registration for scientific studies and events. For the convenience of the public, the forms itemize the information we need to provide a timely response. Information from forms will only be used by the Agency for the purposes identified.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response (range: 1–5 minutes).

Respondents: Agricultural researchers, students and teachers, business people, members of service organizations, community groups, other federal and local government agencies, and the general public.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3 minutes × 25,000 respondents = 1250 hours.

Copies of forms used in this information collection can be obtained from Jill Philpot, ARS Webmaster, at (301) 504–5683.

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 will 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 those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 21, 2006.

Edward B. Knipling,

ARS Administrator.

[FR Doc. 06–2065 Filed 2–28–06; 5:03 pm]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: March 27–29, 2006, 8 a.m. to 5 p.m. on March 27, 8 a.m. to 4 p.m. on March 28, and 8 a.m. to noon on March 29. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M St., NW., Washington, DC 20036. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The twelfth meeting of the AC21 has been scheduled for March 27–29, 2006. The AC21 consists of 20 members representing the biotechnology industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members. At this meeting, the Committee aims to: introduce new AC21

members; complete work on a paper examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, through review and revision of the current draft Chair's text for the paper; and consider preliminary presentations and introductory discussions related to two upcoming committee projects. The projects are the following: (1) What are the effects (in terms of planting decisions, markets, and rural communities) of coexistence issues on the development and use of new crops derived through modern biotechnology? and (2) What avenues of technology transfer or actions by USDA are most likely to result in the production of biotechnology-derived crops— other than large-scale, commingled, major commodity uses— that would have the greatest positive impacts on domestic markets, rural communities in the United States, and developing nations?

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=AC21Main.xml.*

On March 27, 2006, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: February 28, 2006.

Bernice Slutsky,

Special Assistant for Biotechnology.

[FR Doc. E6–3097 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Washington State Potato Commission representing Washington fresh potato producers for trade adjustment assistance. The Administrator will determine within 40 days whether or not increasing imports of French fries contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 1, 2004, and ending December 31, 2005. If the determination is positive, all producers who produce and market their fresh potatoes in Washington will be eligible to apply to the Farm Service Agency for no cost technical assistance and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 21, 2006.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–3096 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 3, 2006 at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach CA 96143. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 3, 2006, beginning at 1:30 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 N. Lake Blvd., King Beach CA 96143.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) The Southern Nevada Public Land Management Act—Round 7; and, (2) Public Hearing. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 28, 2006.

Terri Marceron,

Forest Supervisor.

[FR Doc. 06–2089 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposals, (5) Chairman's Perspective, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on March 9, 2006 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 6, 2006 will

have the opportunity to address the committee at those sessions.

Dated: February 27, 2006.

Janet Flanagan,

Acting Designated Federal Official.

[FR Doc. 06–2071 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites on the Angeles National Forest

AGENCY: USDA, Forest Service.

ACTION: Notice of new fee site—Big Pines Clubhouse Historic Site.

SUMMARY: The Angeles National Forest will begin charging a fee for the rental of the Big Pines Clubhouse Historic Site. The fee will be $65.00 per hour not to exceed $510.00 per day, with a discounted rate of $45.00 per hour for interpretive programs. Rentals of this type are unusual on Federal lands but public involvement has indicated that visitors appreciate and enjoy the availability of this kind of historic rental facility. Funds from the rental will be used for the continued operation and maintenance of the Big Pines Clubhouse Historic Site.

DATES: The Bit Pines Clubhouse Historic Site will become available for rent August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Raina Fulton, Public Services Staff Officer, USDA Forest Service, Angeles National Forest, 701 North Santa Anita Ave., Arcadia, CA 91006.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directs the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to inform publics of a new fee site.

The Angeles National Forest currently has no other rental facility similar to the Big Pines Clubhouse Historic Site, this is a unique opportunity. A business analysis of the Big Pines Clubhouse Historic Site has shown that people desire having this sort of recreation experience on the Angeles National Forest. A market analysis indicates that the fee of $65.00 per hour not to exceed $510.00 per day, with a discounted rate of $45.00 per hour for interpretive programs is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent the Big Pines Clubhouse Historic Site will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: February 3, 2006.

Valerie Guardia,

Deputy Director Recreation, Wilderness and Heritage Resources.

[FR Doc. 06–2025 Filed 3–3–06; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota State Advisory Committee will convene at 1 p.m. (MST) and adjourn at 4 p.m. (MST), Wednesday, March 22, 2006, at the Holiday Inn, 100 West 8th Street, Sioux Falls. The purpose of the meeting is to provide an overview of the U.S. Commission on Civil Rights, including recent Commission activities; discuss continuing impacts of the South Dakota SAC's report, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System* (March 2000); discuss requested report on elementary and secondary school desegregation; and planning through December 2006.

Persons desiring additional information, or planning a presentation to the Committee, should contact John F. Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 24, 2006.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. E6–3119 Filed 3–3–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–821–811

Final Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2005, the Department of Commerce ("the Department") initiated a sunset review of the suspended antidumping duty investigation on ammonium nitrate from the Russian Federation ("Russia") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Notice of Initiation of Five-year ("Sunset") Reviews*, 70 FR 16800 (April 1, 2005) ("*Initiation Notice*"). On the basis of notices of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department conducted a full (240-day) review. As a result of this review, the Department finds that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0192, or 482–0172, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by the sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia include solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading

3102.30.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope of this sunset review is dispositive.

History of the Suspension Agreement

On August 12, 1999, the Department initiated an antidumping duty investigation under section 732 of the Act on ammonium nitrate from Russia. See Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 64 FR 45236 (August 19, 1999). On January 7, 2000, the Department preliminarily determined that ammonium nitrate from Russia is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000). The Department suspended the antidumping duty investigation on ammonium nitrate from Russia effective May 19, 2000. The basis for this action was an agreement between the Department and the Ministry of Trade of the Russian Federation ("MOT") accounting for substantially all imports of ammonium nitrate from Russia, wherein the MOT has agreed to restrict exports of ammonium nitrate from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price. *See Suspension of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 37759 (June 16, 2000) ("*Suspension Agreement*"). Thereafter, pursuant to a request by the petitioner, the Committee for Fair Ammonium Nitrate Trade ("COFANT"), the Department completed its investigation and published in the **Federal Register** its final determination of sales at less that fair value. *See Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669 (July 11, 2000) ("*Final Determination*"). In the Final Determination, the Department calculated weighted–average dumping margins of 253.98 percent for Nevinnomyssky Azot, a respondent company in the investigation, and for the Russia–wide entity. The *Suspension Agreement* remains in effect for all manufacturers, producers, and exporters of ammonium nitrate from Russia.

Background

On April 1, 2005, the Department initiated a sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia, pursuant to section 751(c) of the Act. *See Notice of Initiation of Five-year ("Sunset") Reviews*, 70 FR 16800 (April 1, 2005). On October 24, 2005, the Department published the preliminary results of the full sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia. *See Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty investigation on Ammonium Nitrate from the Russian Federation*, 70 FR 61431 (October 24, 2005) ("*Preliminary Results*") and the accompanying *Issues and Decision Memorandum for the Preliminary Results of the Full Five-year Sunset Review of the Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation ("Preliminary Results Decision Memorandum")*. In the *Preliminary Results*, the Department preliminarily found that the termination of the suspended antidumping duty investigation would likely lead to continuation or recurrence of dumping (for a full discussion of the Department's preliminary finding see the *Preliminary Results and the Preliminary Results Decision Memorandum*).

On December 7, 2005, the Department received a case brief from the petitioner in this proceeding, the Committee for Fair Ammonium Nitrate Trade ("COFANT"). No other case briefs or rebuttal briefs were received.

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the *Issues and Decision Memorandum for the Final Results of the of the Full Five-year Sunset Review of the Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation ("Final Results Decision Memorandum")* from Joseph A. Spetrini, Deputy Assistant Secretary for Policy and Negotiations, to David M. Spooner, Assistant Secretary for Import Administration, dated February 27, 2006, which is adopted by this notice. The issues discussed in the *Final Results Decision Memorandum* include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the suspended antidumping duty investigation to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Final Results Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Final Results Decision Memorandum* are identical in content.

Final Results of Review

We determine that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted–average margin:

Exporter/manufacturer	Weighted–average margin (percent)
JSC Azot Nevinnomyssky	253.98
Russia–Wide	253.98

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3086 Filed 3–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut–To-Length Carbon–Quality Steel Plate Products From Italy: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Nucor Corporation (Nucor), the

Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products (CTL Plate) from Italy. The period of review (POR) is February 1, 2004 through January 31, 2005.

This review covers five producers/exporters of subject merchandise. Based upon our analysis of the record evidence, we preliminarily find that the application of adverse facts available (AFA) is warranted with respect to Palini and Bertoli S.p.A. (Palini). Further, we are preliminarily rescinding the review with respect to Trametal S.p.A. (Trametal) because there is no entry against which to collect duties. We are also preliminarily rescinding the review for Ilva S.p.A. (Ilva), Metalcam S.p.A. (Metalcam) and Riva Fire S.p.A. (Riva Fire), because they had no shipments during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published an antidumping duty order on CTL Plate from Italy. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut–To-Length Carbon–Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000) (*Amended Final and Orders*). On February 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 5136 (February 1, 2005). In accordance with 19 CFR 351.213(b)(1), on February 28, 2005, Nucor, a domestic producer of subject merchandise requested that the Department conduct an administrative review of Palini, Ilva, Metalcam, Riva Fire, and Trametal. On March 23, 2005, the Department published a notice of initiation of administrative review of the antidumping duty order on CTL Plate from Italy covering the period February 1, 2004 through January 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On May 11, 2005, the Department issued section A of the antidumping duty questionnaire to Palini, Ilva, Metalcam, Riva Fire, and Trametal. In response, Ilva, Metalcam, and Riva Fire informed the Department via letters dated May 24, 2005, and May 30, 2005, that they did not ship subject merchandise to the United States during the POR. The Department received no response from Palini or Trametal. On June 6, 2005, the Department sent a letter to Palini and Trametal asking whether the reason they had not responded to the questionnaire was because they had made no shipments of subject merchandise to the United States during the POR.

On June 13, 2005, Trametal informed the Department that it made one sale of subject merchandise to the United States. The Department confirmed Trametal's claim of a single U.S. sale by reviewing CBP import data and entry documents. Although the entry documents appear to indicate that Trametal shipped subject merchandise in its single sale to the United States during the POR, the importer did not enter the goods as subject to the antidumping order, and CBP liquidated the entry under its own authority. There is no evidence to indicate that Trametal has any connection to this importer.

On June 14, 2005, Palini informed the Department that if there were any exports to the United States, they were made through an unaffiliated Canadian customer, and it did not know what portion of its sales to that customer were ultimately shipped to the U.S. market. The Department reviewed CBP data and entry documentation and found that certain entry documents appeared to contradict Palini's claim that it had no knowledge of which sales to its Canadian customer entered the United States. On January 5, 2006, the Department sent Palini a supplemental questionnaire, asking additional questions about its sales to the Canadian customer, during the POR, and whether Palini had knowledge of the port of discharge of those sales.

In its response to the Department's January 25, 2006, supplemental questionnaire, Palini explained that, at the time of cargo readiness, its customer advises Palini of the discharge port for sales to the United States and Canada. Palini noted that, although some shipments were sent directly to the United States, it did not know whether the merchandise remained in the United States, or if it was re–exported from the United States to Canada.

Scope of the Order

The products covered by the scope of this order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but no exceeding 1250 mm, and of a nominal or actual thickness of not less then 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross-section where such non–rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of cooper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of

molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from this order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S. or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.000, 7208.90.000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.90.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

Application of Knowledge Test

Based on our examination of the questionnaire responses, we preliminarily determine, in accordance with the Department's established practice, that Palini knew or should have known that the merchandise under review was for export to the United States at the time of the sale.

Under section 772(a) of the Tariff Act of 1930, as amended, (the Act) the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed. *See Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997) (*Pasta from Italy*). The Department's test for determining knowledge is whether the relevant party knew or should have known that the merchandise was destined for the United States. *See Statement of Administrative Action Accompanying the Trade Agreements Act of 1979*, H.R. Rep. No. 4537, 388, 411 reprinted in 1979 U.S.C.A.A.N. 665, 682. The U.S. Court of International Trade (CIT) has upheld the Department's use of the knowledge test.

Additionally, the CIT has affirmed that the Department is not required to show that the producer had actual knowledge of the destination of its exports. *Wonderful Chemical Indus. v. United States*, 259 F. Supp. 2d 1273, 1279 (CIT 2003) (citing *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1331–1332 (CIT 2000).

In determining whether a party knew or should have known that its merchandise was destined for the United States, the Department's well–established practice is to consider such factors as: (1) Whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its sales were destined for the United States. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain In–Shell Raw Pistachios From Iran*, 70 FR 7470 (February 14, 2005) and the accompanying Issues and Decision Memorandum at Comment 1; *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*, 64 FR 69694 (December 14, 1999); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69723 (December 14, 1999) (unchanged in final determination) (upheld by CIT in *Wonderful Chemical*, 259 F. Supp. 2d at 1280) ; and *Pasta from Italy*, 62 FR 66602.

In this case, at the time of the sale, three of the four factors noted above are present. Specifically, Palini stated that (1) its unaffiliated customer informed Palini of the location of the port of discharge prior to shipment; (2) Palini's commercial invoice identifies the port of discharge; (3) Palini provided all of the shipping information, including the port of discharge, to the unaffiliated customer's shipping agent at the customer's request; and (4) Palini's shipping marks, which are completed prior to shipment and are stenciled onto each plate, include the port of discharge. Moreover, the documents Palini provided for two shipments, directly from Italy, during the POR, identify the port of discharge as one in the United States.

Therefore, pursuant to the Department's consistent practice and based upon the explanations and documents provided in Palini's supplemental questionnaire response, we preliminarily find that Palini had knowledge of direct shipments to the United States of subject merchandise. Because Palini had knowledge that its sales to its Canadian customer were destined for the United States, Palini's sales are properly subject to this review.

Use of Adverse Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Pursuant to sections 776(a)(2)(A) and (C) of the Act, we preliminarily find that the use of facts available as the basis for the weighted–average dumping margin is appropriate for Palini, because Palini withheld information specifically requested by the Department and significantly impeded the proceeding.

The Department specifically requested in the May 11, 2005, questionnaire that Palini report the quantity and value of subject merchandise it sold and entered into the United States during the POR. Palini failed to respond to the questionnaire. It was not until the Department issued a letter to Palini in which we asked Palini to indicate whether it had no shipments during the POR, that Palini informed the Department that sales to the its Canadian customer may have entered the United States, but that it had no knowledge of which portion of these sales did, in fact, enter the United States. We note that, at this time, Palini made no mentioned that it had shipped

sales to this customer directly to the United States.

As discussed above, the documentary evidence provided by Palini in response to the Department's supplemental questionnaire, demonstrates that Palini had knowledge that merchandise it shipped from Italy entered the United States during the POR. Even though these documents were in Palini's possession, and kept in the normal course of business, Palini failed to respond to the May 11, 2005, questionnaire and did not report its sales and entries of subject merchandise made during the POR. Palini only acknowledged its direct sales to the United States after the Department informed Palini that CBP documents contradicted its earlier assertions. Because it was unaware until late in the proceeding that there, in fact, were entries subject to the review, the Department was unable to issue additional questionnaires or calculate a dumping margin for Palini's entries within the statutory time for completing the review. The Department, therefore, finds that Palini has withheld information that the Department specifically requested. Additionally, by not responding to the initial questionnaire and waiting to reveal its knowledge of direct shipments, Palini significantly impeded the proceeding. Therefore, the Department has determined that it must base Palini's dumping margin on the facts otherwise available pursuant to sections 776(a)(2)(A) and (C) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party "failed to cooperate by not acting to the best of its ability to comply with a request for information." The Court of Appeals for the Federal Circuit (Federal Circuit) has held that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. *See, e.g., Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). In the instant case, Palini knew that its shipments were destined for the United States. However, Palini failed to report its entries of subject merchandise or even to respond to the May 11, 2005, questionnaire at all. Palini did not do the maximum it was able to do in response to the Department's requests for information, but rather failed to report shipments it knew were subject to the administrative review. Therefore, the Department finds that Palini failed to cooperate to the best of its ability in complying with the Department's requests for information. Because Palini did not cooperate to the best of its ability, the Department, in selecting from among the facts otherwise available will use an inference that is adverse to the interests of Palini. *See* section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use as adverse facts available (AFA) information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record. \. It is the Department's practice normally to select the highest margin determined in any segment of the proceeding for any respondent. *See e.g., Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut–to-Length Carbon Steel Plate from Romania*, 71 FR 7008 (February 10, 2006). The CIT and the Federal Circuit have consistently upheld Commerce's practice. *See Rhone Poulenc, Inc. V. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *see also NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55% total adverse facts available rate, the highest available dumping margin from a different respondent in an LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (CIT 2000) (upholding a 51.16% total adverse facts available rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339 (CIT 2005) (upholding a 223.01% total adverse facts available rate, the highest available dumping margin from a different respondent in a previous administrative review).

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 (February 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 *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870 (1994) (SAA), *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *see also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Rhone Poulenc*, 899 F. 2d at 1190. However, the Department's reliance on secondary information to determine an adverse facts available rate is subject to the corroboration requirement of section 776(c) of the Act.

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA 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* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (March 11, 2005).

In this case, because there have been no administrative reviews since the investigation, the only secondary information on the record is Palini's calculated rate from the investigation and information from the petition. The Department finds that it is inappropriate to use Palini's calculated rate from the

investigation, 7.85 percent,[1] because we presume if Palini could have done better by cooperating in the proceeding it would have produced current information showing the margin to be less. *See Rhone Poulenc*, 899 F. 2d at 1190. Therefore, to ensure that Palini does not obtain a more favorable result by failing to cooperate than if it had cooperated fully, the Department will not use its margin from the investigation. *See SAA*, at 870. Therefore, the Department must rely on the only other information available, the margins from the petition.

In the petition filed on February 16, 1999, the petitioners calculated estimated dumping margins for the identified respondents, including Palini, ranging from 30.75 to 93.30 percent. In this case, we preliminarily determine that the petition margin of 30.75 percent is sufficiently adverse to effectuate the purpose of the facts available role. Therefore, we determine that the 30.75 percent margin is appropriate as adverse facts available and are assigning it to Palini as AFA.

Pursuant to 776(c) of the Act, we attempted to corroborate the margin using the only information reasonably available to us. While we did not have information available on the record to fully corroborate the margin, the fact that corroboration may not be practicable in a given case does not prevent the Department from applying an adverse inference as appropriate, and does not prevent the Department from using the secondary information. *See* 19 CFR 351.308(d); *see also Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India*, 68 FR 40629 (July 8, 2003). The petitioners calculated the AUV, which served as an estimate of export price (EP), using import statistics obtained from the International Trade Commission for the three HTSUS categories accounting for the largest volume of subject imports from Italy during the first eleven months of 1998. *See Initiation of Antidumping Duty Investigations: Certain Cut–To-Length Carbon–Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999) (*CTL Plate from Italy Initiation Notice*). The petitioners calculated the cost of manufacturing (COM) using their own production experience, adjusting for known differences between costs incurred to produce CTL plate in the United States and in Italy. The petitioners calculated selling, general, and administrative expenses; financial expenses; and profit based upon the 1997 financial statements of an Italian steel producer, consistent with section 773(e)(2) of the Act. *Id.*

Therefore, given the record evidence from the petition and from the instant review, we preliminarily find that the 30.75 percent rate is the most appropriate to use as AFA and are assigning it to Palini.

Partial Preliminary Rescission of Administrative Review

The Department's practice, supported by substantial precedent, requires that there be entries during the POR upon which to assess antidumping duties, to conduct an administrative review. Pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the period of review there were "no entries, exports, or sales of the subject merchandise." Ilva, Metalcam, and Riva Fire reported that they had no entries of subject merchandise during the POR. The Department confirmed, through CBP data, that there were no entries of subject merchandise from these companies during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review with respect to Ilva, Metalcam, and Riva Fire.

Trametal has no entries during the POR against which to collect duties. It is the Department's practice not to conduct an administrative review when there are no entries to be reviewed. *See Notice of Final Results of Antidumping Duty Administrative Review: Portable Electric Typewriters from Japan*, 56 FR 14072, 14073 (April 5, 1991); and *Notice of Proposed Rulemaking and Final Comments: Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7318 (February 27, 1996). Liquidation of entries is final on all parties unless protested within the prescribed period. See 19 U.S.C. § 1514(a)(5). Because the liquidation of Trametal's entry is final, the Department cannot assess antidumping duties against that entry pursuant to the final results of this administrative review. Therefore, the Department will preliminarily rescind the review with respect to Trametal, pursuant to 19 CFR 351.213(d)(3).

Preliminary Results of Review

As a result of our review, we preliminarily find that the dumping margin for Palini for the period February 1, 2004 through January 31, 2005, is 30.75 percent. For Ilva, Metalcam, Riva Fire, and Trametal, we preliminarily rescind the administrative review.

Public Comment

Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Any interested party may request a hearing within 30 days of the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 37 days after the publication of this notice, or the first business day thereafter. Unless the deadline for issuing the final results of review is extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in the written comments, within 120 days of publication of the preliminary results in the **Federal Register**.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are applying AFA to all exports of subject merchandise produced or exported by Palini, we will instruct CBP to liquidate entries according to the AFA *ad valorem* rate for all importers. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Instructions

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of CTL Plate from Italy entered, or withdrawn from

[1] §*See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000) (*CTL Plate Order*).

warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for Palini will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered by this review, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash–deposit rate will be 7.85 percent, the all–others rate established in the LTFV. *See Amended Final and Orders.* These cash–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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–3123 Filed 3–3–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of the Sixth Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is currently conducting the sixth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2004, through January 31, 2005. This review covers imports of subject merchandise from four manufacturers/exporters: Raoping Yucun Canned Foods Factory ("Raoping Yucun"), Primera Harvest (Xiangfan) Incorporated ("PHX"), Gerber Food (Yunnan) Co., Ltd. ("Gerber") and Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin") . We are preliminarily rescinding the review with respect to Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh").

We preliminarily find that Yucun sold subject merchandise at less than normal value ("NV") during the period of review ("POR"). In addition, we find that adverse facts available ("AFA") are appropriate for PHX, Gerber and Guangxi Yulin. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries in accordance with these results. We invite interested parties to comment on these preliminary review results and will issue the final review results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208 or 202 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Case History

General

On February 19, 1999, the Department published in the **Federal Register** the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999) ("*Mushrooms Order*").

In response to requests from the Coalition for Fair Preserved Mushroom Trade (the "Petitioner"), PHX, Raoping Yucun, Gerber and Green Fresh, and in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act"), and section 351.214(c) of the Department's regulations, on March 23, 2005, the Department initiated the sixth administrative review of certain preserved mushrooms from the PRC on 30 companies. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 14643 (March 23, 2005). On June 29, 2005, the Petitioner filed a timely letter withdrawing its request for review for 25 of the 30 companies. On July 21, 2005, the Department rescinded the review with respect to these 25 companies.[1] *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42038 (July 21, 2005).

On March 30, 2005, the Department issued antidumping duty questionnaires to Raoping Yucun, PHX, Gerber, Guangxi Yulin and Green Fresh.

On April 13, 2005, the Department provided all interested parties the opportunity to submit information pertinent to selecting a surrogate country and valuing factors of production for this administrative review.

On October 6, 2005, the Department extended the time limit for the preliminary results of this administrative review from October 31, 2005 to February 28, 2006. *See Notice of Extension of the Preliminary Results of the Administrative Antidumping Duty Review: Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 58381 (October 6, 2005).

Gerber

On March 25, 2005, Gerber stated that it had no shipments of subject merchandise during the POR. However, the Department obtained information from CBP that indicated Gerber may have had shipments during the POR and on October 5, 2005, the Department sent Gerber a letter asking for clarification of its no shipment response given the CBP data obtained by the Department. On October 30, 2005, Gerber notified the Department that it would no longer participate in this review.

Green Fresh

On May 6, 2005, Green Fresh requested clarification from the Department regarding its one shipment of subject merchandise to the United Stated during the POR. Specifically, Green Fresh requested whether one shipment which did not enter during the POR was subject to this administrative review. On May 18, 2005, the Department notified Green

[1] The list of the 30 companies initiated for an administrative review is available at 70 FR 14647 (March 23, 2005).

Fresh that, because Green Fresh's single shipment of subject merchandise entered the United States after the POR and that the sale of this single shipment was made to the first unaffiliated U.S. customer after the POR, this shipment would be properly reviewed in the next administrative review in accordance with section 351.213(e)(1) of the Department's regulations. *See* the Department's May 18, 2005, letter to Green Fresh.

Guangxi Yulin

On June 30, 2005, Guangxi Yulin notified the Department that it would no longer participate in this review.

PHX

On May 27, 2005, PHX submitted its response to the Department's antidumping duty questionnaire.[2] On June 3, 2005, the Department notified PHX that it had omitted electronic versions of the sales and factors of production ("FOP") databases. The Department requested that PHX file the omitted databases by June 8, 2005. *See Memorandum to the File from Amber Musser, Case Analyst, 6th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Regarding Telephone Call with Ms. Lizbeth Levinson of Garvey Schubert Barer*, dated June 6, 2005. On August 5, 2005, PHX submitted its response to the Department's first supplemental sections A, C & D questionnaire. Additionally, PHX submitted several exhibits on August 10, 2005, which PHX omitted from its August 5, 2005, response. On November 14, 2005, PHX submitted its response to the Department's second supplemental section A questionnaire. On November 21, 2005, PHX submitted its response to the Department's second supplemental sections C & D questionnaire. Additionally, on November 22, 2005, PHX submitted exhibits which it had omitted from its November 21, 2005, response. On November 29, 2005, PHX filed a revised FOP database corresponding to the questionnaire response dated November 21, 2005.

On November 30, 2005, the Department issued a third supplemental sections A, C & D questionnaire regarding deficiencies in PHX's previous supplemental responses. PHX did not submit a response to this supplemental questionnaire. On December 5, 2005, the Department issued a letter to PHX discussing various continued deficiencies in PHX's responses, providing an opportunity for PHX to correct these deficiencies by December 9, 2005. On December 9, 2005, PHX requested an extension to correct its deficiencies, which the Department granted for a new deadline of December 12, 2005. On December 12, 2005, PHX advised the Department by telephone that it would not submit corrections or any other response to the letter dated December 5, 2005. Furthermore, PHX stated that it was withdrawing from the instant proceeding. *See Memorandum to the File from Irene Gorelik, Case Analyst, 6th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Regarding Telephone Call with Counsel to Primera Harvest (Xiangfan) Inc. ("PHX")*, dated December 12, 2005. On December 13, 2005, PHX filed a letter withdrawing its request for an administrative review.

Raoping Yucun

On May 18, 2005, Raoping Yucun submitted its response to the Department's antidumping duty questionnaire. On August 16, 2005, Raoping Yucun submitted its response to the Department's supplemental sections A, C & D questionnaire. On October 28, 2005, Raoping Yucun submitted its response to the Department's supplemental sections A, C & D questionnaire. On November 17, 2005, Raoping Yucun submitted its response to the Department's request for FOPs and market economy purchases. On January 13, 2006, Raoping Yucun submitted its response to the Department's supplemental Section D questionnaire.

Period of Review

The POR covers February 1, 2004, through January 31, 2005.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms≥; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Green Fresh, which reported that it did not have any entries of merchandise subject to the antidumping duty order on certain preserved mushrooms during the POR. No party has placed evidence on the record to indicate that Green Fresh had entries of subject merchandise during the POR. In addition, we examined CBP shipment data and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from Green Fresh during the POR. *See* the Department's May 18, 2005, letter to Green Fresh.

PHX's Request for Withdrawal of Administrative Review

As noted above, PHX submitted a letter to the Department withdrawing its

[2] Sections A (Organization, Accounting Practices, Markets and Merchandise), C (Sales to the United States), D (Factors of Production), E (Cost of Further Manufacturing Performed in the United States) and Sales and Factors of Production Reconciliations.

[3] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 39C F.3d 1378 (Fed. Cir. 2005).

request for an administrative review on December 13, 2005. Pursuant to 19 CFR 351.213(d)(1), "the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." The 90–day deadline for withdrawing from this administrative review passed on June 21, 2005. However, the Department extended the deadline to withdraw an administrative review request, per the Petitioner's request, to July 5, 2005. Therefore, PHX's request to withdraw from the administrative review was submitted 161 days after the deadline established by the Department.

During the course of these 161 days, the Department reviewed PHX's submissions and prepared and sent questionnaires to PHX. As a result of PHX's deficient and/or incomplete questionnaire responses, the Department repeatedly attempted to gather necessary information from PHX. On November 30, 2005, the Department sent PHX a supplemental questionnaire requesting additional information. To date, the Department has not received PHX's response to this questionnaire. On December 5, 2005 the Department sent PHX a letter enumerating outstanding deficiencies in PHX's responses and requesting that these be remedied. Instead, PHX submitted its late request for withdrawal from the administrative review. In this case, because the Department expended considerable effort and resources in our analysis of PHX, prior to its late withdrawal during an advanced stage of the review, we have not rescinded the review of the order on certain preserved mushrooms from the PRC with respect to PHX. This is consistent with past Department practice. *See Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, And Notice of Intent to Revoke Order in Part*, 69 FR 5949, (February 9, 2004), ("Although we have accepted untimely withdrawals of requests for review elsewhere, the circumstances surrounding the review of INA are different from other situations...we had expended effort and resources in our analysis of INA prior to the untimely withdrawal such that we were quite advanced in the review").

Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department, "in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316 at 870 (1994).

PHX

(A) Facts Available

As noted above, section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the appropriate determination. As stated above, PHX has withheld information requested by the Department by not submitting a response to the Department's questionnaire dated November 30, 2005. The information requested in the November 30, 2005, questionnaire is critical and necessary to calculate PHX's margin. Additionally, PHX has also failed to provide information in the manner requested. For details regarding PHX's outstanding questionnaires, please see *Memo to the File, from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, 6th Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Outstanding Responses from Primera Harvest (Xiangfan) Inc. ("PHX")*, dated February 28, 2006. Finally, PHX's actions have impeded the administrative review procedures such that a verification of PHX's sales and cost information could not be performed. Therefore, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for PHX, pursuant to section 776(a)(2) of the Act. *See Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005), ("because this company refused to participate in this administrative review, we find that....the use of total facts available is appropriate") and *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072 (December 22, 2003), ("Since UC and DNP withheld information requested by the Department, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for these parties").

(B) Adverse Inference

In applying facts otherwise available, section 776(b) of the Act states that if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the International Trade Commission, the administering authority or the Commission, in reaching the applicable determination under section 776(b) of the Act, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In the instant proceeding, we find it appropriate to use an inference that is adverse to the interests of PHX in selecting from among the facts otherwise available. By withdrawing from this administrative review 161 days after the Department's established deadline rather than submitting a response to the Department's November 30, 2005, supplemental questionnaire or the Department's December 5, 2005, letter, PHX has failed to cooperate to the best of its ability in this proceeding. Accordingly, we find that an adverse inference is warranted.

By applying AFA, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review. Because of PHX's withdrawal from the instant proceeding, the Department was unable to verify PHX's separate rates information due to its withdrawal from the administrative review. Thus, the Department could not determine whether PHX is eligible for a separate rate. Accordingly, we are not

granting PHX a separate rate and are applying the PRC–wide rate to PHX. *See* the "Corroboration" section below for a discussion of the probative value of the PRC–wide 198.63 percent rate.

Gerber and Guangxi Yulin

(A) Facts Available

As stated above in the "Case History" section, Gerber and Guangxi Yulin did not respond to the Department's antidumping questionnaire. Rather, as noted above, Gerber and Guangxi Yulin informed the Department that they would no longer participate in this proceeding, and failed to respond to the Department's request for information. Because of their failure to participate in the instant review, Gerber and Guangxi Yulin withheld requested information from the Department and impeded this proceeding. Consistent with section 776(a) of the Act, the Department has determined to apply total facts available to Gerber and Guangxi Yulin in the preliminary results.

(B) Adverse Inference

The Department further finds that by failing to participate in this administrative review, Gerber and Guangxi Yulin have failed to cooperate to the best of their ability in this proceeding. Therefore, pursuant to section 776(b) of the Act, we find it appropriate to use an inference that is adverse to the interests of Gerber and Guangxi Yulin in selecting from among the facts otherwise available. By doing so, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review. Because Gerber and Guangxi Yulin failed to respond to our request for information, the Department could not determine whether these companies are eligible for a separate rate. Accordingly, we are applying the PRC–wide rate to Gerber and Guangxi Yulin. *See* the "Corroboration" section below for a discussion of the probative value of the PRC–wide 198.63 percent rate.

Corroboration of AFA rate for PHX, Gerber and Guanxi Yulin

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the PRC–wide rate, which is the highest rate from any segment of this administrative proceeding, and is a rate from the less–than-fair–value ("LTFV") investigation. *See Mushrooms Order* at 8310.

The information upon which the AFA rate is based in the current review (the PRC–wide rate of 198.63 percent) being assigned to PHX, Gerber and Guangxi Yulin was the highest rate from the petition in the LTFV investigation. This AFA rate has not changed since the original LTFV determination. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in reviews subsequent to the LTFV investigation to the extent that the Department referred to the history of corroboration, as well as in the most recently completed review. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005) ("*5th Review Results*") (to corroborate the AFA margin of 198.63 percent, in the 5th review the Department compared the AFA margin to calculated margins for certain respondents and found that 198.63 percent was within the margins for individual sales of identical and/or similar products). Furthermore, no information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis as described above, we find that the margin of 198.63 percent is reliable and has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC–wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from all companies subject to the PRC–wide rate, including PHX, Gerber and Guangxi Yulin.

Separate Rates

The Department has treated the PRC as a non–market economy ("NME") country in all previous antidumping cases. *See Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review*, 71 FR 4112 (January 25, 2006). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the FOPs in a surrogate country.

It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in the *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 the separate rates criteria established in these cases, the

Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of absence of de jure government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

In the instant review, Yucun submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Yucun includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by Yucun supports a finding of an absence of *de jure* governmental control over its export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *Sparklers* at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Yucun submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Yucun sets its own export prices independent of the government and without the approval of a government authority; (2) Yucun retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Yucun has a director with the authority to negotiate and bind the company in an agreement; (4) the director is the owner of Yucun and appoints the deputy managers and the manager of each department; and (5) there is no restriction on Yucun's use of export revenues. Therefore, the Department has preliminarily found that Yucun has established prima facie that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, 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 utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Office of Policy, Acting Director, to Brian C. Smith, Program Manager: Antidumping Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Request for a List of Surrogate Countries*, dated April 7, 2005. We selected an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process ("Policy Bulletin")*, dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise and is at a similar level of economic development pursuant to section 773(c)(4) of the Act. *See Memorandum from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File, 6th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Selection of a Surrogate Country*, dated February 28, 2006 ("*Surrogate Country Memo*").

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Yucun for the POR. To calculate NV, we valued the reported FOP by multiplying the per–unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, contemporaneity to the POR, as well as excluded taxes of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in *International Financial Statistics*. We excluded imports from Korea, Thailand, and Indonesia from the surrogate country import data used in our calculations due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, we disregarded prices from NME countries. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's Web site at: http://www.ia.ita.doc.gov/exchange/index.html. For further detail, *see Surrogate Values Memo*.

U.S. Price

In accordance with section 772(a) of the Act, the Department calculated an export price ("EP") for Yucun's sale to the United States because the first sale

to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to an unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to the unaffiliated purchaser foreign inland freight and brokerage & handling. Each of these services was either provided by a NME vendor or paid for in NME currency. Thus, we based the deduction for these movement charges on surrogate values. *See Memorandum from Paul Walker, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File,6th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Surrogate Values for the Preliminary Results,* dated February 28, 2006, ("*Surrogate Values Memo*") for details regarding the surrogate values for other movement expenses.

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2004, through January 31, 2005:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Raoping Yucun Canned Foods Factory	123.42
PRC–wide Entity (including Primera Harvest (Xiangfan) Inc., Gerber Food (Yunnan) Co., Ltd. and Guangxi Yulin Oriental Food Co., Ltd.)	198.63

Public Comment

The Department will disclose to parties to this proceeding the calculation performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

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) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed companies not listed above that have separate rates, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters (including PHX, Gerber and Guangxi Yulin) will continue to be the "PRC–wide" rate of 198.63 percent, which was established in the LTFV investigation. 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 serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3125 Filed 3–3–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is requesting comments regarding the calculation of the weighted average dumping margin in an antidumping duty investigation. Currently, the Department usually makes comparisons between average export prices and average normal values and does not offset any dumping that is found with the results of comparisons for which the average export price exceeds the average normal value. A recent WTO dispute settlement report has found that the United States application of this methodology was inconsistent with our WTO obligations. In response to this report, the Department will abandon the use of average–to-average comparisons without such offsets. The Department seeks comment on the alternative approach(s) that may be appropriate in future investigations.

EFFECTIVE DATE: March 6, 2006.

DATES: To be assured of consideration, written comments must be received no later than 30 days after the date of publication in the **Federal Register**. Rebuttal comments must be received no later than 45 days after the publication date.

ADDRESS: Submit comments to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Weighted Average Dumping Margin.

FOR FURTHER INFORMATION CONTACT: Michael Rill at 202) 482–3058, Mark Barnett at (202) 482–2866, or William Kovatch at (202) 482–5052.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 777A(d)(1)(A) of the Tariff Act of 1930, in an investigation, the Department may determine whether the subject merchandise is being sold at less than fair value either by comparing weighted average normal values to weighted average export prices of comparable merchandise (the average–to-average comparison methodology), or by comparing normal values of individual transactions to the export prices[1] of individual transactions for comparable merchandise (the transaction–to-transaction comparison methodology). The Department's regulations state that the Department will normally use the average–to-average comparison methodology in an investigation. 19 C.F.R. 351.414(c)(1).

In applying the average–to-average methodology during an investigation, the Department usually divides the export transactions into groups by model and level of trade ("averaging groups"), and compares an average of the export price of transactions within one group to an average normal value for the same or similar model of the foreign like product at the same or most similar level of trade. When aggregating the results of the comparisons of averaging groups in order to determine the weighted average dumping margin, the Department has not allowed the results of averaging groups for which export price exceeds normal value to offset the results of averaging groups for which export price is less than normal value.[2]

The European Communities ("EC") challenged the denial of offsets, both "as such," and "as applied" in certain administrative determinations, as being inconsistent with the World Trade Organization ("WTO") Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement") before a dispute settlement panel. The panel circulated its report on October 31, 2005, finding, with respect to the specific antidumping duty investigations subject to the EC's challenge, that the Department's denial of offsets when using the average–to-average comparison methodology in an investigation is inconsistent with Article 2.4.2 of the Antidumping Agreement.[3] The United States has not appealed this aspect of the panel's report.

[1] The Department may also use constructed export prices, if appropriate. Because the use of export prices or constructed export prices is not relevant to the substance of this notice, the Department refers only to export prices hereafter.

[2] Section 771(35)(A) of the Act defines the dumping margin as the amount by which normal value "exceeds" export or constructed export price. Section 771(35)(B) defines the weighted average dumping margin as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export or constructed export price of that exporter or producer.

[3] Panel Report, *United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("US - Zeroing")*, WT/DS294/R, para. 7.32, circulated October 31, 2005 *("Zeroing")*.

Proposal for Calculating the Weighted Average Dumping Margin in an Antidumping Investigation and Request for Comments

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act ("the URAA"), "[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements," certain requirements must be met before "that regulation or practice" may be "amended, rescinded, or otherwise modified . . . ." Section 123(g)(1)(C) of the URAA requires that the Department provide opportunity for public comment by publishing "the proposed modifications and the explanation of the modification" in the **Federal Register**.

The WTO panel in US - *Zeroing* has found the denial of offsets in certain antidumping duty investigations, when using the average–to-average comparison methodology, to be inconsistent with Article 2.4.2 of the Antidumping Agreement.[4] Accordingly, the Department proposes that it will no longer make average–to-average comparisons without providing offsets for non–dumped comparisons.

The Department is soliciting comments pertaining to this proposal and appropriate methodologies to be applied in future antidumping duty investigations in light of the panel's report in *US - Zeroing*.

Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a final notice regarding the calculation of the weighted average dumping margin using the average–to-average comparison methodology in an investigation. *See* section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). Any changes in methodology will be applied in all investigations initiated on the basis of petitions received on or after the first day of the month following the date of publication of the Department's final notice of the new weighted average dumping margin calculation methodology.

Comments - Format

Parties wishing to comment should submit a signed original and six copies of each set of comments, including reasons for any recommendations, along with a cover letter identifying the commenter's name and address. To help simplify the processing and distribution

[4] *US - Zeroing*, para. 7.32.

of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on CD–ROM in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

Comments received on CD–ROM will be made available to the public on the Web at the following address: http://ia.ita.doc.gov/. In addition, upon request, the Department will make comments filed in electronic form available to the public on CD–ROMs (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482–0866 or via e–mail at *andrew.beller@mail.doc.gov*.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 06–2134 Filed 3–3–06; 1:14 pm]

Billing Code: 3510–DS–R

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held March 20 – 23, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, AL 36602.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, March 22, 2006

1:30 p.m. – Convene.

1:45 p.m. – 2:30 p.m. – Hear a Monitoring Report on the Madison/Swanson Marine Reserves.

2:30 p.m. – 4:30 p.m. – Receive public testimony on (a) Final Reef Fish Amendment 26 [Red Snapper Individual Fishing Quota (IFQ)]; and (b) Exempted fishing permits (if any).

4:30 p.m. – 5:30 p.m. – Open public comment period regarding any fishery issue or concern.

6:30 p.m. – 8:30 p.m. – NOAA Fisheries Service will hold a public workshop to provide a general demonstration of the on-line capabilities to implement the Red Snapper Individual Fishing Quota (IFQ) System. This presentation is solely for the purpose of soliciting input from the Council and potential users of the system in an effort to make the tool user friendly, concise and responsive to Reef Fish Amendment 26.

Thursday, March 23, 2006

8:30 a.m. – 9 a.m. – Receive the Scientific and Statistical Committee (SSC) Selection Committee Report on appointment of shrimp effort working group (CLOSED SESSION).

9 a.m. – 11:15 a.m. – Receive the joint Reef Fish/Shrimp Management Committees Report.

11:15 a.m. – 12 noon – Receive the Administrative Policy Committee Report.

1:30 p.m. – 1:45 p.m. – Report the Council action on the SSC Selection Committee Report.

1:45 p.m. – 3:45 p.m. – Receive the Reef Fish Management Committee Report.

3:45 p.m. – 4 p.m. – Receive the Council Chairs Budget Meeting Report.

4 p.m. – 5 p.m. – Other Business (Includes miscellaneous reports filed under Tabs O, P, Q, and R of briefing book).

Committee

Monday, March 20, 2006

1 p.m. – 3 p.m. – The Standing SSC will meet to discuss and take action on attendance/operations issues. The Standing SSC will then review and take action on the Socioeconomic Panel (SEP) Report on grouper allocation issues.

3 p.m. – 4:30 p.m. – The Administrative Policy Committee will meet jointly with the Standing SSC to review the Statement of Organization Practices and Procedures (SOPPs) provisions on SSC operations.

4:30 p.m. – 5:30 p.m. – The joint Reef Fish/Shrimp Management Committees will meet with the Standing SSC to review an options paper for Joint Draft Amendment Reef Fish 27/Shrimp 14 to consider changes to regulations for the directed red snapper fishery and shrimp trawl fishery for reducing bycatch in the directed red snapper fishery and shrimp fishery; and effort limitation alternatives for the shrimp fishery. The Committees and the SSC will also review a scoping document for a Draft Shrimp Amendment 15 that considers limits on trawling gear, restrictions on the transfer of vessel permits, bycatch quotas, and possible area closures. Public comments from the scoping meetings will be reviewed for both proposed amendments. The SSC will provide their review, and the Committees will make recommendations for Council.

Tuesday, March 21, 2006

8:30 a.m. – 12 noon – The joint Reef Fish/Shrimp Management Committees will reconvene with the Standing SSC to continue their work.

1:30 p.m. – 5:30 p.m. – The joint Reef Fish/Shrimp Management Committees will convene without the Standing SSC to continue their discussions.

Wednesday, March 22, 2006

8:30 a.m. – 12 p.m. – After an update on the red snapper IFQ referendum, the Reef Fish Management Committee will take final action on Reef Fish Amendment 26 for a Red Snapper IFQ program. They will then review public comments/letters and develop committee recommendations. The Committee will then discuss issues pertaining to the Grouper IFQ Amendment and review recommendations of the Ad Hoc Grouper IFQ Advisory Panel and make recommendations to Council. Finally, the Committee will review the SEP report and the SSC Recommendations on Grouper Allocation Amendment issues and make recommendations to Council.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's

intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 1, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3100 Filed 3–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/Marine Protected Area (MPA)/ Ecosystem Committee in March, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, March 20, 2006. at 9 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 746–5386.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review and recommend for Council consideration Essential Fish Habitat (EFH) designation alternatives for inclusion in Phase 1 of the EFH Omnibus Amendment. In addition, the committee will be briefed on any proposed non-fishing projects that may adversely affect EFH in the northeast U.S. and will discuss the EFH consultation elevation process, and they may also be briefed on the progress and status of ecosystem-based fisheries management within the National Marine Fisheries Service. Other topics may be covered at the committee's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3098 Filed 3–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806C]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Charter Halibut Stakeholder Committee will meet in Anchorage, AK.

DATES: The meeting will be held on March 21–23, 2006. The meeting will be held from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Dillingham Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Halibut Stakeholder Committee will identify common principles and goals to develop a problem statement and define two alternatives for a future analysis. One alternative would be an allocation based program. Elements to be included in the plan should include, but not be limited to:

1. A percentage based allocation that would float up and down with abundance in a fashion similar to the commercial longline Total Allowable Catch (TAC);

2. Subdivision of Area 2C and 3A into smaller geographic sub-districts, including time certain establishment of local area management plans (LAMPs) and super-exclusive registration areas;

3. Management measures that will be used to enforce the allocation, including:

a. the current suite of measures to reduce harvests under the Guideline Harvest Level (GHL) (i.e., one trip per vessel per day, no harvest by skipper and crew, and annual limit of 5 or 6 fish per person (for Area 2C only);

b. Measures being pursued by the State of Alaska in 2006, including:

i. a halibut reporting requirement in charter boat logbooks with methodology to ensure accuracy;

ii. a proposed regulation to the Board of Fish to prohibit retention or harvest of fish by skipper and crew members when clients are on board; and

iii. limit the number of lines fished to the number of clients;

c. Other annual bag limits;

d. Limitations on days fished (either total number of days or by excluding specific days of the week);

e. Reduced daily limits including size limitations for the second fish caught;

f. Subtraction of any allocation exceedence from the following year's allocation;

g. Federal moratorium or control date of December 9, 2006 and/or a State limited entry program with delayed transferability;

h. Mechanisms which, if the charter harvest continues to grow, would allow

for an orderly and compensated allocation shift from the longline sector to the charter sector, including the use of a charter stamp, which would generate funds to pay for management of the charter fishery and to buy longline shares to be converted into the charter allocation;

i. Exploration of delegation of some management aspects of the halibut sport fishery, including the charter sector, to the State of Alaska.

A second alternative would be a modified Individual Fishing Quota (IFQ) program, including, but not be limited to:

1. The elements of the previously proposed (2001) charter Individual Fishing Quota (IFQ) program;

2. A modified IFQ program, including, but not be limited to, addressing potential legal vulnerabilities that may exist in the 2001 IFQ program. Such approaches might include a "leveling" plan, other effort based mechanisms to update 1998 and 1999 history, new history approaches, an effort based transferable seat program, or other options;

3. Subdivision of Area 2C and 3A into smaller geographic sub-districts, including time certain establishment of LAMPs;

4. The use of a moratorium or control date of December 9, 2006; and

5. Other elements to be identified by the committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 28, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3099 Filed 3–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a public workshop on the development of the analysis for the groundfish trawl individual quota program alternatives to be considered by the Council.

DATES: The public workshop will begin Tuesday, April 18, 2006, at 10 a.m. and may go into the evening if necessary to complete business for the day; reconvene at 8:30 a.m. on Wednesday, April 19, 2006, continuing until business for the day is completed; and reconvene at 8:30 a.m. on Thursday April 20, 2006, continuing until 5 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, Oak Room, 7900 NE 82nd Avenue, Portland, OR 97220; telephone: (503) 460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to review and receive comments from the public and Council advisory bodies on the first stage of the draft analytical package being developed by Northern Economics Incorporated to support the Council's consideration of individual quotas for the West Coast groundfish trawl fishery.

Although non-emergency issues not contained in this workshop agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 1, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3101 Filed 3–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0024]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the extension of an existing public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 5. 2006.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available

for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Senior Investigator, the Millennium Cohort Study, Naval Health Research Center, Department of Defense Center for Deployment Health Research, Code 25, P.O. Box 85122, San Diego, CA 92186–5122, or call Margaret A. K. Ryan, MD, MPH at (619) 553–8097.

Title and OMB Number: Prospective Department of Defense Studies of U.S. Military Forces: The Millennium Cohort Study; OMB Control Number 0720–0029.

Needs and Uses: The Millennium Cohort Study responds to recent recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service.

Affected Public: Civilians, formerly Active Duty and activated Reservists in the U.S. Military, who enrolled and participated in panels 1 and 2 of the Millennium Cohort Study.

Annual Burden Hours: 43,776.

Number of Respondents: 58,369.

Responses per Respondent: 1.

Average Burden in Hours/Minutes per Response: 45 minutes.

Frequency of Response: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Persons eligible to respond to this survey are those civilians now separated from military service who initially enrolled, gave consent and participated in the Millennium Cohort Study while on active duty in the Army, Navy, Air Force, Marine Corps or U.S. Coast Guard during the first or second panel enrollment periods in 2001–2002 or 2003–2004, respectively.

Dated: February 27, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2080 Filed 3–3–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 27, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–597–000.
Applicants: Wayne-White Counties Electric Cooperative.
Description: Wayne-White Counties Electric Cooperative submits the negotiated settlement in its proceeding involving its OATT.
Filed Date: February 17, 2006.
Accession Number: 20060221–0188.
Comment Date: 5 p.m. eastern time on Friday, March 10, 2006.

Docket Numbers: ER06–262–001.
Applicants: Pittsfield Generating Company, L.P.
Description: Pittsfield Generating Co, LP submits its response together with supporting materials, to the deficiency letter issued on January 23, 2006.
Filed Date: February 16, 2006.
Accession Number: 20060221–0031.
Comment Date: 5 p.m. eastern time on Thursday, March 9, 2006.

Docket Numbers: ER06–508–001.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc acting as agent for Alabama Power Co et al submits Substitute Original Sheet 141B.168 to FERC Electric Tariff, 4th Revised Volume No. 5 in accordance with Order 2006–A & 661–A.
Filed Date: February 16, 2006.
Accession Number: 20060221–0008.
Comment Date: 5 p.m. eastern time on Thursday, March 9, 2006.

Docket Numbers: ER06–647–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc and New England Power Pool submits amendments to the ISO Financial Assurance Policy for Market Participants Committee.
Filed Date: February 16, 2006.
Accession Number: 20060221–0084.
Comment Date: 5 p.m. eastern time on Thursday, March 9, 2006.

Docket Numbers: ER06–648–000.
Applicants: Duke Energy St. Francis LLC.
Description: Duke Energy St. Francis LLC submits its Notice of Cancellation (Attachment A) to cancel its market-based rate tariff, currently designated as FERC Electric Tariff, Original Volume No. 1.
Filed Date: February 17, 2006.
Accession Number: 20060221–0012.
Comment Date: 5 p.m. eastern time on Friday, March 10, 2006.

Docket Numbers: ER06–649–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an unexecuted interconnection service agreement etc with East Coast Power, LLC and Public Service Electric and Gas Co.
Filed Date: February 16, 2006.
Accession Number: 20060221–0013.
Comment Date: 5 p.m. eastern time on Thursday, March 9, 2006.

Docket Numbers: ER06–650–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an interconnection service agreement among PJM, Calvert Cliffs Nuclear Power Plant Inc, and Baltimore Gas and Electric Co.
Filed Date: February 17, 2006.
Accession Number: 20060222–0012.
Comment Date: 5 p.m. eastern time on Friday, March 10, 2006.

Docket Numbers: ER06–651–000.
Applicants: Ohio Valley Electric Corporation.
Description: Ohio Valley Electric Corp submits notice of cancellation of transmission agreement, transmission scheduling agreement & lease with Louisville Gas & Electric Co.
Filed Date: February 17, 2006.
Accession Number: 20060222–0013.
Comment Date: 5 p.m. eastern time on Friday, March 10, 2006.

Docket Numbers: ER06–652–000.
Applicants: PECO Energy Company.
Description: PECO Energy Co submits a Notice of Cancellation of the Interconnection Agreement with Exelon Generation for the Eddystone Generating Facility.
Filed Date: February 17, 2006.
Accession Number: 20060222–0014.
Comment Date: 5 p.m. eastern time on Friday, March 10, 2006.

Docket Numbers: ER94–1478–018.
Applicants: Electrade Corporation.
Description: Electrade Corp submits an amendment to its market-based rate schedule.
Filed Date: February 16, 2006.
Accession Number: 20060221–0004.
Comment Date: 5 p.m. eastern time on Thursday, March 9, 2006.

Docket Numbers: ER96–2495–028; ER97–4143–016; ER97–1238–023; ER98–2075–022; ER98–542–018; EL04–131–000.
Applicants: AEP Power Marketing, Inc.; AEP Service Corporation; CSW Power Marketing, Inc.; CSW Energy Services, Inc.; Central and South West Services, Inc.

Description: American Electric Power Service Corp, on behalf of the AEP Power Marketing Inc et al submits on February 13, 2006 an Offer of Settlement and two related Settlement Agreements; on February 14, 2006 submits Certificate of Service.

Filed Date: February 13, 2006.

Accession Number: 20060223–0094.

Comment Date: 5 p.m. eastern time on Monday, March 6, 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. E6–3081 Filed 3–3–06; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, March 8, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: Proposed Rule: Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: Periodic Update of Examination Program Development and Supervisory Findings.

FOR MORE INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov*.

By the Federal Housing Finance Board.

Dated: March 1, 2006.

John P. Kennedy,

General Counsel.

[FR Doc. 06–2119 Filed 3–1–06; 4:37 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). 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 instrument(s) 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.

FOR FURTHER INFORMATION CONTACT: Douglas Carpenter, Supervisory Financial Analyst (202–452–2205) or Wanda Dreslin, Supervisory Financial Analyst (202–452–3515) for information concerning the specific bank holding company reporting requirements. The following may also be contacted regarding the information collection:

Federal Reserve Board Clearance Officer Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to mmenchik@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority the revision, without extension, of the following reports:

1. Report title: Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, and FR Y–9SP

OMB control number: 7100–0128

Frequency: Quarterly and semiannually.

Reporters: Bank holding companies.

Annual reporting hours: FR Y–9C: 116,279; FR Y–9LP: 18,639; FR Y–9SP: 47,379.

Estimated average hours per response: FR Y–9C: 37.95; FR Y–9LP: 4.75; FR Y–9SP: 5.10.

Number of respondents: FR Y–9C: 766; FR Y–9LP: 981; FR Y–9SP: 4,645.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9C, FR Y–9LP, and FR Y–9SP are standardized

financial statements for the consolidated bank holding company (BHC) and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on–site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre–inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from the BHC. The FR Y–9C is filed by top–tier BHCs with total consolidated assets of $150 million or more and lower–tier BHCs that have total consolidated assets of $1 billion or more. (Under certain circumstances defined in the General Instructions, BHCs under $150 million may be required to file the FR Y–9C.) In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include one–bank holding companies with total consolidated assets of less than $150 million and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

Current actions: On November 2, 2005, the Federal Reserve issued for public comment proposed revisions to bank holding company reports (70 FR 66423). The comment period expired on January 3, 2006. The proposed effective date for all of the revisions was March 31, 2006. The Federal Reserve received two comment letters. In addition, thirty comments were received by the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (banking agencies) on proposed revisions to the Call Reports that parallel some of the proposed revisions to the FR Y–9C, and were also taken into consideration.

After considering all comments, the Federal Reserve approved several modifications to the initial set of proposed revisions and decided to phase–in the changes beginning March 31, 2006, through March 31, 2007, to provide BHCs sufficient time to make system and processing changes. The Federal Reserve will move forward with reporting changes to the FR Y–9C and FR Y–9LP on March 31, 2006, to increase the asset–size threshold for filing the FR Y–9C and FR Y–9LP from $150 million to $500 million and to revise other current filing criteria affecting the reporting of the FR Y–9C and FR Y–9LP. Other FR Y–9C revisions effective for March 31, 2006, include: (1) Adding a data item for loans for purchasing and carrying securities, (2) adding a data item for additional regulatory capital detail, (3) adding data items for further detail on credit derivatives, (4) removing the threshold for reporting of life insurance assets, (5) revising the scope of securitizations to be included in Schedule HC–S, (6) removing the FR Y–9C filing requirement for lower–tier BHCs with total assets of $1 billion or more; (7) deleting or imposing a reporting threshold on a number of data items; and (8) making revisions to the reporting instructions. The Federal Reserve will delay the implementation for providing additional detail on certain balance sheet data items, mortgage banking activities, and credit derivatives to September 30, 2006, and other data items providing additional detail on income statement data items and certain loans to March 31, 2007. In addition, revised officer signature requirements for the FR Y–9C and FR Y–9LP will take effect September 30, 2006. Finally, the Federal Reserve will implement revisions to the FR Y–9SP on June 30, 2006, to: (1) increase the asset–size threshold for filing the FR Y–9SP from under $150 million to under $500 million; (2) revise other current filing criteria affecting the reporting of the FR Y–9SP; and (3) add two new data items to collect information on total off–balance–sheet activities and total debt and equity securities. Revised officer signature requirements for the FR Y–9SP will take effect December 31, 2006.

A summary of final revisions and the Federal Reserve's response to the comments are presented below.

FR Y–9C Revisions Effective as of the March 31, 2006, Reporting Date

Filing Criteria

The Federal Reserve will increase the asset–size threshold of the FR Y–9C from $150 million to $500 million. BHCs with consolidated assets of less than $500 million generally will file the parent–only FR Y–9SP. The Federal Reserve will also revise the other criteria used in determining whether a BHC is subject to consolidated FR Y–9C reporting requirements. However, the Federal Reserve will retain the current policy that allows a Reserve Bank to require a BHC to file consolidated financial reports if the Reserve Bank determines that such action is warranted for supervisory reasons.

Specifically, the Federal Reserve will require BHCs with consolidated assets of less than $500 million to continue to comply with the FR Y–9C reporting requirements if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or administering assets for third parties, either directly or through a nonbank subsidiary; or (3) has a material amount of debt or equity securities (other than trust preferred securities) outstanding that are registered with the Securities and Exchange Commission (SEC).[1] While the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is expected to be infrequent, any such holding company will be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

In addition, the Federal Reserve separately approved amendments to the capital adequacy guidelines to explicitly provide that BHCs not subject to the capital guidelines may voluntarily comply with the guidelines. BHCs electing to comply with the guidelines will be required to file the complete consolidated FR Y–9C, and generally would not be permitted to revert back to filing the FR Y–9SP report in any subsequent periods.

[1] Responsibility for determination whether such activities are significant or material for any given BHC would rest with the supervisory function at each Federal Reserve district bank. If a Reserve Bank finds that a BHC meet any of these criteria, the Reserve Bank would be responsible for notifying the BHC and establishing the time frame for meeting the capital adequacy guidelines and FR Y–9C reporting requirements.

Lower–tier Reporting Requirements

The Federal Reserve proposed to eliminate the reporting exception requiring top–tier BHCs to submit an FR Y–9C for each lower–tier BHC with total consolidated assets of $1 billion or more, finding that information from such lower–tier institutions is no longer needed for supervisory or safety and soundness purposes. Such BHCs would continue to file the FR Y–9LP.

Two commenters supported this change, but further requested exemption from submitting information on two schedules in the FR Y–9LP – Schedule PI–A, Cash Flow Statement and Schedule PC–B, Memoranda. The commenters believed that these schedules are of little supervisory value for the lower–tier BHCs, but create significant burden for the reporting institutions. They also sought clarification of requirements for lower–tier BHCs to continue to file the FR Y–9LP.

All lower–tier BHCs of parent FR Y–9C filers are required to file the FR Y–9LP. Both the cash flow statement and the memoranda schedule provide cash flow and liquidity information that are considered critical for supervisory and safety and soundness purposes, particularly if the BHC is undergoing a period of financial stress. Such information would not be reflected in the top–tier BHC's parent–only FR Y–9LP statement. Information collected on Schedules PI–A and PC–B are also an important input when monitoring the condition of these institutions between on–site examinations. Lack of this information could lead to more frequent on–site examinations, which would tend to increase overall regulatory burden. For these reasons the Federal Reserve will retain the requirement that lower–tier BHCs of parent FR Y–9C filers submit the entire FR Y–9LP.

Impact of Derivatives on Income

In Schedule HI, Income Statement, the Federal Reserve is eliminating Memoranda data items 10.a through 10.c, which collect data on the Impact on income of derivatives held for purposes other than trading.

Bankers Acceptances

The Federal Reserve will eliminate the following data items for reporting information on bankers acceptances: Schedule HC, data item 9, Customers' liability on acceptances outstanding; Schedule HC, data item 18, Liability on acceptances executed and outstanding; Schedule HC–M, data item 10, a data item that provides an indication of whether the BHC has reduced the liabilities on acceptances executed and outstanding by the amount of any participations in bankers acceptances; and Schedule HC–L, data item 5, Participations in acceptances conveyed to others by the reporting bank holding company. BHCs will be instructed to include any acceptance assets and liabilities in Other assets and Other liabilities, respectively, on the balance sheet and to include in the Other category of Schedule HC–F, Other Assets, and Schedule HC–G, Other Liabilities.

Holdings of Asset–Backed Securities

BHCs with domestic offices only and less than $1 billion in total assets will no longer submit a six–way breakdown of their holdings of asset–backed securities (not held for trading purposes) in Schedule HC–B, Securities, data items 5.a through 5.f.[2] Instead, these BHCs will submit only their total holdings of asset–backed securities in Schedule HC–B, data item 5. However, all BHCs with foreign offices and other BHCs with $1 billion or more in total assets will continue to submit the existing breakdown of their asset–backed securities, but this information will be collected in new Memorandum data items 5.a through 5.f of Schedule HC–B. To determine whether a BHC must complete Memorandum data items 5.a through 5.f during 2006, the $1 billion asset size test is based on the total assets reported on the BHC's FR Y–9C balance sheet for June 30, 2005. Each year thereafter, this asset size test will be determined based on the total assets reported in the previous year's June 30 FR Y–9C report. Once a BHC surpasses the $1 billion total asset threshold, it must continue to submit these memorandum data items regardless of subsequent changes in its total assets.

Schedule HC–C–Loans and Lease Financing Receivables

The Federal Reserve will revise Schedule HC–C, data item 9, All other loans, to break out a new data item 9.a, Loans for purchasing or carrying securities (secured and unsecured). Current data item 9 would be renumbered as 9.b. This data item will be defined the same as a comparable data item currently reported by banks on the Call Report.

Life Insurance Assets

At present, BHCs include their holdings of life insurance assets (that is, the cash surrender value submitted to the BHC by the insurance carrier, less any applicable surrender charges not reflected by the carrier in this submitted value) in Schedule HC–F, data item 5, Other assets. If the carrying amount of a BHC's life insurance assets included in data item 5 exceed 25 percent of its Other assets, the BHC must disclose this carrying amount in data item 5.a. The Federal Reserve will revise Schedule HC–F, data item 5.a, by removing the disclosure threshold of 25 percent of Other assets. Existing data item 5, Other assets, in Schedule HC–F will be renumbered as data item 6.

Credit Derivatives by Type and Remaining Maturity

In data item 7 of Schedule HC–L, Derivatives and Off–Balance Sheet Items, BHCs currently submit the notional amounts of the credit derivatives on which they are the guarantor and on which they are the beneficiary as well as the gross positive and negative fair values of these credit derivatives. These existing data items will be revised so that BHCs with credit derivatives will submit a breakdown of these notional amounts by type of credit derivative – credit default swaps, total return swaps, credit options, and other credit derivatives – in data items 7.a.(1) through 7.a.(4) of Schedule HC–L, with those on which the BHC is the guarantor submitted in column A and those on which the BHC is the beneficiary in column B. BHCs will continue to separately submit the gross positive and negative fair values of credit derivatives on which they are the guarantor and the beneficiary without a breakdown by type of credit derivative (data items 7.b.(1) and 7.b.(2), columns A and B).

In addition, BHCs currently present a maturity distribution for six categories of derivative contracts that are subject to the risk–based capital standards in Schedule HC–R, Regulatory Capital, Memorandum data item 2. A new category will be added for credit derivatives that are subject to these standards. The remaining maturities of these credit derivatives will be submitted separately for those where the underlying reference asset is rated investment grade or, if not rated, is the equivalent of investment grade under the BHC's internal credit rating system (Memorandum data item 2.g.(1)) and those where the underlying reference asset is rated below investment grade (subinvestment grade) or, if not rated, is the equivalent of below investment grade under the BHC's internal credit rating system (Memorandum data item 2.g.(2)).

[2] In Schedule HC–B, the asset–backed securities reported in data items 5.a through 5.f exclude mortgage–backed securities, which are reported separately in data items 4.a.(1) through 4.b.(3) of the schedule.

Schedule HC–M–Memoranda

The Federal Reserve will delete Schedule HC–M, data item 7, Total assets of unconsolidated subsidiaries and associated companies.

Schedule HC–R–Regulatory Capital

The Federal Reserve will add a new memorandum data item 6, Market risk equivalent assets attributable to specific risk (included in Schedule HC–R, data item 58). The Federal Reserve's risk–based capital standards require all BHCs with significant market risk to measure their market risk exposure and hold sufficient capital to mitigate this exposure. In general, a BHC is subject to the market risk capital guidelines if its consolidated trading activity, defined as the sum of trading assets and liabilities submitted in its FR Y–9C for the previous quarter, equals: (1) 10 percent or more of the BHC's total assets as submitted in its FR Y–9C for the previous quarter or (2) $1 billion or more.

A BHC that is subject to the market risk guidelines must hold capital to support its exposure to general market risk and specific risk. General market risk means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices. Covered positions include all positions in a BHCs trading account and foreign exchange and commodity positions, whether or not in the trading account. Specific risk means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk.

Scope of Securitizations to be Included in Schedule HC–S

In column G of Schedule HC–S, Servicing, Securitization, and Asset Sale Activities, BHCs submit information on securitizations and on asset sales with recourse or other seller–provided credit enhancements involving loans and leases other than those covered in columns A through F. Although the scope of Schedule HC–S was intended to cover all of a BHC's securitizations and credit–enhanced asset sales, as currently structured column G does not capture transactions involving assets other than loans and leases. Therefore, the Federal Reserve will revise the scope of column G to encompass All Other Loans, All Leases, and All Other Assets. As a result, column G will begin to reflect securitization transactions involving such assets as securities.

Instructions

In addition to modifying instructions to incorporate the proposed reporting changes, the Federal Reserve will revise the following reporting instructions.

General Instructions – The Federal Reserve will modify the reporting instructions under Who Must Report, section C, Shifts in Reporting Status: A top–tier BHC that reaches $500 million or more in total consolidated assets as of June 30 of the preceding year should begin reporting on the FR Y–9C in March of the current year. If a BHC reaches $500 million or more in total consolidated assets due to a business combination, then the BHC will be instructed to begin reporting the FR Y–9C beginning with the first quarterly report date following the effective date of the business combination. In general, once a BHC reaches or exceeds $500 million in total assets and begins filing the FR Y–9C, it should file a complete FR Y–9C going forward. If a BHC's total assets should subsequently fall to less than $500 million for four consecutive quarters, then the BHC may revert to filing the FR Y–9SP.

Schedule HC–B–Securities – The Federal Reserve will modify the reporting instructions for Schedule HC–B, memorandum data item 2, Remaining maturity of debt securities, to instruct BHCs to submit the remaining maturity of holdings of floating rate debt securities according to the amount of time remaining until the next repricing date. This instruction will be consistent with the current reporting treatment for a comparable data item in the Call Report. The instructions for this data item will also be expanded to define the terms fixed interest rate, floating rate, and next repricing date to make them consistent with the Call Report instructions.

Schedule HC–K–Quarterly Averages – The Federal Reserve will modify Schedule HC–K, data item 11, Equity capital, to no longer exclude net unrealized losses on marketable equity securities, other net unrealized gains and losses on available–for–sale securities, and accumulated net gains (losses) on cash flow hedges when calculating average equity capital.

Schedule HC–S–Servicing, Securitization, and Asset Sale Activities – BHCs submit the outstanding principal balance of assets serviced for others in Schedule HC–S, memorandum data item 2, Servicing, Securitization, and Asset Sale Activities. In memoranda data items 2.a and 2.b, the amounts of 1–4 family residential mortgages serviced with recourse and without recourse, respectively, are submitted. Memorandum data item 2.c covers all other financial assets serviced for others, but BHCs are required to submit the amount of such servicing only if the servicing volume is more than $10 million. The Federal Reserve will clarify the instructions by stating that servicing of home equity lines should be included in Memorandum data item 2.c. Memorandum data items 2.a and 2.b should include servicing of closed–end loans secured by first or junior liens on 1–4 family residential properties only.

FR Y–9C Revisions Effective as of the September 30, 2006, Reporting Date

Officer Signature Requirements

Several commenters to a comparable Call Report proposal expressed concern regarding the revision to the existing officer declaration to require that the reporting form be signed by each BHC's chief executive officer (or the person performing similar functions) and chief financial officer (or the person performing similar functions) rather than by an "authorized officer." Under the proposal, the officer declaration was also to be revised to state that these officers are responsible for establishing and maintaining internal control over financial report submissions, including controls over regulatory reports. Commenters indicated that it would be difficult to obtain the required review and signatures of the chief executive officer and chief financial officer in the short timeframe allowed for completion and submission of the data.

Several commenters also expressed concern that the banking agencies were trying to impose certification and internal control standards similar to those contained in the Sarbanes–Oxley Act of 2002 for compliance with regulatory submission guidelines. However, statutory requirements already specify that regulatory reports must be signed by an authorized officer. These statutes further require that, in signing the regulatory reports, the officer address the correctness of the submitted information. The statutes also recognize that institutions are responsible for maintaining procedures to ensure the accuracy of this information.

After considering the comments received, the Federal Reserve will revise the existing officer signature requirement so that the BHC reporting form must be signed only by the BHC's chief financial officer (or the individual performing an equivalent function) rather than by any authorized officer of the BHC. In signing the BHC reporting forms, the chief financial officer will attest that the reporting forms have been

prepared in conformance with the instructions and are true and correct to the best of the officer's knowledge and belief. The introductory paragraph preceding the statements concerning the preparation of the BHC report that must be signed by the chief financial officer will note that each BHC's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the BHC data submission. (This language concerning internal control does not appear in the statement to be signed by the chief financial officer.) Similar references to the responsibility of the board and senior management for the internal control system are contained in the banking agencies' March 2003 Interagency Policy Statement on the Internal Audit Function and Its Outsourcing. Internal control and its relationship to timely and accurate regulatory reports are also addressed in the Interagency Guidelines Establishing Standards for Safety and Soundness.

Amounts Payable and Receivable on Credit Derivatives

BHCs with credit derivatives currently submit the notional amount and fair value of these instruments in Schedule HC–L, data item 7, Derivatives and Off–Balance Sheet Instruments. BS&R proposed to add new data items 7.c.(1) and (2) to Schedule HC–L to collect information on the maximum amounts that the reporting BHC can collect or must pay on the credit derivatives it has entered into. One commenter on comparable Call Report changes requested further clarification regarding what is meant by "maximum" in this context. This term will be clarified.

Secured Borrowings

The Federal Reserve proposed to add two data items to Schedule HC–M, Memoranda, in which BHCs will submit the amount of their Federal funds purchased (as submitted in Schedule HC, data item 14.a), and their Other borrowings (as submitted in Schedule HC–M, data item 14) that are secured. Two commenters specifically addressed comparable data items proposed to the Call Report. One did not object to these data items, but the other suggested that materiality thresholds be applied to the submission of these two data items. Various alternative materiality thresholds were evaluated with the conclusion that, for many institutions, such thresholds would effectively increase, rather than reduce, the burden associated with providing the requested information. Burden would effectively increase because these institutions would have to assess whether they exceed the reporting threshold as of each report date and would need to develop a system for capturing the information whenever the threshold is exceeded. Once the threshold is exceeded institutions would continue to submit the information until the volume of the submitted information declined and remained below a threshold for a sufficient period of time to indicate that the borrowings were no longer an integral part of the institution's operations. Therefore, the Federal Reserve does not support establishing a materiality threshold for these data items.

Closed–End 1–4 Family Residential Mortgage Banking Activities

The Federal Reserve proposed adding a new Schedule HC–P (Call Report Schedule RC–P) that would contain a series of data items that are focused on closed–end 1–4 family residential mortgage banking activities. The schedule would include data items for the principal amount of retail originations during the quarter of mortgage loans for resale, wholesale originations and purchases during the quarter of mortgage loans for resale, and mortgage loans sold during the quarter. The schedule would also collect information on the carrying amount of mortgage loans held for sale at quarter–end. Data would be submitted separately for first lien and junior lien mortgages.[3]

The Federal Reserve further proposed that Schedule HC–P would be completed by all BHCs with $1 billion or more in total assets or by any BHC that has a bank subsidiary that is required to submit this information by the bank subsidiary's primary regulator. One commenter to comparable changes proposed on the Call Report stated that this submission approach of requiring bank subsidiaries to submit this information by the bank's primary regulator could result in confusion and inconsistent treatment. This commenter recommended against leaving the submission decision up to a bank's regulator, suggesting instead that a reporting threshold by mortgage volume be established for banks with less than $1 billion in assets. This commenter also stated that data collection for this new schedule would be time consuming and some information may need to be compiled manually. Three other commenters to the Call Report changes urged the banking agencies to delay the implementation of the proposed information to provide more lead time to prepare for it. Another commenter requested clear instructional guidance for the information to be submitted in this new schedule. As discussed in the following paragraph, the agencies have established a mortgage volume threshold for submitting data on Schedule RC–P of the Call Report by banks with less than $1 billion in total assets. The effective date of the schedule has also been delayed from the proposed March 31, 2006, implementation date. The instructions will be refined from those included in the proposal.

Call Report Schedule RC–P is to be completed by (1) all banks with $1 billion or more in total assets[4] and (2) banks with less than $1 billion in total assets whose closed–end 1–4 family residential mortgage banking activities exceed a specified level. More specifically, if either closed–end (first lien and junior lien) 1–4 family residential mortgage loan originations and purchases for resale from all sources, loan sales, or quarter–end loans held for sale exceed $10 million for two consecutive quarters, a bank with less than $1 billion in total assets must complete Schedule RC–P beginning the second quarter and continue to complete the schedule through the end of the calendar year. For example, for a bank with less than $1 billion in total assets, if the bank's closed–end 1–4 family residential mortgage loan originations plus purchases for resale from all sources exceeded $10 million during the quarter ended June 30, 2006, and the bank's sales of such loans exceeded $10 million during the quarter ended September 30, 2006, the bank would be required to complete Schedule RC–P in its September 30 and December 31, 2006, Call Reports. The level of the bank's mortgage banking activities during the fourth quarter of 2006 and the first quarter of 2007 would determine whether it would need to complete Schedule RC–P each quarter during 2007 beginning March 31, 2007.

Retail originations of closed–end 1–4 family residential mortgage loans for resale include those mortgage loans for which the origination and underwriting process was handled exclusively by the

[3] An additional data item on noninterest income earned during the quarter from these mortgage banking activities will be added to Schedule HC–P effective March 31, 2007.

[4] The $1 billion asset size test is generally based on the total assets reported on the Call Report balance sheet (Schedule RC, data item 12) as of June 30 of the preceding year. Banks with $1 billion or more in total assets as of June 30, 2005, must complete Schedule RC–P beginning September 30, 2006.

bank or a consolidated subsidiary of the bank. Therefore, retail originations would exclude those closed–end 1–4 family residential mortgage loans for which the origination and underwriting process was handled in whole or in part by another party, such as a correspondent or mortgage broker, even if the loan was closed in the name of the bank or a consolidated subsidiary of the bank. Such loans would be treated as wholesale originations or purchases, as would acquisitions of closed–end 1–4 family residential mortgage loans that were closed in the name of a party other than the bank or a consolidated subsidiary of the bank. Closed–end 1–4 family residential mortgage loans originated or purchased for the reporting bank's own loan portfolio should be excluded from amounts submitted as originations or purchases for resale in Schedule RC–P.

Closed–end 1–4 family residential mortgage loans sold during the quarter include those transfers of loans originated or purchased for resale from retail or wholesale sources that have been accounted for as sales in accordance with FASB Statement No. 140, i.e., those transfers where the loans are no longer included in the bank's consolidated total assets. Sales of closed–end 1–4 family residential mortgage loans directly from the bank's loan portfolio during the quarter should also be submitted as loans sold.

Closed–end 1–4 family residential mortgage loans held for sale at quarter–end should be submitted at the lower of cost or fair value consistent with their presentation in the Call Report balance sheet. Such loans would include any mortgage loans transferred at any time from the bank's loan portfolio to a held–for–sale account that have not been sold by quarter–end.

The Federal Reserve will incorporate the same filing criteria and comparable instructional guidance for new Schedule HC–P.

FR Y–9C Revisions Effective as of the March 31, 2007 Report Date

Income from Annuity Sales, Investment Banking, Advisory, Brokerage, and Underwriting

In the FR Y–9C income statement (Schedule HI), BHCs currently submit commissions and fees from sales of annuities (fixed, variable, and deferred) and related referral and management fees in one of three data items: income from sales of annuities by a bank subsidiary's trust department (or a consolidated trust company subsidiary) that are executed in a fiduciary capacity is submitted in Income from fiduciary activities (Schedule HI, data item 5.a); income from sales of annuities to BHC customers by a BHC's securities brokerage subsidiary is submitted in Investment banking, advisory, brokerage, and underwriting fees and commissions (Schedule HI, data item 5.d); and income from all other annuity sales is submitted in Income from other insurance activities (Schedule HI, data item 5.h.(2)). Existing data item 5.d also collects the amount of noninterest income from a variety of other activities.

To better distinguish between BHCs' noninterest income from investment banking (dealer) activities and their sales (brokerage) activities, the Federal Reserve will revise the noninterest income section of the income statement effective March 31, 2006. A new data item will be added for Fees and commissions from annuity sales, which will include income from sales of annuities and related referral and management fees (other than income from sales by a bank subsidiary's trust department or a consolidated trust company subsidiary executed in a fiduciary capacity, which will continue to be submitted in Schedule HI, data item 5.a). Existing data item 5.d will be replaced by separate data items for Fees and commissions from securities brokerage and Investment banking, advisory, and underwriting fees and commissions. Securities brokerage income will include fees and commissions from sales of mutual funds and from purchases and sales of other securities and money market instruments for customers (including other banks) where the BHC is acting as agent. Other than moving annuity–related income to the new data item for such income, there will be no other changes to the existing data item 5.h.(2), Income from other insurance activities. The Federal Reserve will delay implementation of these changes until March 31, 2007, consistent with a delayed implementation for similar Call Report data items.

One commenter to comparable Call Report changes, an insurance consultant, supported the proposed income statement changes relating to income from annuity sales, securities brokerage, and investment banking. However, this commenter also recommended that banks submit additional detail on income from annuity sales, a change that the banking agencies are not implementing for the Call Report. The Federal Reserve also does not see merit in adding this detail to the FR Y–9C.

Income from 1–4 Family Residential Mortgage Banking Activities

The Federal Reserve proposed to collect data on noninterest income generated from 1–4 family residential mortgage banking activities on new Schedule HC–P. New data item 5 of Schedule HC–P, Noninterest income for the quarter from the sale, securitization, and servicing of closed–end 1–4 family residential mortgage loans, would capture the portion of a BHC's Net servicing fees, Net securitization income, and Net gains (losses) on sales of loans and leases (current data items 5.f, 5.g, and 5.i of Schedule HI) earned during the quarter that is attributable to 1–4 family residential mortgage loans. A number of commenters' to comparable Call Report changes requested that the banking agencies delay the collection of this information from its proposed March 31, 2006, effective date. The Federal Reserve will delay implementation of this new data item until March 31, 2007, consistent with a delayed implementation for similar Call Report changes.

Revenues from Credit Derivatives and Related Exposures

In Schedule HI, Memorandum data item 9, BHCs that submitted average trading assets of $2 million or more for any quarter of the preceding calendar year currently provide a four–way breakdown of trading revenue by type of risk exposure: interest rate, foreign exchange, equity, and commodity. Although BHCs also trade credit derivatives and credit cash instruments, there is no specific existing category in which to submit the revenue from these trading activities. Accordingly, the Federal Reserve proposed to add a new risk exposure category to Memorandum data item 9 for credit derivatives.

One commenter to a comparable Call Report change stated that adding credit derivatives to the breakdown of trading revenue by type of exposure may not be meaningful because credit derivative positions are often hedged with cash instruments. After considering this comment, the banking agencies have modified the Call Report proposal and will instead add a new risk exposure category for credit–related exposures effective March 31, 2007. In this new Call Report data item (Schedule RI, Memorandum data item 8.e), a bank will submit its net gains (losses) from trading cash instruments and derivative contracts that it manages as credit exposures. The Federal Reserve will add a similar data item to the FR Y–9C income statement (Schedule HI,

Memorandum data item 9.e) effective March 31, 2007.

The banking agencies are also adding new Memorandum data items 9.a and 9.b to Schedule RI, Income Statement, as of March 31, 2007, in which banks must submit the net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account, regardless of whether the credit derivative is designated as and qualifies as a hedging instrument under generally accepted accounting principles. Credit exposures outside the trading account include, for example, nontrading assets (such as available–for–sale securities or loans held for investment) and unused lines of credit. To address the commenter's concern about the use of credit derivatives for hedging, banks will submit such net gains (losses) on credit derivatives held for trading in Memorandum data item 9.a and on credit derivatives held for purposes other than trading in Memorandum data item 9.b. Thus, those net gains (losses) on credit derivatives submitted in Schedule RI, Memorandum data item 9.a, will also have been included in the amount submitted in new Memorandum data item 8.e of Schedule RI. The Federal Reserve will make these same changes to the FR Y–9C income statement effective March 31, 2007.

Construction, Land Development, and Other Land Loans

At present, BHCs submit the total amount of their Construction, land development, and other land loans in the loan schedule (Schedule HC–C, data item 1.a) and they also disclose the amount of these loans that are past due 30 days or more or in nonaccrual status (Schedule HC–N, data item 1.a) and that have been charged off and recovered (Schedule HI–B, part I, data item 1.a). The Federal Reserve proposed to split the existing data item for Construction, land development, and other land loans in these three schedules into separate data items for 1–4 family residential construction, land development, and other land loans and Other construction, land development, and other land loans. In addition, the Federal Reserve would similarly split the data item for Commitments to fund commercial real estate, construction, and land development loans secured by real estate in the off–balance sheet data items schedule (Schedule HC–L, data item 1.c.(1)) into two data items.

A significant number of commenters expressed concern regarding comparable changes to the Call Report about the burden associated with distinguishing 1–4 family residential construction loans from other loans currently submitted in the existing construction loan category and making the system changes that would be required to provide this information, particularly in light of the relatively short timeframe banks would be provided to make these changes, i.e., by March 31, 2006, under the proposal. One other commenter, a nonbanking trade group, recommended that all residential construction loans, both 1–4 family and multifamily, be segregated from other construction loans and that banks separately submit data on 1–4 family and multifamily residential construction loans. Based on the comments received, the Federal Reserve will retain a two–way breakout of Construction, land development, and other land loans, but clarify the scope of the two new loan categories and implement the changes as of March 31, 2007.

Loans Secured by Nonfarm Nonresidential Properties

BHCs currently submit the total amount of their loans Secured by nonfarm nonresidential properties in the loan schedule (Schedule HC–C, data item 1.e) along with the amounts of these loans that are past due 30 days or more or in nonaccrual status (Schedule HC–N, data item 1.e) and the amounts that have been charged off and recovered (Schedule HI–B, part I, data item 1.e). The Federal Reserve proposed to split the existing data item for loans Secured by nonfarm nonresidential properties in these three schedules into separate data items for loans secured by owner–occupied nonfarm nonresidential properties and loans secured by other nonfarm nonresidential properties.

A significant number of commenters to comparable changes to the Call Report expressed concern about the burden of the nonfarm nonresidential real estate loan proposal similar to that discussed above with respect to construction loans. One commenter noted in particular the difficulties in determining how "mixed–use" properties should be categorized in the Call Report loan schedule. Commenters also expressed concern about the relatively short timeframe banks would be provided to make these changes, i.e., by March 31, 2006, under the proposal. Based on the comments, received, the Federal Reserve will modify the scope of the two new loan categories and implement the changes in March 31, 2007.

The new category for Loans secured by other nonfarm nonresidential properties includes those nonfarm nonresidential real estate loans where the primary or a significant source of repayment is derived from rental income associated with the property (i.e., loans for which 50 percent or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. Thus, the primary or a significant source of repayment for Loans secured by owner–occupied nonfarm nonresidential properties is the cash flow from the ongoing operations and activities conducted by the party, or an affiliate of the party, who owns the property, rather than from third party, nonaffiliated, rental income or the proceeds of the sale, refinancing, or permanent financing of the property. The determination as to whether a property is considered "owner–occupied" would be made upon acquisition (origination or purchase) of the loan. However, for purposes of determining whether existing nonfarm nonresidential real estate loans would be submitted as owner–occupied beginning March 31, 2007, BHCs may consider the source of repayment either when the loan was acquired or based on the most recent available information. Once a BHC determines whether a loan should be submitted as owner–occupied or not, this determination need not be reviewed thereafter.

Retail and Commercial Leases

BHCs currently submit a breakdown of their lease financing receivables between those from U.S. and non–U.S. addressees in Schedule HC–C, data items 10.a and 10.b. Addressee information on leases is also submitted in the past due and nonaccrual schedule (Schedule HC–N, data items 8.a and 8.b) and on the charge–offs and recoveries schedule (Schedule HI–B, part I, data items 8.a and 8.b). The Federal Reserve proposed replacing the existing addressee breakdown of leases with a breakdown between retail (consumer) leases and commercial leases in these three schedules effective March 31, 2006, but will delay implementation until March 31, 2007, consistent with a delayed implementation for similar Call Report data items.

FR Y–9LP Revisions Effective as of the March 31, 2006 Report Date

Filing Criteria

The Federal Reserve will increase the asset–size threshold of the FR Y–9LP from $150 million to $500 million. The Federal Reserve will further modify the other criteria and include additional

criteria that would be used in determining whether a BHC is subject to FR Y–9LP filing requirements.

Specifically, the Federal Reserve will require BHCs with consolidated assets of less than $500 million to continue to comply with the FR Y–9LP reporting requirements, if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or administering assets for third party, either directly or through a nonbank subsidiary; or (3) has a material amount debt or equity securities (other than trust preferred securities) outstanding that are registered with the SEC. While the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is expected to be infrequent, any such BHCs would be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

These changes are consistent with the revisions to filing criteria to the FR Y–9C, as fully described above. These filing requirements would apply to all BHCs in multi–tiered organizations.

FR Y–9LP Revisions Effective as of the September 30, 2006 Report Date

Officer Signature Requirements

Consistent with the revisions to the FR Y–9C officer signature requirement, as fully discussed above, the Federal Reserve will revise the existing FR Y–9LP officer signature requirement so that the BHC report must be signed only by the BHC's chief financial officer (or the individual performing an equivalent function) rather than by any authorized officer of the BHC. In signing the BHC reports, the chief financial officer will attest that the reports have been prepared in conformance with the instructions and are true and correct to the best of the officer's knowledge and belief. The introductory paragraph preceding the statements concerning the preparation of the BHC report that must be signed by the chief financial officer will note that each BHC's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the BHC report. (This language concerning internal control does not appear in the statement to be signed by the chief financial officer.)

Instructions

Instructions will be clarified in an attempt to achieve greater consistency in reporting by respondents.

FR Y–9SP Revisions Effective as of the June 30, 2006 Report Date

Filing Criteria

The Federal Reserve will increase the asset–size threshold of the FR Y–9SP from companies with total consolidated assets of less than $150 million to companies with total consolidated assets of less than $500 million. The Federal Reserve will further modify the other criteria and include additional criteria that would be used in determining whether a BHC is subject to FR Y–9SP filing requirements.

Specifically, the Federal Reserve will require BHCs with consolidated assets of less than $500 million to continue to comply with the FR Y–9C and FR Y–9LP reporting requirements, if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or administering assets for third party, either directly or through a nonbank subsidiary; or (3) has a material amount debt or equity securities (other than trust preferred securities) outstanding that are registered with the SEC.

Although the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is not expected to be frequent, information is not currently available to identify BHCs meeting the second and third criteria. Therefore, the Federal Reserve will collect two new data items on Schedule SC–M, Memoranda, to identify total off–balance–sheet activities conducted either directly or through a nonbank subsidiary and to identify total debt and equity securities (other than trust preferred securities) outstanding that are registered with the SEC. BHCs meeting any of the criteria would be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

FR Y–9SP Revisions Effective as of the December 31, 2006 Report Date

Officer Signature Requirements

Consistent with the revisions to the FR Y–9C officer signature requirement, as fully discussed above, the Federal Reserve will revise the existing FR Y–9SP officer signature requirement so that the BHC report must be signed only by the BHC's chief financial officer (or the individual performing an equivalent function) rather than by any authorized officer of the BHC. In signing the BHC reports, the chief financial officer will attest that the reports have been prepared in conformance with the instructions and are true and correct to the best of the officer's knowledge and belief. The introductory paragraph preceding the statements concerning the preparation of the BHC report that must be signed by the chief financial officer will note that each BHC's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the BHC report. (This language concerning internal control does not appear in the statement to be signed by the chief financial officer.)

Instructions

In addition to modifying instructions to incorporate the reporting changes, instructions will be revised and clarified in an attempt to achieve greater consistency in reporting by respondents.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11 and FR Y–11S.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Bank holding companies

Annual reporting hours: FR Y–11 (quarterly): 24,725; FR Y–11 (annual): 1,769; FR Y–11S (annual): 1,195

Estimated average hours per response: FR Y–11 (quarterly): 6.25; FR Y–11 (annual): 6.25; FR Y–11S (annual): 1.0

Number of respondents: FR Y–11 (quarterly): 989; FR Y–11 (annual): 283; FR Y–11S (annual): 1,195

General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR Y–11 reports collect financial information for individual U.S. nonbank subsidiaries of domestic bank holding companies (BHCs). BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria or file the FR Y–11S annually. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume,

nature, and condition of their nonbanking operations.

Current Actions: The Federal Reserve will raise the asset–size threshold for filing the quarterly FR Y–11 to make it consistent with the proposed filing threshold for reporting the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) and to further reduce reporting burden. The Federal Reserve also will (1) add one new equity capital component on the balance sheet for reporting partnership interests and (2) reclassify reporting of certain annuity sales revenue on the income statement. The Federal Reserve also will revise several balance sheet memoranda data items to capture securitization information on transactions involving assets other than loans. No revisions will be made to the content of the FR Y–11S; however, several respondents will shift to filing the FR Y–11S because of the proposed threshold revisions.

FR Y–11 Revisions Effective as of the March 31, 2006 Report Date

Filing Criteria

The Federal Reserve will revise the reporting criteria for the quarterly FR Y–11 to be consistent with the proposed threshold for the FR Y–9C and reduce reporting burden. Specifically, a BHC must file the FR Y–11 quarterly for its subsidiary if the subsidiary is owned or controlled by a top–tier BHC that files the FR Y–9C[5] and the subsidiary has (a) total assets of $1 billion or more, or (b) total off–balance–sheet activities of at least $5 billion, or (c) equity capital of at least 5 percent of the top–tier BHC's consolidated equity capital; or (d) operating revenue of at least 5 percent of the top–tier BHC's consolidated operating revenue.

As currently required, a BHC must file the FR Y–11 for any nonbank subsidiary that satisfies the quarterly filing criteria for any quarter during the calendar year and must continue to report quarterly for the remainder of the calendar year even if the nonbank subsidiary no longer satisfies the requirements for quarterly reporting. The Federal Reserve will modify this reporting requirement to be more consistent with the FR Y–9C. The Federal Reserve will revise the reporting instructions for quarterly filers under Who Must Report to indicate that if a nonbank subsidiary meets the criteria for quarterly filing as of June 30 of the preceding year, its BHC should begin reporting the FR Y–11 quarterly for the nonbank subsidiary beginning in March of the current year and continue to report for the entire calendar year. In addition, if a nonbank subsidiary meets the quarterly filing criteria due to a business combination, then the BHC would report the FR Y–11 quarterly beginning with the first quarterly report date following the effective date of the business combination. If a nonbank subsidiary subsequently does not meet the quarterly filing criteria for four consecutive quarters, then the BHC would revert to annual filing.

Schedule BS–Balance Sheet

The Federal Reserve will add a new data item, 18.e, General and limited partnership shares and interests, renumber current data item, 18.e, Other equity capital components, as data item 18.f., and renumber current data item 18.f, Total equity capital, as data item 18.g. Currently, the instructions for data item 18, Equity capital, directs subsidiaries that are not corporate in form (that is, those that do not have capital structures consisting of capital stock and the other components of equity capital currently listed under data item 18) to submit their entire net worth in data item 18.f, Total equity. The reporting form and the instructions for data item 18.f, Total equity, state that data item 18.f must equal the sum of the components of data item 18. However, equity capital of those entities not in corporate form cannot appropriately be reported in any of the components of data item 18. This new data item and clarifications to the instructions for data item 18 will remove this inconsistency and improve the accuracy of the information reported. In addition, the Federal Reserve will clarify that Schedule IS–A, Changes in Equity Capital, data item 6, Other adjustments to equity capital, should include contributions and distributions to and from partners or limited liability company (LLC) shareholders when the company is a partnership or a LLC. Schedule IS–A, data item 6 is a component of Schedule IS–A, data item 7, Total equity at end of current period. Schedule IS–A, data item 7 must equal Schedule BS, data item 18.f, Total equity.

Schedule BS–M–Memoranda

The Federal Reserve will expand the scope of data item 2.a. Number of loans in servicing portfolio, data item 2.b, Dollar amount of loans in servicing portfolio, and data item 3, Loans that have been securitized and sold without recourse with servicing rights retained, to include assets other than loans. The captions and instructions for these data items will be revised to include other assets.

FR Y–11 Revisions Effective as of the March 31, 2007 Report Date

Schedule IS–Income Statement

The Federal Reserve will change the category of noninterest income in which nonbank subsidiaries submit income from certain sales of annuities from data item 5.a.(8), Insurance commissions and fees, to data item 5.a.(4), Investment banking, advisory, brokerage, and underwriting fees and commissions, to be consistent with the revision to the FR Y–9C. Currently, nonbank subsidiaries submit income from the sales of annuities and related commissions and fees in data item 5.a.(8). Since annuities are deemed to be financial investment products rather than insurance, the Federal Reserve will revise the instructions for data item 5.a.(8) and data item 5.a.(4) by moving the reference to annuities in the former data item to the latter data item. This change will be delayed until March 31, 2007.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 and FR 2314S.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations.

Annual reporting hours: FR 2314 (quarterly): 4,800; FR 2314 (annual): 950; FR 2314S (annual): 255

Estimated average hours per response: FR 2314 (quarterly): 6.25; FR 2314 (annual): 6.25; FR 2314S (annual): 1.0

Number of respondents: FR 2314 (quarterly): 192; FR 2314 (annual): 152; FR 2314S (annual): 255

General description of report: This information collection is mandatory (12 U.S.C. §§ 324, 602, 625, and 1844). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4) (b)(6) and (b)(8)].

Abstract: The FR 2314 reports collect financial information for direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs.

[5] The Federal Reserve is proposing to raise the asset–size threshold for purposes of consolidated FR Y–9C reporting, the Small Bank Holding Company Policy Statement and the Capital Guidelines from $150 million to $500 million. In addition, a limited number of holding companies with assets less than $500 million may be required to file the FR Y–9C because they meet certain conditions.

Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria or file the FR 2314S annually. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current Actions: The Federal Reserve will raise the asset–size threshold for filing the quarterly FR 2314 to make it consistent with the proposed filing threshold for reporting the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) and to further reduce reporting burden. The Federal Reserve will also (1) add one new equity capital component on the balance sheet for reporting partnership interests and (2) reclassify reporting of certain annuity sales revenue on the income statement. The changes in the reporting thresholds will have no immediate effect on the FR 2314 panel because there are currently no quarterly filers owned by parent organizations with assets less than $500 million.

FR 2314 Revisions Effective as of the March 31, 2006 Report Date

Revisions to Filing Criteria

The Federal Reserve will revise the reporting criteria for the quarterly FR 2314 to be consistent with the proposed threshold for the FR Y–9C and reduce reporting burden. Specifically, a BHC must file the FR 2314 quarterly for its subsidiary if the subsidiary is owned or controlled by a parent U.S. BHC that files the FR Y–9C or a state member bank or an Edge or agreement cooperation that has total consolidated assets equal to or greater than $500 million and the subsidiary has (a) total assets of $1 billion or more, or (b) total off–balance–sheet activities of at least $5 billion, or (c) equity capital of at least 5 percent of the top–tier organization's consolidated equity capital, or (d) operating revenue of at least 5 percent of the top–tier organization's consolidated operating revenue.

The criteria for filing the FR 2314 will be revised to maintain the consistency in the reporting criteria for nonbank subsidiary reports. Revising the quarterly reporting threshold for the FR 2314 filers will have no immediate effect on the panel because currently there are no quarterly filers owned by parent organizations with assets less than $500 million. However, the Federal Reserve believes that there may be a small number of additional FR 2314 reports filed for subsidiaries owned by a BHC that has assets under $500 million and that files the FR Y–9C because they meet certain conditions.

As currently required, a parent organization must file the FR 2314 for any nonbank subsidiary that satisfies the quarterly filing criteria for any quarter during the calendar year and must continue to report quarterly for the remainder of the calendar year even if the nonbank subsidiary no longer satisfies the requirements for quarterly reporting. The Federal Reserve will modify this reporting requirement to be more consistent with the FR Y–9C. The Federal Reserve will revise the reporting instructions for quarterly filers under Who Must Report to indicate that if a nonbank subsidiary meets the criteria for quarterly filing as of June 30 of the preceding year, its parent organization should begin reporting the FR 2314 quarterly for the nonbank subsidiary beginning in March of the current year and continue to report for the entire calendar year. In addition, if a nonbank subsidiary meets the quarterly filing criteria due to a business combination, then the parent organization would report the FR 2314 quarterly beginning with the first quarterly report date following the effective date of the business combination. If a nonbank subsidiary subsequently does not meet the quarterly filing criteria for four consecutive quarters, then the parent organization would revert to annual filing.

Schedule BS–Balance Sheet

The Federal Reserve will add a new data item, 18.e, General and limited partnership shares and interests, renumber current data item, 18.e, Other equity capital components, as data item 18.f., and renumber current data item 18.f, Total equity capital, as data item 18.g. Currently, the instructions for data item 18, Equity capital, directs subsidiaries that are not corporate in form (that is, those that do not have capital structures consisting of capital stock and the other components of equity capital currently listed under data item 18) to submit their entire net worth in data item 18.f, Total equity. The reporting form and the instructions for data item 18.f, Total equity, state that data item 18.f must equal the sum of the components of data item 18. However, equity capital of those entities not in corporate form cannot appropriately be submitted in any of the components of data item 18. The new data item and clarifications to the instructions for data item 18 will remove this inconsistency and improve the accuracy of the information submitted. In addition, the Federal Reserve will clarify that Schedule IS–A, Changes in Equity Capital, data item 6, Other adjustments to equity capital, should include contributions and distributions to and from partners or limited liability company (LLC) shareholders when the company is a partnership or a LLC. Schedule IS–A, data item 6 is a component of Schedule IS–A, data item 7, Total equity at end of current period. Schedule IS–A, data item 7 must equal Schedule BS, data item 18.f, Total equity.

FR 2314 Revisions Effective as of the March 31, 2007 Report Date

Schedule IS–Income Statement

The Federal Reserve will change the category of noninterest income in which nonbank subsidiaries submit income from certain sales of annuities from data item 5.a.(8), Insurance commissions and fees, to data item 5.a.(4), Investment banking, advisory, brokerage, and underwriting fees and commissions, to be consistent with the revision to the FR Y–9C. Currently, nonbank subsidiaries submit income from the sales of annuities and related commissions and fees in data item 5.a.(8). Since annuities are deemed to be financial investment products rather than insurance, the Federal Reserve will revise the instructions for data item 5.a.(8) and data item 5.a.(4) by moving the reference to annuities in the former data item to the latter data item. This change will be delayed until March 31, 2007.

Board of Governors of the Federal Reserve System, March 1, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–3122 Filed 3–3–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices

also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Harvey H. Delaney and Barbara A. Delaney, both of Burdett, Kansas; to retain voting shares of NSB Bancshares, Inc., La Crosse, Kansas, and thereby indirectly retain voting shares of The Nekoma State Bank, La Crosse, Kansas.

Board of Governors of the Federal Reserve System, March 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3115 Filed 3–3–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. DBT Financial Corporation, DeWitt, Arkansas; to merge with Planters & Merchants Bancshares, Inc., Gillett, Arkansas, and thereby indirectly acquire Planters & Merchants Bank, Gillett, Arkansas.

2. First Financial Banc Corporation, El Dorado, Arkansas; to acquire 100 percent of the voting shares of Cornerstone Bank, Senatobia, Mississippi.

3. German American Bancorp, Jasper, Indiana; to acquire 14.9 percent of the voting shares of Indiana Bank Corp., Terre Haute, Indiana, and thereby indirectly acquire voting shares of The First National Bank of Dana, Dana, Indiana.

Board of Governors of the Federal Reserve System, March 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3114 Filed 3–3–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Departmental Appeals Board; Privacy Act of 1974; System of Records

AGENCY: Departmental Appeals Board (DAB), Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notification of Altered Privacy Act System Notice.

SUMMARY: On May 19, 1993, in accordance with the requirements of the Privacy Act, the Departmental Appeals Board (DAB) published a notice of a system of records entitled "Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB No. 09–90–0049." 58 FR 29228, May 19, 1993. The DAB has reviewed its May 19, 1993 Privacy Act notice and now proposes to revise that notice. Revisions include the following: Adding routine uses; updating the DAB's address; clarifying its policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system; and making minor editorial or formatting changes. The revised notice, like the original, covers records maintained by the DAB's Appellate Division, Civil Remedies Division, and Alternative Dispute Resolution Division. The DAB's Medicare Appeals Council (MAC) will issue a separate Privacy Act notice describing the system of records used by the MAC and its supporting component, the Medicare Operations Division, to docket, track, manage, and decide appeals and other matters before the MAC.

DATES: The DAB sent a report of the altered system to Congress and the Office of Management and Budget (OMB) on January 19, 2006. The altered system will be effective 40 days after the submittal of the report of new system to OMB or 30 days after publication of the notice, whichever is later, unless the DAB receives comments on the routine uses during that period.

Submit comments on or before April 5, 2006. Comments may be viewed on or before April 5, 2006.

ADDRESSES: Please mail written comments to: Departmental Appeals Board, MS 6127, 330 Independence Avenue, SW., Cohen Building, Room G–644, Washington, DC 20201 (Attention: Maxine Winerman or Ken Veilleux). The DAB will not accept comments by facsimile (fax) transmission.

Comments received will be available for public inspection, by appointment, from 9 a.m. to 5 p.m. at the DAB's offices, which are located at 800 North Capitol Street, NW., 6th Floor, Washington, DC. To schedule an appointment, please call (202) 565–0200.

FOR FURTHER INFORMATION CONTACT: Maxine Winerman (DAB), 202–565–0147, or Ken Veilleux (DAB), (202) 565–0130.

SUPPLEMENTARY INFORMATION: The system of records described in the DAB's May 19, 1993 Privacy Act notice is used by DAB staff to docket, track, manage, and decide or mediate appeals and other matters involving individuals who are parties in those matters. This system includes information on all individuals who are parties in matters before the DAB, including their names and addresses and any other information about those individuals that is presented by a party or intervener to enable the DAB to decide, decline to decide, mediate, or conclude a matter. The amount of information recorded on each individual will be only that which is necessary to resolve the matter that is before the DAB. In addition, this system contains some information that is about entities, rather than individuals, and

that information is not covered by the Privacy Act.

The records in this system are maintained in a secure manner compatible with their content and use. The System Managers control access to the information in the records. Only authorized users whose official duties require the use of such information will have regular access to the records. The records (whether paper or computer-based) are maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual: "Safeguarding Records Contained in the System of Records."

The Privacy Act permits the DAB to disclose information or records pertaining to an individual without that individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure is known as a "routine use." This revised notice identifies eight routine uses for the DAB's system of records. The DAB expects that its routine use disclosures will not result in any unwarranted adverse effects on personal privacy.

Mediation-related records are maintained in conformity with the confidentiality provisions of the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 574, and with guidelines contained in the **Federal Register** document "Confidentiality in Federal Alternative Dispute Resolution Programs," 65 FR 83085, December 29, 2000. Disclosure of such records is made only in conformity with those provisions and guidelines. That is, all dispute resolution communications would be confidential unless specifically subject to disclosure under one of the public policy type exceptions identified in sections 574(a) or 574(b) of the ADRA.

Dated: January 13, 2006.

Cecilia Sparks Ford,

Chair, Departmental Appeals Board.

HHS/OS/DAB 09–90–0049

SYSTEM NAME:

Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

6th Floor, 800 North Capitol Street, NW., Washington, DC 20002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties in matters before the Departmental Appeals Board (DAB), or who are requesting review or consideration of a matter by the DAB.

Categories of Records in the System:

The DAB's system of records contains correspondence, pleadings, legal briefs, documentary evidence, and other paper or computer-stored records relevant to the issues being adjudicated, mediated, or considered by the DAB or its personnel. This system also contains some information that is about entities, rather than individuals, and that information is not covered by the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The DAB provides ALJ hearings and/or Board reviews in cases in which an individual has a right to a hearing pursuant to the following statutory authorities and/or the regulations implementing them:

- 42 U.S.C. 1320a–7a(c),
- 42 U.S.C. 1320a–8(b),
- 42 U.S.C. 1395cc(h) and (j),
- 42 U.S.C. 1395ff(f),
- 31 U.S.C. 3801 *et seq.*,
- 5 U.S.C. 5514(a)(2),
- 42 U.S.C. 216, 241, and 289b, and
- Any other authorities that are cited when new cases are added to the DAB's jurisdiction.

The DAB also mediates disputes pursuant to the federal Administrative Dispute Resolution Act, 5 U.S.C. 571–584.

The system of records has been created for the purpose of tracking, adjudicating, and mediating matters that come before the DAB. Information about the types of matters that come before the DAB can be obtained by contacting the DAB at 202–565–0200 or by visiting the DAB Web site at the following Internet addresses: *http://www.hhs.gov/dab/civil/overview.html*, *http://www.hhs.gov/dab/appellate*, and *http://www.hhs.gov/dab/adr*.

PURPOSE:

The system of records is used to docket, track, adjudicate, mediate, or conclude matters before the DAB and, in those matters before the Appellate and Civil Remedies Divisions, to develop a body of case law that can guide persons and agency components in the future with respect to matters that are before or might come before the DAB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are the routine uses of records or information contained in the DAB's system of records:

(1) To apprise the public of the basis on which the DAB makes its decisions, the DAB may disclose records or parts of records not subject to a Freedom of Information Act exemption to persons who request the records or who attend DAB hearings.

(2) The DAB will disclose the status of a pending or past matter, and similar docket information, to any person making an inquiry about such information in order to apprise the public of the status and progress of matters before the DAB.

(3) The DAB may make disclosures to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Justice Department (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to the litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) The DAB may make disclosures to a Congressional office in response to an inquiry made by that office at the request of an individual who is a party in a matter before the DAB.

(5) The DAB may make disclosures to the public and to commercial reporters of DAB decisions and rulings for the purpose of distributing and publishing the decisions and rulings.

(6) The DAB may make disclosures to third parties, including public and private organizations, in order to obtain from them (by subpoena or other means) information relevant or necessary to the proceedings before the DAB.

(7) The DAB may make disclosures to HHS contractors who have been engaged by the agency to assist in the performance of a service related to this system of records and who have a need to access the records in order to perform the activity.

(8) The DAB may make disclosures to student volunteers, individuals working under a personal services contract, and other individuals performing functions for HHS but technically not having the status of agency employees, if they need access to the records to perform their assigned agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records in the system are maintained in file folders and binders, and on password-protected computers or computer servers.

RETRIEVABILITY

Records in the system are retrieved by the name of the non-government party or by docket or decision number.

SAFEGUARDS

Access to and use of records in the system are limited to those persons (including DAB contractors) whose official duties require such access. Paper records are maintained in file cabinets, offices, and other secure areas to which only authorized persons have access; information or records stored on computers may be retrieved through the use of passwords known only to authorized personnel. Physical access to the DAB's offices and computers is controlled by security personnel and by a computerized card entry system, and is limited to DAB employees and to non-DAB persons whose access is authorized and whose activities are supervised or monitored by the System Managers or other DAB employees. DAB employees who maintain records in the system are instructed to grant access to these records only to persons whose official duties require such access. In addition, DAB employees are required and instructed to adhere to the provisions of the Privacy Act, the HHS Privacy Act Regulations, and security guidelines set forth in Chapter 45–13 of the HHS General Administration Manual. Contractors who assist the DAB in maintaining the records are instructed to make no disclosure of the records except as authorized by the System Managers and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

RETENTION AND DISPOSAL

Once a matter is closed, the DAB's paper records for that matter are stored in DAB files for a period of time not exceeding seven years. After that time, the files are turned over to the Office of the Secretary, HHS Records Management Officer. The records are then transferred to the Washington National Records Center, Washington, DC 20409, where they are kept for an additional 20 years, after which time they may be destroyed.

Electronic files that are part of the DAB's system of records (including case tracking information) are maintained on a secure server that can be accessed only by authorized personnel.

SYSTEM MANAGERS AND ADDRESSES

Appellate Division: Chief, Appellate Division, Departmental Appeals Board, MS 6127, Room G–644, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Civil Remedies Division: Chief, Civil Remedies Division, Departmental Appeals Board, MS 6132, Room G–644, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Alternative Dispute Resolution Division: Chief, Alternative Dispute Resolution Division, Departmental Appeals Board, MS 6132, Room G–644, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE

Individuals who wish to inquire about whether the DAB's system of records contains information about them should contact the appropriate System Manager indicated above. When making such an inquiry, it is necessary to provide the following information regarding the individual:

(1) Full name;

(2) Date of birth;

(3) Kind of action taken by the agency;

(4) Date and location of the filing of the case, appeal or other matter before the DAB; and

(5) If appropriate, the DAB docket or decision number.

RECORD ACCESS PROCEDURE

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE

Contact the appropriate System Manager at the address specified under notification procedures, reasonably identify the record, and specify the information to be contested and corrective action sought with the supporting justification.

RECORD SOURCE CATEGORIES

Information in this system is obtained from:

(1) The individuals to whom the record pertains;

(2) Agency officials and documents;

(3) The testimony, affidavits and statements of witnesses;

(4) The documents, received testimony, exhibits and submissions of the parties involved in the matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

[FR Doc. E6–3009 Filed 3–3–06; 8:45 am]
BILLING CODE 4150–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Departmental Appeals Board; Privacy Act of 1974; New System of Records

AGENCY: Departmental Appeals Board (DAB), Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the HHS DAB is publishing a notice of a system of records entitled, "Medicare Appeals Council Records, HHS/OS/DAB No. 09–90–0048." We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The DAB sent a report of the system notice to Congress and the Office of Management and Budget (OMB) on *January 27, 2006.* The routine uses will be effective 40 days after the submittal of the report of new system to OMB or 30 days after publication of the notice, whichever is later, unless the DAB receives comments on the routine uses during that period.

Submit comments on or before April 5, 2006. Comments may be viewed on or before April 5, 2006.

ADDRESSES: Written comments on routine uses should be addressed to: U.S. Department of Health and Human Services, Office of the Secretary, Departmental Appeals Board, MS 6127, Medicare Appeals Council, Attention: Jill W. Anderson, 330 Independence Avenue, SW., Cohen Building, Room G–644, Washington, DC 20201.

Comments received will be available for public inspection, by appointment, from 9 a.m. to 5 p.m. at the DAB's offices, which are located at 800 North Capitol Street, NW., 6th Floor, Washington, DC. To schedule an appointment, please call (202) 565–0200.

FOR FURTHER INFORMATION CONTACT: Jill W. Anderson, Departmental Appeals Board, 202–565–0166 and/or *jill.anderson@hhs.gov.*

SUPPLEMENTARY INFORMATION: On August 15, 1994, the Social Security Independence and Program Improvement Act of 1994, Public Law 103–296, was enacted, establishing the Social Security Administration (SSA) as an independent agency. As a result, the Secretary of HHS delegated to the Chair of the DAB the authority to review decisions issued by Administrative Law Judges (ALJs) concerning entitlement

claims and claims for coverage and payment under Titles XVIII and XI of the Social Security Act (60 FR 64065). The delegation was effective October 1, 1995. (Prior to that date, the SSA Appeals Council reviewed ALJ decisions concerning Medicare claims. See 47 FR 45592 and 47 FR 45589 for the Privacy Act Notices pertaining to cases within SSA's prior jurisdiction.) The Chair has redelegated to the Administrative Appeals Judges and Appeals Officers of the Medicare Appeals Council (MAC) of the DAB her authority to review ALJ decisions. The Chair has also retained this authority for herself and has authorized other Members of the DAB to sit as MAC Administrative Appeals Judges. The MAC is supported by DAB's Medicare Operations Division (MOD).

Because the Privacy Act Notice published by the DAB in the **Federal Register** on May 19, 1993 (58 FR 29228) was issued before the above-referenced delegation of authority, it does not describe the system of records for the MAC cases. The DAB proposes to establish a new system of records: "Medicare Appeals Council Records, HHS/OS/DAB No. 09–90–0048." This system of records will be used by the MAC and the MOD staff to docket, track, manage and decide appeals and other matters involving individuals and entities who are parties before the MAC.

This system contains information on all individuals and entities who are parties before the MAC of the DAB, including their names and, with respect to beneficiaries, their health insurance claim numbers (which are generally the same as their social security numbers). The amount of information recorded on each individual or entity will only be that which is necessary to resolve the matter before the MAC. This system contains some records that are about entities, rather than individuals, and those records are not covered by the Privacy Act.

The records in this system will be maintained in a secure manner compatible with their content and use. The MAC and MOD staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control the access to the data. Only authorized users whose official duties require such information will have regular access to the records in this system. Authorized users are the MAC, MOD staff, and designated DAB computer staff. Physical access to the MAC/MOD component is by authorized card key holders only.

Records will be stored in file folders in a secure records room or in file cabinets. Data stored on computers will be accessed only by authorized users. Paper and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual: "Safeguarding Records Contained in the System of Records."

The Privacy Act permits us to disclose information without consent of the individual for "routine uses", that is, disclosure for purposes that are compatible with the purpose for which we collect the information. Information may also be disclosed if required by the Freedom of Information Act. The information is collected for administering a hearings and appeals process in accordance with Title XVIII and Part B of Title XI of the Social Security Act. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

(Authority: 5 U.S.C. 552a(e)(4))

Dated: January 13, 2006.

Cecilia Sparks Ford,

Chair, Departmental Appeals Board.

HHS/OS/DAB No. 09–90–0048

SYSTEM NAME:

Medicare Appeals Council Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

6th Floor, 800 North Capitol Street, NW., Washington, DC 20002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who appeal an action of an Administrative Law Judge (ALJ) concerning a claim for payment under Title XVIII or XI of the Social Security Act or concerning entitlement to Medicare benefits. Also individuals whose cases are referred to the Medicare Appeals Council (MAC) by the Centers for Medicare & Medicaid Services (CMS) pursuant to the MAC's discretionary review authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning Medicare beneficiaries; physicians, providers, suppliers, and other persons or entities involved in furnishing healthcare items or services to Medicare beneficiaries; and third-party appellants such as State Medicaid agencies. Information on beneficiaries may include: name, address, health insurance claim number, medical records, items or services for which Medicare reimbursement is requested, and material used to determine the amount of benefits allowable under Medicare. Information on physicians, providers, suppliers and other persons may include: name, address, specialty, identification number, items or services for which Medicare reimbursement is requested, and material used to determine the amount of benefits allowable under Medicare. This system contains some information that is about entities, rather than individuals, and that information is not covered by the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1852(g), 1869, 1876(c)(5), and 1155 of the Social Security Act, as amended.

PURPOSE(S):

The records contain information used in processing an appellant's request for review of an ALJ decision or dismissal (or for other MAC action) or information used in considering a CMS referral; information used in tracking and ascertaining the status of the request or referral; information used to reply to correspondence; and information the MAC used to reach a decision on the request or referral.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made to:

1. Student volunteers, individuals working under a personal services contract, and other individuals performing functions for HHS but technically not having the status of agency employees, if they need access to the records to perform their assigned agency functions.

2. A congressional office from the record of an individual or entity whose case is pending, in response to an inquiry from the congressional office at the request of that individual or entity.

3. Components of the Social Security Administration and authorized hearing offices that provide information/inquiry services to individuals or entities pursuing appeals or provide hearings on request of individuals or entities.

4. The Department of Justice, a court or other tribunal, or another party before such tribunal, when—

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any

of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. HHS contractors who have been engaged by HHS to assist in the performance of a service related to this system of records and who have a need to access the records in order to perform the activity.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, computer disks, and on password-protected computers or servers.

RETRIEVABILITY:

Records are normally retrieved numerically by the "M Number," a number assigned by the MOD when it receives a record. Records will be cross-referenced by the beneficiary's health insurance claim number; beneficiary's, physician's, provider's, supplier's, or other appellant's name; or ALJ appeal number.

SAFEGUARDS:

a. *Authorized Users*: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. *Physical Safeguards*: Paper records are maintained in file cabinets, offices, and other secure areas to which only authorized individuals have access. Computer terminals are in secured areas that only authorized individuals may use.

c. *Procedural Safeguards*: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers or on servers are accessed through the use of passwords known only to authorized personnel. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

RETENTION AND DISPOSAL:

The period of retention of the paper case file depends upon the final action taken by the MAC. If the final action requires the CMS contractor to effectuate a decision, the case file is sent to the contractor immediately after the MAC has entered its final decision. When a case is remanded to an ALJ, the case file is forwarded with the order of remand to the appropriate hearing office. If the MAC enters an unfavorable decision or a denial of review of an ALJ decision, the case file is stored and maintained in the MAC file room for 6 months. If the MAC enters an order of dismissal or a denial of review of an ALJ dismissal, the case file is stored and maintained for 3 months. At the end of the applicable period, the case file is sent to the designated CMS contractor or SSA. If a case is appealed to Federal District Court, the case file is stored and maintained for 3 months after the certified copy of the record has been furnished to the Court and at that point is sent to the contractor or SSA.

Workpaper documents created by the MAC or MOD are not included in the case file and are destroyed at the time the MAC final action is released. Electronic versions of case disposition documents are saved on the computer database for four years and then deleted. Electronic case tracking records are maintained indefinitely on the computer database, with daily updating to the storage area network.

SYSTEM MANAGER AND ADDRESS:

Chief, Medicare Operations Division, Departmental Appeals Board, Department of Health and Human Services, Office of the Secretary, MS 6127, 330 Independence Avenue, SW., Cohen Building, Room G–644, Washington, DC 20201.

NOTIFICATION PROCEDURE:

Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. The requester must specify the appellant's name, social security number, health insurance claim number, or docket number.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE(S):

Contact the System Manager at the address specified above, reasonably identify the record, and specify the information to be contested and corrective action sought with the supporting justification.

RECORD SOURCE CATEGORIES:

The DAB obtains the identifying information in this system from the request for review or referral. Claim file records are obtained from Medicare contractors and ALJ hearing offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–3010 Filed 3–3–06; 8:45 am]
BILLING CODE 4150–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Grant Award to The National Council on the Aging, To Evaluate a Project Entitled, "Cost-Effective and Scalable Strategies for Enrolling Medicare Beneficiaries in Medicare Prescription Drug Extra Help"

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice of grant award.

SUMMARY: The Centers for Medicare and Medicaid Services has awarded a grant entitled, "Cost-Effective and Scalable Strategies for Enrolling Medicare Beneficiaries in Medicare Prescription Drug Extra Help" to The National Council on the Aging, 300 D Street, SW., Suite 801, Washington, DC 20024, in response to an unsolicited proposal. The period of performance is March 1, 2006 through February 28, 2007 (Year 1). The applicant proposes to use private-public partnerships to support a five-year strategy of identifying and enrolling eligible beneficiaries through a series of tailored, list-driven intervention approaches already known to be effective in Low-Income Subsidy (LIS) enrollment. The National Council on the Aging (NCOA) is partnering with Benefits Data Trust (BDT) to lead this list-driven intervention research project. They have already received private funds which they plan to award in grants to support test interventions for the proposed study. NCOA expects to test 24–30 intervention approaches over a five-year period.

The NCOA team is soliciting CMS cooperation and support to accomplish two objectives critical to the success of the interventions. First, the proposed project will facilitate an ongoing partnership between NCOA and CMS to refine marketing lists by identifying beneficiaries already enrolled in the

Medicare Part D Low-Income Subsidy (LIS) or Medicaid. This will allow BDT to create the "cleanest" list possible of potential LIS-eligibles. BDT reported that use of similarly refined lists for outreach efforts to low income populations has increased the enrollment success rate, and decreased the cost of enrollment.

Secondly, NCOA is seeking CMS funding to evaluate alternative, list-based outreach strategies. NCOA intends to partner with L&M Policy Research for the evaluation of intervention approaches. In addition, NCOA will rely on Bridgespan to be an advisor for cost-effectiveness studies. Evaluation of these approaches could supplement existing market research knowledge, and be useful for quality improvement of ongoing and future beneficiary outreach efforts for LIS.

FOR FURTHER INFORMATION CONTACT: Susie Butler, Project Officer, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Stop S2–22–05, Baltimore, MD 21244, (410) 786–7211 or Judy Norris, Grants Officer, Department of Health and Human Services, OAGM/CMS, 7500 Security Blvd., Stop C2–21–15, Baltimore, MD 21244, (410) 786–5130.

Authority: Catalog of Federal Domestic Assistance Program No. 93–779, Center for Medicare and Medicaid Services, Research, Demonstrations and Evaluations; Section 1110 of the Social Security Act.

Dated: February 28, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 06–2092 Filed 3–1–06; 1:52 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have delegated to the Director of the Division of Unaccompanied Children's Services (DUCS) and to the DUCS Program Specialists, the following authority vested in the Director of the Office of Refugee Resettlement under the Homeland Security Act of 2002, Public Law No. 107–296, 462, 6 U.S.C. 279.

(a) Authority Delegated

Authority to make placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status and to implement such placement determinations under the Homeland Security Act of 2002, Public Law 107–296, 462(b)(1)(C) and (D), 6 U.S.C. 279(b)(1)(C) and (D).

(b) Limitations and Conditions

This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities. In making placement determinations, the DUCS Director and DUCS Program Specialists shall consult with the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children: Are likely to appear for all hearings or proceedings in which they are involved; are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and are placed in a setting in which they are not likely to pose a danger to themselves or others. In making placement determinations, the DUCS Director and DUCS Program Specialists shall not release unaccompanied alien children upon their own recognizance. The DUCS Director and DUCS Program Specialists will follow the policies and procedures on placement determinations set forth in DUCS placement guidelines. In appropriate cases, as set forth in DUCS placement guidelines, DUCS Program Specialists will obtain approval from the DUCS Director prior to making and implementing placement determinations. This authority may not be further redelegated.

(c) Effect on Existing Delegations

None.

(d) Effective Date

This delegation of authority is effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the DUCS Director or the DUCS Program Specialists, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: December 14, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. E6–3087 Filed 3–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0079]

Draft Guidance for Industry: Guide to Minimize Food Safety Hazards of Fresh-Cut Fruits and Vegetables; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables" (the draft fresh-cut guidance). This document complements FDA's current good manufacturing practices (CGMP) regulations by providing specific guidance on the processing of fresh-cut produce. The draft fresh-cut guidance and the CGMP regulations are intended to assist processors in minimizing microbial food safety hazards common to the processing of most fresh-cut fruits and vegetables sold to consumers in a ready-to-eat form.

DATES: Submit written or electronic comments on the draft guidance and the collection of information provisions by May 5, 2006. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables" to the Office of Plant and Dairy Foods (HFS–306), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1400, FAX: 301–436–2651. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. A copy of the draft guidance is available for public examination in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Submit written comments on the draft guidance and the proposed collection of information provisions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy. (HFS–306), College Park, MD 20740, 301–436–2025, FAX: 301–436–2651, e-mail: *amy.green@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Fresh-cut fruits and vegetables are fruits and vegetables that have been processed by peeling, slicing, chopping, shredding, coring, trimming, or mashing, with or without washing or other treatment, prior to being packaged for consumption. The methods by which produce is grown, harvested, and processed may contribute to its contamination with pathogens and, consequently, the role of the produce in transmitting foodborne illness. Factors such as the high degree of handling and mixing of the product, the release of cellular fluids during cutting or mashing, the high moisture content of the product, the absence of a step lethal to pathogens, and the potential for temperature abuse in the processing, storage, transport, and retail display all enhance the potential for pathogens to survive and grow in fresh-cut produce.

With this notice, FDA is announcing the availability of the draft fresh-cut guidance. This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the microbiological hazards presented by most fresh-cut fruits and vegetables and the recommended control measures for such hazards in the processing of such produce. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed in the following paragraphs.

With respect to the following collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables.

Description: The Federal Food, Drug, and Cosmetic Act (the act) prohibits the distribution of adulterated food in interstate commerce (21 U.S.C. 331 and 342). The methods by which produce is grown, harvested, and processed may contribute to its contamination with pathogens and, consequently, the role of the food in transmitting foodborne illness. The potential for pathogens to survive or grow may be enhanced in fresh-cut produce due to the release of plant cellular fluids during cutting or chopping, the high moisture content of many of the products, the absence of a process lethal to pathogens, and the potential for temperature abuse during processing, storage, transport, and retail display. In response to the increased consumption of fresh-cut fruits and vegetables and the potential for foodborne illness associated with these products, FDA recognizes the need for guidance specific to the processing of fresh-cut fruits and vegetables. Accordingly, FDA encourages fresh-cut produce processors to adopt the general recommendations in the guidance and to tailor practices to their individual operations.

FDA's fresh-cut draft guidance represents the agency's recommendations to industry based on the current state of science. Following the recommendations set forth in the fresh-cut guidance is the choice of each individual fresh-cut operation, plant, or processor. FDA estimates the burden of this draft guidance on industry by assuming that those in the fresh-cut industry who do not currently follow the recommendations put forth in the guidance will find it of value to do so. Therefore, the estimates of the burden associated with the issuance of this guidance represent the upper bound estimate of burden, the burden if every fresh-cut plant, processor, or operation that does not follow the recommendations of the guidance should choose to do so.

A. Industry Profile

Estimates of the paperwork burden to the fresh-cut industry that may result from the publication of FDA's draft guidance are based on information from FDA's relationship with a fresh-cut processor who has developed and maintained these programs and information from a fresh-cut produce industry trade association. Because of the small number of fresh-cut processors, the agency is able to extrapolate data from industry programs to calculate the total estimated upper bound burdens that may result from the issuance of this draft guidance (see table 1 of this document).

The burden to industry of developing and maintaining the activities recommended in FDA's fresh-cut draft guidance will vary considerably among fresh-cut processors, depending on the type and number of products involved, the sophistication of the equipment or instruments (e.g., those that automatically monitor and record food safety controls), and the type of controls monitored under any individual preventive control program, such as critical control points (CCPs) monitored under a hazard analysis and critical control point (HACCP) program.

Currently, the fresh-cut trade association estimates that there are 250 fresh-cut plants in operation in the United States. While most of the recent growth in the fresh-cut industry has been due to mergers between already existing firms, there are approximately 50 fresh-cut plants that did not exist in 2001. This implies that about 10 new firms are entering the fresh-cut industry each year. Many of the existing firms in the fresh-cut industry already make use of CGMP-related, recall, HACCP, and other activities. FDA estimates that the burden of this draft guidance will fall on both existing and new firms entering the industry who may follow the recommendations in this draft guidance.

B. SOPs and SSOPs

Two general recommendations in this draft guidance are for operators to develop and implement both a written standard operating procedures (SOPs) plan and a written sanitary standard operation procedures (SSOPs) plan. SOPs describe in writing the performance of the day-to-day operations of a processing plant. Examples of activities that would fall under SOPs would be developing written specifications for agricultural inputs, ingredients, and packaging materials; production steps for the processing and packaging operations; instructions for packaging and storage activities; and procedures for equipment maintenance, calibration, and replacement and facility maintenance and upkeep; and maintaining SOP records on product processing and distribution activities.

SSOPs provide written instructions or procedures for sanitary practices developed for each specific sanitation activity in and around the facility. Sanitation activities include procedures for cleaning equipment, food-contact surfaces and plant facilities; chemical use and storage; cleaning equipment maintenance, use, and storage; pest control; and maintaining SSOP records for the activities. From communication with the fresh-cut industry, we know that existing fresh-cut processors already have developed SOPs and SSOPs. We therefore consider the development of SOPs and SSOPs to be "usual and customary" for manufacturers and processors in the fresh-cut industry (see 5 CFR 1320.3(b)(2)). Thus, we do not calculate this burden for existing firms or new firms entering this industry.

FDA recommends that facilities not only develop but also maintain SOPs and SSOPs. Implementation and maintenance of SOPs and SSOPs include maintaining daily records for each of the firm's operational days for the following activities: Inspection of incoming ingredients, such as the fresh produce and packaging material; facility and production sanitation inspections; equipment maintenance, sanitation, and visual safety inspections; equipment calibration, e.g., checking pH meters; facility and premises pest control audits; temperature controls during processing and in storage areas; and audits of ingredients, food contact surfaces, and equipment for microbiological contamination.

Of the 250 fresh-cut processors, the fresh-cut trade association estimates that well over half have SOP and SSOP maintenance programs in place. Therefore, for purposes of estimating the annual record keeping burden for SOP and SSOP maintenance, the agency assumed that 40 percent of the existing processors, or 100 firms, and the 10 new firms do not have SOP and SSOP maintenance in place. FDA estimates the recordkeeping burden for SOP and SSOP maintenance by assuming that these 110 firms will choose to implement such a maintenance strategy as a result of the recommendations in this draft guidance document, if finalized.

A typical fresh-cut processing plant operates about 255 days per year. For an 8-hour shift, assuming the ingredients are received twice during that time, under the recommendations in the draft guidance, there would be about 13 records kept (two for inspecting incoming ingredients; two for inspecting the facility and production areas once every 4 hours; three records for equipment (maintenance, sanitation, and visual inspections for defects); one for calibrating equipment; two temperature recording audits (one time for each of the two processing runs); and three microbiological audits (ingredients, food contact surfaces, and equipment)). Therefore, the annual frequency of recordkeeping for SOPs and SSOPs is calculated to be 3,315 times (255 x 13) per year per firm; 110 firms will be performing these activities to generate a total 364,650 records (3,315 x 110) annually, assuming all firms choose to follow the recommendations on keeping records.

The total time to record observations for SOP and SSOP maintenance is estimated to take 4 minutes or 0.067 hours per record, and the number of records maintained is 364,650. Therefore, the total annual burden in hours for 110 processors to maintain their SOP and SSOP records is approximately 24,432 hours. The maintenance burden for these 110 firms, along with the annual maintenance burden of audits or testing, is estimated in row 1 of table 1 of this document. Again, these figures assume that all firms choose to follow the recommendations on recording observations.

C. Recall and Traceback

We recommend that fresh-cut processors establish and maintain written traceback procedures to respond to food safety hazard problems when they arise and establish and maintain a written contingency plan for use in initiating and effecting a recall. In order to facilitate tracebacks and recalls, we recommend that processors establish a program that documents and tracks fresh-cut products back to the source of their raw ingredients, and keep records of product identity and specifications, the product in inventory, and where, when, to whom, and how much of the product is shipped.

Traceback programs are used for those times when a food safety problem has been identified or a product has been implicated in a foodborne illness outbreak. The burden to develop a traceback program is a one-time activity estimated to take approximately 20 hours. Firms in the industry may choose to begin a traceback program after this guidance is made available. The total annual estimated burden for this activity for the 250 existing fresh cut firms and the 10 new businesses expected to enter the industry annually is 5,200 hours. The burden estimate of developing a traceback program is shown in row 2 of table 1 of this document.

Traceback program adjustments or revisions may, or may not, be needed annually. Firms may test their traceback programs yearly to see if adjustments are needed to maintain traceback capabilities. Evaluating and updating traceback programs is estimated to take 40 hours to complete. The annual burden of maintaining a traceback program is estimated for the 250 existing firms in the industry plus the 10 firms new to the industry that may decide to implement this type of program. Assuming that each firm completes this exercise once a year, the total maintenance burden of traceback programs is 10,400 hours yearly. This burden estimate is shown in row 3 of table 1 of this document.

This draft guidance refers to previously approved collections of information found in FDA regulations. The recommendations in this draft guidance regarding establishing and maintaining a recall plan in § 7.59 have been approved under OMB control number 0910–0249. Therefore, FDA is not calculating a new paperwork burden for recall plans.

D. Preventative Control Program

When properly designed and maintained by the establishment's personnel, a preventive control program is a valuable program for managing the safety of food products. A common preventive control program used by the fresh-cut industry is a Hazards Analysis and Critical Control Point (HACCP) system. A HACCP system allows managers to assess the inherent risks and identify hazards attributable to a product or a process, and then determine the necessary steps to control the hazards. Monitoring and verification

steps, which include recordkeeping, are included in the HACCP system to ensure that potential risks are controlled. We use HACCP as an example of a preventive control program that a firm may choose based on the recommendations in the draft guidance to estimate the burden of developing, implementing, and reviewing a preventive control program.

FDA estimated the paperwork burden of developing and implementing a HACCP plan based on a plan with two CCPs. The number of CCPs may vary depending on how the processor chooses to identify the CCPs for a particular operation. Of the estimated 250 fresh-cut processors, the fresh-cut industry estimates that approximately 50 percent of the firms already have HACCP plans in place. Therefore, assuming that the remaining fresh-cut processors voluntarily decide to develop a HACCP plan, 125 existing firms plus the 10 new firms, will develop a HACCP plan.

Developing a HACCP plan is a one-time activity that is estimated to take 100 hours based on a trained HACCP team working on the plan full time. The HACCP team identifies the CCPs and measures needed to control them, and then identifies the approach needed to verify the effectiveness of the controls. During this plan development period, the firm chooses the records to be kept and information and observations to be recorded. This is a one-time process during the first year. Therefore, the total time for 135 processors to develop their individual HACCP plans is approximately 13,500 hours. This one-time burden is shown in row 4 of table 1 of this document.

After the HACCP plan is developed, the frequency for recordkeeping for implementing or maintaining daily records is estimated to be 510 records per year. (This is based on a firm choosing to maintain daily records for two CCPs for one 8-hour shift per day for each of the estimated 255 operational days per year.) The total time to record observations for the CCPs was estimated to take 4 minutes or 0.067 hours per record. Therefore, the total annual records kept by the 135 firms choosing to implement the HACCP plan is 68,850, and the "Total Hours" required are 4,613. This annual burden is shown in row 5 of table 1 of this document.

After the HACCP plan has been developed and implemented, we recommend that the plan is reviewed regularly to ensure that it is working properly. Fresh-cut processors are estimated to review their HACCP plans four times per year (once per quarter). Assuming that it takes each of the 135 firms 4 hours per review each quarter, the total burden of this activity, for firms that choose to review their plans annually, is 2,160 hours per year. This annual burden is shown in row 6 of table 1 of this document.

FDA estimates the burden of the collection of information described in the previous paragraphs as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
SOP and SSOP: Maintenance	110	3,315	364,650	0.067	24,432
Traceback Development[2]	260	1	260	20	5,200
Traceback Maintenance	260	1	260	40	10,400
Preventive control program comparable to a HACCP system: System development[2]	135	1	135	100	13,500
Preventive control program comparable to a HACCP system: System implementation	135	510	68,850	0.067	4,613
Preventive control program comparable to a HACCP system: Implementation review	135	4	540	4	2,160
One-time burden hours					18,700
Annual burden hours					41,605

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]First year activity.

Summing the "Total Hours" column, the estimated one-time recordkeeping burden for firms that choose to follow the recommendations is 18,700 hours; the annual burden for firms, existing and new, is estimated to be 41,605 hours.

III. Comments

Interested persons may sumbit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: February 27, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–3084 Filed 3–3–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of IL13–PE38 for the Treatment of Asthma and Pulmonary Fibrosis

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 60/337,179 filed December 4, 2001, entitled "IL–13 Receptor-Targeted Immunotoxins Ameliorates Symptoms of Asthma and of Allergy" [HHS Reference No. E–296–2001/0–US–01], PCT Application No. PCT/US02/00616 filed February 28, 2002, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL–13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E–296–2001/0–PCT–02], U.S. Patent Application No. 10/497,804 filed June 4, 2004, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL–13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E–296–2001/0–US–03], Australian Patent Application No. 2002258011 filed June 8, 2004, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL–13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E–296–2001/0–AU–04], Canadian Patent Application No. 2469082 filed February 28, 2002, entitled "Chimeric Molecule for the Treatment of TH2-Like Cytokine Mediated Disorders" [HHS Reference No. E–296–2001/0–CA–05], and European Patent Application No. 02727815.9 filed June 29, 2004 entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL–13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E–296–2001/0–EP–06], including background patent rights to U.S. Patent No. 4,892,827, issued on January 9, 1990, entitled "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects" [HHS Reference No. E–385–1986/0–US–01], U.S. Patent No. 5,919,456, issued on July 6, 1999, entitled "IL–13 Receptor Specific Chimeric Proteins" [HHS Reference No. E–266–1994/0–US–07], U.S. Patent 6,518,061, issued on February 11, 2003, entitled "IL–13 Receptor Specific Chimeric Proteins and Uses Thereof" [HHS Reference No. E–266–1994/0–US–08], to NeoPharm, Inc., which has offices in Waukegan, Illinois. The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the treatment of asthma and pulmonary fibrosis with IL13–PE38.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology relates to the treatment of asthma and pulmonary fibrosis. When airway inflammation occurs (*e.g.*, during an asthmatic attack or a response to an allergen), the number of cells that produce the receptor for IL–13 increases in the lungs. When IL–13 interacts with the receptor, an inflammatory response is induced; when this occurs in the lungs, it leads to the symptom of constricted breathing. Blocking the interaction between IL–13 and its receptors on the cells has been shown to reduce the inflammatory response.

A chimeric molecule was developed that comprised both an IL–13 domain (capable of interacting with its cognate receptor) and a toxin domain. This molecule has the capacity to interact with and kill IL–13 receptor expressing cells. The invention relates to a method of treating asthma or pulmonary fibrosis by administering a chimeric molecule comprising a toxin linked to an IL–13 targeting moiety (*e.g.*, IL13–PE38). By administering the toxin in this form, cells involved in airway inflammation can be selectively targeted and killed, thereby alleviating the symptom of constricted breathing.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 27, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06–2096 Filed 3–3–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method for Determining Redox Status of a Tissue

James B. Mitchell et al. (NCI).
U.S. Provisional Application No. 60/707,518 filed August 11, 2005 (HHS Reference No. E–258–2005/0-US–01).
Licensing Contact: Chekesha Clingman: 301/435–5018; *clingmac@mail.nih.gov.*

This invention describes methods for diagnosis and therapy of cancer and other pathologies associated with oxidative stress by administering a nitroxyl contrast agent and employing magnetic resonance imaging (MRI). Tumor tissues exhibit viable but hypoxic regions that allow them to reduce nitroxide compounds more efficiently than normal tissue. The paramagnetic relaxivity of nitroxide compounds makes it possible to use standard MRI scanners to determine the redox status of tissue in vivo. By determining the redox status of a tumor it is possible to not only diagnose a tumor due to its enhanced reduction of intracellular nitroxide contrast agent, but also to determine appropriate radiation treatment fields spatially to deliver therapeutic doses of radiation, and to determine appropriate timing sequences after the administration of a nitroxide contrast agent such that the maximum difference between normal and tumor tissue with respect to the radioprotective form of the nitroxide is present in the normal tissue, thereby limiting collateral damage to the normal tissue.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Susceptibility-Matched Multiwell Plates for High-Throughput Screening by Magnetic Resonance Imaging and Spectroscopy

Kenneth W. Fishbein (NIA).
U.S. Provisional Application No. 60/725,299 filed October 12, 2005 (HHS Reference No. E–243–2005/0-US–01).
Licensing Contact: Chekesha Clingman; 301/435–5018; *clingmac@mail.nih.gov*.

This invention describes the development of a multi-well assay plate for high-throughput screening by magnetic resonance imaging (MRI) and nuclear magnetic resonance (NMR) spectroscopy. Multi-well plates are used in a wide variety of high-throughput measurements in clinical chemistry and immunology, as well as in drug discovery and other research applications. Magnetic resonance imaging (MRI) of multi-well plates offers the possibility of performing new kinds of high-throughput assays, including the detection of magnetic nanoparticles attached to or within cells. Moreover, MRI-guided localized nuclear magnetic resonance (NMR) spectroscopy could be used to perform detailed chemical analysis of complex mixtures of metabolites not possible by any other common analytical technique. Best of all, conventional MRI techniques exist which would permit all samples in one or more multi-well plate(s) to be analyzed simultaneously. Unfortunately, conventional multi-well plates typically give poor performance for MRI-based assays since they provide inadequate matching of magnetic susceptibility between the plate, the sample and their surroundings. This results in distortion of the magnetic field within the scanner and thus reduces the sensitivity for detecting magnetic particles and the resolution of NMR spectra. This invention relates to a new multi-well plate design incorporating one-piece polyetherimide plastic construction for improved magnetic susceptibility matching for aqueous samples. This design can easily be extended to non-aqueous samples by the selection of an appropriate, commercially-available plastic resin or resin blend. Further enhancement in susceptibility matching can be accomplished by combining the new plate design with plugs for each well constructed from the same plastic as the plate. These plugs would allow the entire thickness of each sample to be scanned in chemical analyses, improving signal-to-noise ratio and sensitivity. These plugs can be integrated into a single "cap mat" so that the entire assembly can be filled and manipulated by standard robotic laboratory equipment already in wide use in the pharmaceutical industry. Alternatively, spherical wells, accessed by narrow fill holes, may be molded into a solid plate, eliminating the need for individual plugs to seal each well. The new multi-well plate/plug design reduces magnetic field distortions and should dramatically improve spectral resolution and sensitivity for NMR and MRI-based high-throughput screening.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Measuring Fifteen Endogenous Estrogens Simultaneously in Human Urine by High-Performance Liquid Chromatography-Mass Spectrometry

Xia Xu, Timothy Veenstra, Larry Keefer, Regina Ziegler (NCI).
U.S. Provisional Application No. 60/688,160 filed June 7, 2005 (HHS Reference No. E–207–2005/0–US–01).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing and commercial development is a patent-pending, validated high-performance liquid chromatography-electrospray ionization-tandem mass spectrometry method for measuring the absolute quantities of fifteen endogenous estrogens and their metabolites in human urine. The method is sensitive, specific, accurate, and precise. It requires a single hydrolysis/extraction/derivatization step and only 0.5 mL of urine, yet is capable of simultaneously quantifying estrone, its 2- and 4-methoxy derivatives, and its 2-, 4-, and 16α-hydroxy derivatives; estradiol, its 2- and 4-methoxy derivatives, and its 2- and 16α-hydroxy derivatives; 2-hydroxyestrone-3-methyl ether; 16-epiestriol; 17-epiestriol; and 16-ketoestradiol in premenopausal and postmenopausal women as well as men. Standard curves are linear over a 10^3-fold concentration range with the relative standard error of the estimate for the linear regression line ranging from 1.2 to 7.3%, respectively. The lower limit of quantitation for each estrogen is 0.02 ng per 0.5-mL urine sample (only 2 pg placed on column). The percent recovery of a known added amount of estrogen metabolite ranges from 96 to 107%. The overall precision, including the hydrolysis, extraction, and derivatization steps, is 1–5% relative standard deviation for samples prepared concurrently and 1–12% relative standard deviation for samples prepared in separate batches.

Immunogenic T Cell Targets in Autoimmune Hepatitis and Methods of Use

Barbara Rehermann (NIDDK) et al.
U.S. Provisional Application No. 60/659,513 filed March 7, 2005 (HHS Reference No. E–263–2003/0–US–01)
Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov*.

Available for licensing and commercial development are new methods of diagnosing and monitoring the progression or response to therapy of subjects with autoimmune hepatitis (AIH) by quantitating the frequency and determining the function of autoantigen-specific CD4+ T cells in the peripheral blood with HLA–DRB1*0301 tetramers that display the autoepitopes. The invention identifies the immunogenic peptide regions that are targets of the T-cell immune response in two types of autoimmune hepatitis: (1) Anti-SLA (soluble liver antigen)-positive autoimmune hepatitis type 3 and (2) anti-LKM (liver kidney microsomal antigen)-positive autoimmune hepatitis type 2. Upon mapping the immunogenic regions within SLA and P450 2D6 using short, overlapping peptides, the inventors discovered at least four immunogenic peptides within SLA and

at least one peptide within P450 2D6 that were recognized by HLA–DRB*0301-restricted T cells. The technology is partially described in Hepatology 2005; 42: 291A–292A.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods for Rapid and Specific Fluorescent Staining of Biological Tissue for Laser Capture Microdissection

Robert A. Star (NIDDK), Hiroshi Murakami (NIDDK), Lance A. Liotta (NCI), Kenneth R. Spring (NHLBI)
U.S. Patent No. 6,790,636 issued 14 Sep 2004 (HHS Reference No. E–133–2000/0–US–02).
Licensing Contact: Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development are methods for rapid and specific fluorescent staining of biological tissue samples that substantially preserve biological molecules such as mRNA. Also within the scope of the invention are methods for microdissecting tissue to obtain pure populations of cells or tissue structures based upon identifying and excising cells or tissue structures that are labeled with fluorescent specific binding agents. A laser capture microdissection (LCM) apparatus useful for identifying and isolating cells and tissue structures following rapid immunofluorescent staining is also disclosed. Other LCM devices are available for purchase from Arcturus Engineering.

Dated: February 27, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06–2097 Filed 3–3–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Deoxyhypusine Hydroxylase

Myung Hee Park et al. (NIDCR)

U.S. Provisional Application No. 60/748,879 filed 09 Dec 2005 (HHS Reference No. E–051–2006/0–US–01).
Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov.*

Translation initiation factor eIF5A is a highly conserved eukaryotic protein. One of its lysine residues is enzymatically modified, using spermidine, to form an unusual amino acid, hypusine, a posttranslational modification unique to eIF–5A. This eukaryotic initiation factor (eIF5A) and its hypusine modification are essential for mammalian cell proliferation. Inventors at the National Institutes of Health have recently cloned and characterized the enzyme deoxyhypusine hydroxylase (DOHH) that catalyzes the final step in the modification of eIF5A. The inventors have characterized and cloned both the yeast and human recombinant versions of this enzyme.

Studies have shown that metal chelating compounds like deferiprone and ciclopirox olamine that inhibit DOHH activity in cells also inhibit HIV–1 replication in cell culture. These findings suggest potential utility of DOHH as a novel target for anti-cancer and anti-retroviral therapy. These advances could also conceivably lead to the development of small molecule inhibitors that bind to specific sites in the enzyme.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods of Treating Cancer Using Pyridine Carboxaldehyde Pyridine Thiosemicarbazone Radiosensitizing Agents

Philip J. Tofilon et al. (NCI)

U.S. Provisional Application No. 60/718,172 filed 16 Sep 2005 (HHS Ref. No. E–319–2005/0–US–01).
Licensing Contact: George G. Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

Ribonucleotide reductase is the rate-limiting enzyme of de novo DNA synthesis. The enzyme is composed of two homodimer subunits, hRRM1 and hRRM2. Hydroxyurea, a ribonucleotide reductase inhibitor, is commonly used in conjunction with radiotherapy but it its efficacy as shown in many chemoradiation trials is limited. Triapine (2-carboxyaldehyde pyridine thiosemicarbazone), a novel ribonucleotide reductase inhibitor, exhibits sensitivity to the subunit hRRM2 and inhibits ribonucleotide reductase more effectively when compared to hydroxyurea, thus imparting a radiosensitizing effect.

This present invention provides methods of preventing DNA synthesis and DNA repair after exposing cells to ionizing radiation. The present invention further provides methods of treating cancer and other tumors by coadministration of a radiosensitizing amount of Triapine and ionizing radiation.

Methods and Compositions for Treating FUS1 Related Disorders

Michael I. Lerman *et al.* (NCI)
U.S. Provisional Application No. 60/697,596 filed 07 Jul 2005 (HHS Reference No. E–137–2005/0–US–01).
Licensing Contact: Thomas Clouse; 301/435–4076; *clousetp@mail.nih.gov.*

The FUS1 gene residing in the 3p21.3 chromosome region may function as a tumor suppressor gene. Results show that FUS1 null mutants show consistent changes in NK cells and secreted antibodies, suggesting that FUS1 plays an important role in the development and activation of the mammalian immune system. The invention relates to methods, systems and transgenic animals useful for screening, diagnosing and treating FUS1 related disorders. Interestingly, targeted disruption of FUS1 gene in mice resulted in a viable and fertile phenotype.

Possible uses of this invention include using the FUS1 protein to modulate and boost the immune system in diseases like cancer and AIDS. Also, the cDNA and the corresponding protein are small and the applications could include gene therapy with

appropriate vectors and protein transduction technology.

Dated: February 28, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06–2098 Filed 3–3–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–21232]

Beacon Port Liquefied Natural Gas Deepwater Port License Application; Draft Environmental Impact Statement

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of the draft environmental impact statement (DEIS) for this license application. The application describes a project that would be located in the Gulf of Mexico, in lease block High Island Area 27, on the outer Continental Shelf (OCS). The Main Terminal would be located approximately 45 miles South of High Island and 50 miles East-Southeast of Galveston, Texas, with a riser platform in lease block West Cameron 167, approximately 27 miles South of Holly Beach and 29 miles South-Southeast of Johnson's Bayou, Louisiana. The Coast Guard and MARAD request public comments on the DEIS.

DATES: The public meeting in Lafayette, Louisiana will be held on March 21, 2006; the public meeting in Galveston, Texas will be held on March 22, 2006; and the public meeting in Corpus Christi, Texas will be held on March 23, 2006. Each public meeting will be held from 5 p.m. to 7 p.m., and will be preceded by an open house from 3 p.m. to 4:30 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak. Material submitted in response to the request for comments must reach the Docket Management Facility on or before April 17, 2006.

ADDRESSES: The public meeting and informational open house will be held at:

Holiday Inn Central, 2032 NE. Evangeline Thruway, Lafayette, LA 70501; telephone 337–233–6815; Galveston Island Convention Center at the San Luis Resort, 5600 Seawall Boulevard, Galveston, TX 77551, telephone 409–763–6564; and Omni Bayfront Tower, 900 North Shoreline Boulevard, Corpus Christi, TX 78401; telephone 361–887–1600.

Address docket submissions for USCG–2005–21232 to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–267–1683, e-mail: *rmartin@comdt.uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at the informational open house, and to comment at the public meeting on the proposed action and the evaluation contained in the DEIS.

Please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) if you wish to speak at the public meeting. In order to allow everyone a chance to speak, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See "Request for Comments" for information about DMS and your rights under the Privacy Act.

If you plan to attend either the open house or the public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on the DEIS. The public meeting is not the only opportunity you have to comment on the DEIS. In addition to or in place of attending the meeting, you can submit material to the Docket Management Facility during the public comment period (see **DATES**). The Coast Guard will consider all comments submitted during the public comment period, and then will prepare the final EIS. We will announce the availability of the final EIS and once again give you an opportunity for review and comment. (If you want that notice to be sent to you, please contact the Coast Guard contact person identified in **FOR FURTHER INFORMATION CONTACT**.) Submissions should include:

- Docket number USCG–2005–21232.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

SUPPLEMENTARY INFORMATION:

Proposed Action

We published a notice of intent to prepare an EIS for the proposed liquefied natural gas (LNG) deepwater port at 70 FR 33916, June 10, 2005. The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in "Summary of the Application" below, which is reprinted from previous **Federal Register** notices in this docket.

Alternatives to the Proposed Action

The alternatives to licensing are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the "no-action" alternative. These alternatives are more fully discussed in the DEIS.

Summary of the Application

The application plan calls for the proposed deepwater port terminal to be located outside State waters in the Gulf of Mexico on the U.S. Outer Continental Shelf (OCS). Beacon Port would consist of a Main Terminal, Riser Platform, and connecting pipelines. The Main Terminal would be located approximately 50 miles (80 km) off the coast, East-Southeast of Galveston, TX (approximately 45 miles (72 km) South of High Island, TX) in OCS lease block High Island Area 27 (HIA 27). The Riser Platform would be located approximately 29 miles off the coast, South-Southeast of Johnson's Bayou, LA (approximately 27 miles South of Holly Beach, LA) in OCS lease block West Cameron 167 (WC 167). Beacon Port would serve as an LNG receiving, storage, and regasification facility. The Main Terminal would be located in water depth of approximately 65 feet (20 m).

The proposed Beacon Port Main Terminal would include: Two concrete Gravity Based Structures (GBS) that would contain the LNG storage tanks, LNG carrier berthing provisions, LNG unloading arms, low and high pressure pumps, vaporizers, metering, utility systems, general facilities and accommodations. The Main Terminal would be able to receive LNG carriers with cargo capacities of up to 253,000 cubic meters. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. The terminal would have storage capacity for up to 300,000 cubic meters of LNG (150,000 cubic meters per tank) on site.

Regasification of LNG would be accomplished through the use of open rack vaporizers (ORVs). In normal operation, four pumps would operate with a combined total flow rate of approximately 167.5 million gallons of sea water per day (26,400 m^3/hr). At peak operation, five pumps would operate with a combined total flow rate of approximately 203 million gallons of sea water per day (32,000 m^3/hr).

Beacon Port proposes the installation of approximately 46 miles of offshore natural gas transmission pipeline on the OCS. A 42-inch diameter pipeline would connect the Main Terminal with the Riser Platform. Three additional pipelines (24-inch, 20-inch, and 12.75-inch diameter) are proposed to connect the Riser Platform with existing gas distribution pipelines in the West Cameron (WC) 167 OCS block. The deepwater port would be designed to handle an average delivery of approximately 1.5 billion standard cubic feet per day (Bscfd) with a peak delivery of approximately 1.8 Bscfd.

Dated: February 24, 2006.

Howard L. Hime,

Acting Director of Standards, Assistant Commandant for Prevention, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 06–2110 Filed 3–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5052–N–01]

Notice of Proposed Information Collection: Comment Request; Guide for Opinion of Counsel to the Mortgagor and HUD Guide for Counsel to Owner

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 5, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Brenda M. Johnson, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9230, Washington, DC 20410–0500, telephone (202) 708–4090 (this is not a toll-free number) for copies of the proposed guide.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and 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: HUD Guide for Counsel to the Mortgagor and HUD Guide to Counsel to Owner.

OMB Control Number, if applicable: 2510–0010.

Description of the need for the information and proposed use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Agency form numbers, if applicable: Guide.

Members of affected public: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 or section 811 projects which receive capital advances from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: As closings occur in connection with the aforementioned projects.

Number of respondents	Burden hours	Frequency of response	Total burden hours
700	1.0	1	700

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 28, 2006.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 06–2095 Filed 3–3–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–11]

Notice of Submission of Proposed Information Collection to OMB; Mortgagee's Certification of Fees and Escrow and Surely Bond Against Defects

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.

Mortgagees provide this information to certify that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. The surely bond ensures a project has ample coverage regarding defects.

DATES: *Comments Due Date:* April 5, 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 (2502–0468) 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, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *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.

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: Mortgagee's Certification of Fees and Escrow and Surely Bond Against Defects.

OMB Approval Number: 2502–0468.

Form Numbers: HUD–2434 and HUD–3259.

Description of the Need for the Information and Its Proposed Use: Mortgagees provide this information to certify that fees are within acceptable limits and the required escrows will be collected, HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. The surely bond ensures a project has ample coverage regarding defects.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	,1,020	1.49		0.60		917

Total Estimated Burden Hours: 917.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 28, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–3136 Filed 3–3–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

Proposed Agency Information Collection With Indian Artist/Artisan Survey; Comment Request

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice.

SUMMARY: The proposal for the collection of information listed below

has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection form may be obtained by contacting the Board's Director at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget. A copy of the comments and suggestions should also be sent to the Board's Director.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 5, 2006, in order to be assured of consideration.

ADDRESSES: Send your written comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention, Department of the Interior Desk Officer, by fax to 202–395–6566, or by e-mail to *oira_docket@omb.eop.gov*. Send a copy of your written comments to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW., MS–2058 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 208–5196, or you may send them by e-mail to *iacb@ios.doi.gov*. Please mention that your comments concern the Indian Artist/Artisan Survey, OMB control # 1085–0003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Indian Artist/Artisan Survey, OMB Control # 1085–0003, i.e., the information collection instrument, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS 2058 MIB, Washington, DC 20240. You may also call (202) 208–3773 (not a toll free call), or send your request by e-mail to *iacb@ios.doi.gov* or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The IACB is responsible for promoting the development of American Indian and Alaska Native Arts and crafts, improving the economic status of members of federally recognized Tribes, and helping to develop and expand marketing opportunities for arts and crafts produced by Native American Indians and Alaska Natives. This year, the Secretary of the Interior has mandated that each department complete a Strategic Plan. In conjunction with this plan, the Commissioners for the IACB have requested that the IACB generate baseline numbers that will be included in the Strategic Plan, as well as other statistics that will be used for evaluating and strengthening our Congressional mandate. The IACB has designed a questionnaire that would produce valid and reliable results that can be generalized to the entire universe of study. It is directed toward the Native American Indian and Alaska Native artist/artisan constituency. The questionnaire is to be utilized at Indian markets across the country, which is where most artists and artisans served by the IACB sell their work. Recently, the IACB learned that it would be able to participate in the Santa Fe Indian Market, the largest event in the Southwest, and felt this would be an excellent opportunity to utilize the questionnaire. In order to do this, it requested emergency approval of the Indian Artist/Artisan Survey; OMB approved the survey under OMB Control Number 1085–0003. The IACB is planning to extend the information collection approval for the standard three years and to add additional surveys in other regions necessary to establish a national baseline.

II. Data

(1) *Title:* Indian Artist/Artisan Survey.
OMB Control Number: 1085–0003.
Current Expiration Date: February 28, 2006.
Type of Review: Information Collection Renewal.
Affected Entities: Businesses or other for-profit entities; Tribes.
Estimated annual number of respondents: 400.
Frequency of response: Annual.
(2) Annual reporting and record keeping burden.
Total annual reporting per respondent: 10 minutes.
Total annual reporting: 67 hours.
(3) Description of the need and use of the information: This information is required to generate baseline numbers for our Strategic Plan, as well as other statistics to be used for evaluating and strengthening our Congressional mandate.

III. Request for Comments

The Department of the Interior invites comments on:
(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;
(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and
(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 17, 2006.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. E6–3090 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Office of Acquisition and Property Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection request may be obtained by contacting the Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget. A copy of the comments

and suggestions should also be sent to the Clearance Officer.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 5, 2006, in order to be assured of consideration.

ADDRESSES: Send your written comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention, Department of the Interior Desk Officer, by fax to 202–395–6566, or by e-mail to *oira_docket@omb.eop.gov*. Send a copy of your written comments to Mary Heying, Department of the Interior, 1849 C Street, NW., MS–2607 MIB, Washington, DC 20240, or electronically to *mary_heying@ios.doi.gov*. Please mention that your comments concern the Claim for Relocation Payments—Residential, DI–381; Claim for Relocation Payments—Nonresidential, DI–382, OMB control # 1084–0010.

FOR FURTHER INFORMATION CONTACT: To request a copy of either or both information collection requests (Claim for Relocation Payments—Residential, DI–381 and/or Claim for Relocation Payments—Nonresidential, DI–382), and explanatory information and related forms, contact Mary Heying, at (202) 208–4080, or electronically at *mary_heying@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Acquisition and Property Management has submitted to OMB for extension or re-approval.

Claim for Relocation Payments—Residential, DI–381 and Claim for Relocation Payments—Nonresidential, DI–382 were created because of amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17. The Office of Acquisition and Property Management has revised these forms to more closely reflect the changes made by the Uniform Relocation Assistance and Real Property Acquisition Act final rule published January 4, 2005, by the Federal Highway Administration. The revision make the forms more user-friendly; incorporate citations; revise the sections relating to certification of occupancy status (citizen or national of the United States or an alien lawfully present in the United States); and clarify the allowable and non-allowable moving expenses sections. The Office of Acquisition and Property Management is requesting a 3 year term of approval for this information collection activity.

The information on the information collection requests will be used to determine the amount of money, if any, owed to persons or businesses displaced by Federal acquisition of their real property.

II. Data

(1) *Title:* Claim for Relocation Payments—Residential, DI–381; Claim for Relocation Payments—Nonresidential, DI–382.

OMB Control Number: 1084–0010.

Current Expiration Date: February 28, 2006.

Type of Review: Information Collection Renewal.

Affected Entities: Individuals or households, Businesses or other for-profit entities, Not-for-profit entities, Farms.

Estimated annual number of respondents:

DI–381; 116
DI–382: 84
Total: 200

Frequency of response: Annual.

(2) *Annual reporting and recordkeeping burden.*

Total annual reporting per respondent:

DI–381: 25 minutes
DI–382: 30 minutes

Total annual reporting:

DI–381: 48 hours
DI–382: 42 hours
Total: 90 hours

(3) *Description of the need and use of the information:* The information on the information collection requests will be used to determine the amount of money, if any, owed to persons or businesses displaced by Federal acquisition of their real property.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 24, 2006.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. E6–3091 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Fish and Wildlife Service; Establishment of the Sporting Conservation Council

SUMMARY: This notice is published in accordance with section 9a(2) of the Federal Advisory Committee Act, 5 U.S.C. App (1988). Following consultation with the General Services Administration, the Secretary of the Interior hereby establishes the Sporting Conservation Council. The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act (Act).

FOR FURTHER INFORMATION CONTACT: Melissa Simpson at 202–208–6224.

SUPLEMENTARY INFORMATION: The Council will provide advice and guidance to the Federal Government through the Department of the Interior

on how to increase public awareness of the importance of wildlife resources and the social and economic benefits of recreational hunting. The purpose of the Council is to advise the Secretary of the Interior about wildlife conservation endeavors that benefit recreational hunting and wildlife resources and that encourage partnerships among the public, the sportsman conservation community and Federal and State government.

Council membership will include representatives from game bird hunting organizations, recreational shooting organizations, wildlife conservation organizations, big game hunting organizations, and the hunting community.

The Council will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Certification

I hereby certify that the establishment of the Sporting Conservation Council is necessary and in the public interest in connection with the performance of duties by the Department of the Interior mandated pursuant to 43 U.S.C. 1457, and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742A–742j).

Dated: February 17, 2006.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. E6–3137 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from any person, association, corporation, subsidiary, or affiliate interested in leasing or developing Federal coal. The BLM uses the information to determine if the applicant is qualified to hold a Federal coal lease.

DATES: You must submit your comments to BLM at the address below on or before May 5, 2006. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comments_washington@blm.gov.* Please include "ATTN: 1004–0073" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact William Radden Lesage, Solid Minerals Group, on (202) 452–0360 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Lesage.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility.

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages the leasing and development of Federal coal under the regulations at 43 CFR Group 3400. These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920;

(2) The 1976 coal amendments (30 U.S.C. 181 *et seq.*);

(3) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359);

(4) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*);

(5) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*);

(6) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and

(8) The Act of October 30, 1978 (92 Stat. 2073–2075).

BLM uses the information provided by the applicant(s) on BLM Forms 3400–12 and 3440–1 to determine if the applicant to lease or develop Federal coal is qualified to hold such a lease.

Based on BLM's experience administering the activities described below, we estimate the public reporting burden for the information collected is 20 hours and 15 minutes per response and the total annual burden is 25,585 hours. We estimate the number of responses per year is 1,289. The respondents are applicants to lease or develop Federal coal and vary from individuals to small businesses and major corporations. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Type of Application	43 CFR	Hours per response	Number of responses	Total hours
Application for an exploration license	3410.2–1	36	10	360
Issuance and termination of an exploration license	3410.3–1	12	5	60
Operations under and modification of an exploration license	3410.3–3	1	1	1
Collection and submission of data from an exploration license	3410.4	18	5	90
Call for coal resource and other resource info	3420.1–2	3	0	0
Surface owner consultation	3420.1–4	1	7	7
Expressions of leasing interest	3420.3–2	7	0	0
Response to notice of sale	3422.2	56	8	448
Consultation with Attorney General	3422.3–4	4	7	28

Type of Application	43 CFR	Hours per response	Number of responses	Total hours
Leasing on application	3425	308	15	4,620
Surface owner consent	3427.2(c)	1	7	7
Preference right lease application	3430.3–1, 3430.4–1	800	3	2,400
Lease modifications	3432.1	12	5	60
License to mine	3440	21	2	42
Relinquishments	3452.1–1, 3452.1–2	18	30	540
Transfers, assignments, subleases	3453.2–1	10	43	430
Bonds	3410.3–4, 3453.2–4, 3474.1, 3474.2	8	196	1,568
Land description requirements	3471.1–1	2	15	30
Future interest lease application	3471.4	16	0	0
Special leasing qualifications	3472.1–2	3	4	12
Qualification statement	3472.2	3	4	12
Lease rental and royalty rate reductions	3473.3–4	13	9	117
Lease suspensions	3473.4, 3483.3	20	7	140
Lease form	3475.1	1	12	12
Logical mining units	3475.6, 3481.2, 3487	170	5	850
General obligations of the operator/lessee	3481.1	1	1	1
Exploration plans	3482.1(a)	30	11	330
Resource recovery and protection plan	3482.1(b)	192	4	768
Modifications to exploration plans and resource recovery and protection plans	3482.2	16	79	1,264
Mining operations maps	3482.3	20	311	6,220
Request for payment of advance royalty in lieu of continued operation	3483.4	22	12	264
Performance standards for exploration (Retention of samples)	3484.1(a)	1	22	22
Performance standards for surface and underground coal mines	3484.1(b)	1	6	6
Exploration reports	3485.1(a), 3485.1(b), 3485.1(c)	4	7	28
Production reports	3485.1(d), 3485.3	10	323	3,230
Notices and orders	3486.2	3	1	3
Enforcement	3486.3	2	8	16

Any member of the public may request and obtain, without charge, a copy of the BLM Forms 3400–12 and 3440–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will be a matter of a public record.

Dated: February 28, 2006

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–2066 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0058

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from Federal timber purchasers to allow BLM to determine compliance with timber export restrictions. BLM uses Form 5460–17, Substitution Determination, to collect this information. This information allows BLM to administer export restrictions on BLM timber sales and to determine whether there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).

DATES: You must submit your comments to BLM at the address below on or before May 5, 2006. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comments_washington@blm.gov.* Please include "ATTN: 1004–0058" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Tim Bottomley, on (303) 236–0681 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Bottomley.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper

functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road Grant Lands under the authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). Under the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*), BLM also manages and sells timber located on other lands under our jurisdiction. The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will ensure that unprocessed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The regulations at 43 CFR part 5400, Sales of Forest Products, General, cover these provisions.

Timber purchasers or their affiliates must submit the information listed at 43 CFR 5424.1(a) using Form 5460–17, Substitution Determination. We collect the purchaser's name, timber contract number, processing facility location, total volume of Federal timber purchased on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume. The regulation at 43 CFR 5424.1(b) requires that the purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date the activity occurred. BLM uses this information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c). We could not protect against export and substitution if we did not collect this information.

Based on BLM's experience administering timber contracts, we estimate the public reporting burden to collect the information is one hour per response. The respondents are Federal timber purchasers who exported private timber within one year preceding the purchase date of Federal timber and/or affiliates of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser. The frequency of response is annually. We estimate 25 responses per year and a total annual burden of 25 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 28, 2006.

Ted R. Hudson,

Bureau of Land Management Information Collection Clearance Officer.

[FR Doc. 06–2067 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0001

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from the general public interested in obtaining free vegetative or mineral material from public lands. BLM uses Form 5510–1, Free Use Application and Permit (Vegetative or Mineral Materials) to collect this information. This information allows BLM to properly manage and accurately track the disposal of these materials.

DATES: You must submit your comments to BLM at the address below on or before May 5, 2006. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comments_washington@blm.gov.* Please include "ATTN:: 1004–0001" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Tim Bottomley, on (303) 236–0681 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Bottomley.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM uses Form 5510–1, Free Use Application and Permit (Vegetative or Mineral Material), under 43 CFR 5510 to collect this information. The PL–167, Surface Resources Act of July 23, 1955, gives the Secretary the discretion to permit the free use of vegetative or mineral materials for use other than commercial or industrial purposes or resale. The Secretary of the Interior may also permit mining claimants the free use of vegetative or mineral materials.

BLM uses the information provided by the applicant(s) to:

(1) Maintain an inventory of vegetative and mineral information; and

(2) Adjudicate your rights to vegetative and mineral resources.

An applicant must file an application for a permit before removing any vegetative or mineral resources from the public lands. If BLM did not collect this information, we could not process applications.

Based upon BLM experience administering the activities described above, we process approximately 300 applications each year. The public reporting information collection burden takes 30 minutes. We estimate 300 responses per year and a total annual burden of 150 hours.

BLM will summarize all responses to this notice and include them in the request for OMB renewal of this form. All comments will become a matter of public record.

Dated: February 28, 2006.

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–2068 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information to ensure operators and mining claimants meet their responsibilities while conducting exploration, mining, and reclamation work on public lands. BLM uses Forms 3809–1, 3809–2, 3809–4, 3809–4a, and 3809–5 to collect financial guarantee bond information for surface management activities. The nonform information under 43 CFR subpart 3809 authorizes operators and mining claimants to perform surface management activities under the General Mining Law.

DATES: You must submit your comments to BLM at the address below on or before May 5, 2006. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comments_washington@blm.gov.* Please include "ATTN: 1004–0194" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact T. Scott Murrellwright, Solid Minerals Group, on (202) 785–6568 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Murrellwright.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under the General Mining Law, a citizen may enter onto public domain lands that are subject to the law to prospect and explore for valuable mineral deposits. They may do so without seeking the government's permission beforehand. The rights to a deposit of a valuable mineral are granted through the act of discovering the mineral deposit. After making a discovery, a prospector may choose to locate and record a mining claim to protect investments in exploration and to have a secure tenure to discovered valuable mineral deposits. Locating a mining claim is not a prerequisite for conducting operations on the public lands, nor is it even a requirement for carrying out mining operations. BLM uses the regulations at 43 CFR subpart 3809 to govern hardrock mineral exploration and development on the public lands and Federal interests in the lands. The hardrock minerals are subject to the provisions of the 1872 General Mining Law (30 U.S.C. 22, *et seq.*, as amended).

BLM collects nonform information on surface management activities from mining claimants and operators.

Information collection for surface mgmt activities	Estimated hours
Notice Level Activities:	
1. Small exploration operations	16
2. Medium scale exploration operations	48
Plan Level Activities:	
3. Small placer operation	80
4. Placer mine operations	160
5. Industrial mineral operations	160
6. Small underground mine	160
7. Open pit mine operations	480
8. NEPA compliance:	
Exploration	320
EA-level mines, simple	320
EA-level mines, standard	890
EIS-level mines	2,480
9. Section 106 of NHPA	30

You must submit the requested information and forms to the proper BLM office.

Based on BLM's experience administering this program, we estimate the public reporting burden is 8 minutes each to complete Forms 3809–1, 3809–2, 3809–4, 3809–4a, and 3809–5. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective forms. The BLM estimated 1,552 surface management activity responses are filed annually, with a total annual burden of 144,598 hours. Respondents vary, from individuals and small businesses to large corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3809–1, 3809–2, 3809–4, 3809–4a, and 3809–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 28, 2006

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–2069 Filed 3–3–06; 8:45am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the

National Park System Advisory Board will meet March 21–22, 2006, in Jacksonville, Florida. The Board will convene its business meeting on March 21 at 8:30 a.m., e.s.t., at the Ribault Inn Club, 11241 Fort George Road, Jacksonville, Florida 32226, telephone 904–251–1050. The Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Education Committee, National Landmarks Committee, Committee on Health and Recreation, National Parks Science Committee, Committee on Federal Historic Rehabilitation Tax Credit, and Partnerships Committee. Nominations for National Historic Landmark designation and National Natural Landmark designation will be considered during the morning session. The business meeting will be adjourned at 4 p.m., on March 21. On March 22, the Board will tour Timucuan National Ecological Preserve and will be briefed regarding environmental, education and partnership programs.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Chief, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: February 24, 2006.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. E6–3121 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Renewal of a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved information collection (OMB No. 1006–0002).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (Reclamation) intends to submit a request for renewal (without revision) of an existing, approved information collection to the Office of Management and Budget (OMB): Recreation Use Data Report, OMB Control Number 1006–0002. As part of its continuing effort to reduce paperwork and respondent burdens, Reclamation invites other Federal agencies, State, local, or tribal governments which manage recreation sites at Reclamation projects; concessionaires, subconcessionaires, and not-for-profit organizations who operate concessions on Reclamation lands; and the public, to comment on this information collection.

DATES: Written comments must be received by the office listed in the addresses section on or before May 5, 2006.

ADDRESSES: Direct comments on the collection of recreation and concession information to: Bureau of Reclamation, Land Resources Office, D–5300, Attention: Mr. Vernon Lovejoy, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the proposed Recreation Data Use Report forms, contact Mr. Lovejoy at the address provided above or by telephone at (303) 445–2913.

SUPPLEMENTARY INFORMATION:

Title: Recreation Use Data Report (Form No. 7–2534—Part 1, Managing Partners and Form No. 7–2535—Part 2, Concessionaires).

Abstract: Reclamation collects Reclamation-wide recreation and concession information (1) in support of existing public laws including the Land and Water Conservation Fund Act (Pub. L. 88–578), the Federal Water Project Recreation Act (Pub. L. 89–72), the Federal Lands Recreation Enhancement Act (Pub. L. 108–477); and (2) to fulfill reports to the President and the Congress. This collection of information allows Reclamation to (1) meet the requirements of the Government Performance and Results Act (GPRA), (2) fulfill congressional and financial reporting requirements, and (3) support specific information required by the Land and Water Conservation Fund Act and the Department of the Interior's GPRA-based strategic plan. Collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of implementing Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Specifically, the collected information provides Reclamation with the ability to (1) evaluate program and management effectiveness pertaining to existing recreation and concessionaire resources and facilities, and (2) validate effective public use of managed recreation resources, located on Reclamation project lands in the 17 Western States.

Frequency: Annually.

Respondents: State, local, or tribal governments; agencies who manage Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Estimated Total Number of Respondents: 275.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 275.

Estimated Total Annual Burden on Respondents: 138 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Annual number of respondents	Annual burden on respondents (in hours)
7–2534 (Part 1, Managing Partners)	30	160	80

Form No.	Burden estimate per form (in minutes)	Annual number of respondents	Annual burden on respondents (in hours)
7–2535 (Part 2, Concessionaires)	30	115	58
Total Burden Hours			138

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E6–3120 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Northwest Area Water Supply Project, North Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) is commencing work under the National Environmental Policy Act on an environmental impact statement (EIS) for the Northwest Area Water Supply Project (NAWS Project), a Federal reclamation project, located in North Dakota. This NOI is being published to describe the proposed action, the purpose of and need for that proposal, the scope of the EIS, and to solicit public comments during a formal scoping period.

Reclamation is initiating a formal scoping period of 60 days following publication of this NOI. Reclamation invites all interested parties to submit written comments or suggestions related to the significant issues, potential impacts and reasonable alternatives to the proposed action during the scoping period. Reclamation will provide a separate project information document that outlines EIS actions, timelines, and public involvement opportunities to all interested parties. The project information document will contain details related to this action that will assist the interested public in providing comments during the scoping period.

DATES: Individuals who want to receive the additional project information document should contact Reclamation's Project Manager within 15 days following publication of this NOI.

Written comments or e-mails on the NOI should be received by May 5, 2006. Comments received after that date will be considered to the extent practical.

ADDRESSES: Written comments should be submitted to: Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502.

FOR FURTHER INFORMATION CONTACT: Alicia Waters, Northwest Area Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502; Telephone: (701) 250–4242 extension 3621; or Fax to (701) 250–4326. You may submit e-mail to *awaters@gp.usbr.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Garrison Diversion Unit's Municipal, Rural and Industrial Water Supply (MR&I) program was authorized by the U.S. Congress on May 12, 1986, through the Garrison Diversion Unit Reformulation Act of 1986. This act authorized the appropriation of $200 million of Federal funds for the planning and construction of water supply facilities throughout North Dakota. The NAWS project, initiated in November 1987, is being developed as a result of this authorization.

The NAWS project is designed as a bulk water distribution system that will service local communities and rural water systems in 10 counties in northwestern North Dakota including the community of Minot. The NAWS Project is an interbasin transfer of water from Lake Sakakawea, in the Missouri River basin in North Dakota, to Minot, North Dakota, in the Hudson Bay basin. Reclamation completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the project in 2001. Construction on the project began in April 2002. In October 2002, the Province of Manitoba filed a legal challenge in U.S. District Court in Washington, DC to compel the Department of the Interior to complete an EIS on the project. A Court Order dated February 3, 2005, remanded the case to Reclamation for completion of additional environmental analysis.

During the pendancy of the litigation filed by Manitoba, construction continued on the project. Construction of the raw water core pipeline for NAWS began in April 2002. Approximately 30 miles of this pipeline have been completed to date. Contract 2–1D provides for installation of 14.9 miles of pipe, cathodic protection, and appurtenances. The date allowed for completion of this contract is October 21, 2006, and once this contract is finished, the raw water core pipeline of the NAWS system will be complete. Work on the distribution system, water treatment facilities, and other features of the project has not yet commenced.

Purpose of the Proposed Action

The purpose of the NAWS Project is to provide a reliable source of high

quality treated water from Lake Sakakawea, a reservoir on the Missouri River in North Dakota to northwestern North Dakota for MR&I uses. The purpose of the proposed action is to deliver treated water to affected communities from the Missouri River using methods and measures that minimize the risk of non-native biota transfer.

Need for the Proposed Action

The NAWS Project is needed: (1) To provide high quality treated water because northwestern North Dakota has experienced water supply problems for many years; (2) to replace poor quality groundwater sources presently used for MR&I purposes; and (3) because there are insufficient surface water supplies from both a quality and quantity standpoint. The proposed action that is the subject of this DEIS is needed for the following reasons: (1) to provide a reliable source of high quality treated water from the Missouri River in North Dakota to northwestern North Dakota for MR&I uses; and (2) to minimize the possibility for transfer of non-native biota from the Missouri River drainage into the Hudson Bay drainage in the NAWS Project area.

The Proposed Action

Reclamation proposes to complete construction of the remaining NAWS Project features and facilities to deliver water to municipal, rural and industrial water users in the service area while minimizing the risk of transfer of non-native biota. Such project features and facilities include (but are not limited to): (1) Construction and operation of suitable water treatment plant(s) located at specified points and using appropriate treatment methods to minimize the possibility of transferring non-native biota from the Missouri River drainage into the Hudson Bay drainage and (2) construction methods and operational measures to minimize the risk of non-native biota transfer that may occur as a result of the project water conveyance and delivery pipelines.

Scope of the Proposed Action

The geographic scope of the DEIS includes areas and resources within the United States affected by water diversion and delivery for NAWS Project purposes. This includes, but is not necessarily limited to: (1) The sites of all NAWS Project features and facilities; (2) lands that receive NAWS Project MR&I water supplies; and (3) the potential depletion affects on the Missouri River affected by water diversion for the NAWS Project.

Summary

Reclamation is engaging in this planning and EIS effort to address the relevant issues related to completion and operation of the NAWS Project. We are seeking input from the public on the development of reasonable alternatives to the proposed action and analysis of their environmental effects that will be described in the EIS.

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 7, 2006.

Michael J. Ryan,

Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. E6–3102 Filed 3–3–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 28, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Hazard Communication (29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, and 1928.21).

OMB Number: 1218–0072.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 7,200,700.

Number of Annual Responses: 475,405,572.

Estimated Time per Response: Varies from 12 seconds for establishments to label an in-plant container to 8 hours for manufacturers or importers to conduct a hazard determination.

Total Burden Hours: 11,000,793.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,047,822.

Description: The standard requires all employers to establish hazard communication programs, to transmit information on the hazards of chemicals to their employees by means of container labels, material safety data sheets and training programs. This action will reduce the incidence of

chemical related illness and injury in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–3126 Filed 3–3–06; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 22, 2006.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 71, No. ___, at ___, February ___, 2006 [citation not available].

PREVIOUSLY ANNOUNCED TIME AND DATE: 10 a.m., Thursday, February 23, 2006.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

CHANGE IN MEETING: The Commission has postponed the meeting to consider and act upon *Secretary of Labor* v. *Plateau Mining Corp.*, Docket Nos. WEST 2002–207 and WEST 2002–278.

No earlier announcement of the change in meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 06–2147 Filed 3–2–06; 2:39 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (06–015)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA: Office of Information and Regulatory Affairs; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite JE000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Automotive Statistical Tool (FAST) Reporting of Government-Owned Contractor-Operated Vehicles is an information collection required by Executive Order 13149, "Greening the Government through Federal Fleet and Transportation Efficiency," Section 505. This order requires Federal agencies to ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract. This order requires the Department of Energy (DOE) to issue guidance to agencies and to establish the data collection and reporting system for collecting annual agency performance data on meeting the goals of the order and other applicable statutes and policies, as stated in Section 301(b).

In July 2000, the DOE prepared the Guidance Document for Federal agencies, as required by Executive Order 13149. Section 2–3 requires agencies to report using DOE's Federal Automotive Statistical Tool (FAST). FAST is accessed through *http://fastweb.inel.gov/.*

II. Method of Collection

NASA collects this information electronically through *http://fastweb.inel.gov/.*

III. Data

Title: Federal Automative Statistical Tool (FAST) Reporting of Government-Owned Contractor-Operated Vehicles.

OMB Number: 2700–0106.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government and Business or other for-profit.

Estimated Number of Respondents: 93.

Estimated Time Per Response: 15 min/vehicle.

Estimated Total Annual Burden Hours: 425.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Dated: February 27, 2006.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E6–3089 Filed 3–3–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 157th Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 23 and March 24, 2006 in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet in closed session on March 23rd, from 12 p.m. to 2 p.m., in Room 527 for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of February 27, 2006, this session will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

The March 24th meeting, from 9 a.m. to 12:30 p.m. (ending time is approximate), will be open to the public on a space available basis. Following opening remarks and announcements, there will be an update on Congressional/White House activities. The meeting will include three presentations: one on 40 years of NEA support for Design, one on 40 years of NEA support for Music & Opera, and one on the National Initiative *The Big Read.* There also will be a report on the National Governors Association briefing papers. This will be followed by review and voting on applications and guidelines. The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: February 28, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E6–3103 Filed 3–3–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) to the National Council on the Arts will be held on March 20, 2006 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. This meeting, which will be held from 10 a.m. to 3:30 p.m., will be closed.

Closed meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: March 1, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–3134 Filed 3–3–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Pub. L. 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the Act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Arts Advisory Panel and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

The Endowment Advisory Committees listed above review and discuss applications for financial assistance. While the majority of applications received by the agency are submitted by organizations, all of the applications contain the names of and personal information relating to individuals who will be working on the proposed project. In reviewing the applications, committee members discuss the abilities of the listed individuals in their fields, the reputations of the listed individuals among their colleagues, the ability of the listed individuals to carry through on projects they start, and their background and performance. Consideration of these matters is essential to the review of the artistic excellence and artistic merit of an application.

Consequently, in the interest of meeting our obligation to consider artistic excellence and artistic merit when reviewing applications for financial assistance:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, and evaluation of applications for financial assistance as outlined herein is likely to disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of applications for financial assistance may be closed to the public in accordance with subsection (c)(6) of section 552b of Title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in local media, of a notice of all advisory committee meetings. Such notice shall

be published in advance of the meetings and contain:

1. Name of the committee and its purposes;

2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

Guidelines

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: February 28, 2006.

Kathy Plowitz-Worden,

Committee Management Officer.

[FR Doc. E6–3105 Filed 3–3–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session including those parts during which applications are reviewed. However, in recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close limited portions of Council meetings if such information is to be discussed. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of section 552b of Title 5, United States code.

Additionally, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During these sessions, similar information of a personal nature will be discussed. As with applications for financial assistance, disclosure of this information about individuals who are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that those portions of Council meetings devoted to consideration of prospective nominees for the National Medal of Arts award may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: February 28, 2006.

Kathy Plowitz-Worden,

Committee Management Officer.

[FR Doc. E6–3104 Filed 3–3–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee (1172).

Date and Time: Wednesday, March 15, 2006, 8:30 a.m.–12:30 p.m., room 1235.

Place: Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Ms. Ann Noonan, Honorary Awards Specialist, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–7000.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Late Notice: Due to administrative oversight.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: March 1, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–2077 Filed 3–3–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time: April 20, 2006; 9 a.m.–5 p.m., April 21, 2006; 9 a.m.–3 p.m.

Place: Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. James P. Collins, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Joint Session with the Directorate for Social Behavioral and Economic Sciences (SBE) Planning and Issues Discussion:

- BIO Status and FY 07 Budget.
- NEON Update.
- NSF Strategic Plan.

Dated: March 1, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–2078 Filed 3–3–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: April 27, 2006; 7:30 a.m.–8 p.m., April 28, 2006; 8 a.m.–4 p.m.

Place: University of Wisconsin, Madison, WI.

Type of Meeting: Part-Open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Nanoscale Science and Engineering Center (NSEC).

Agenda:

Thursday, April 27, 2006

7:30 a.m.–8:30 a.m. Closed—Executive Session.

8:30 a.m.–5 p.m. Open—Review of the Materials Research Science and Engineering Center at Pennsylvania State University.

5 p.m.–6 p.m. Closed—Executive Session.

6:30 p.m.–8 p.m. Open—Dinner.

Friday, April 28, 2006

8 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–10:30 a.m. Open—Review of the Materials Research Science and Engineering Center at Pennsylvania State University.

10:30 a.m.–4 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–2076 Filed 3–3–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Notice of License Amendment Request of BWX Technologies, Inc., Lynchburg, VA, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by May 5, 2006.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8F42, Washington, DC 20555, telephone: (301) 415–5848: fax number (301) 415–5955; e-mail: *bcg@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated June 30, 2004, a license amendment application from BWX Technologies, Inc., requesting a renewal of its materials license at its Mt. Athos site located in Lynchburg, Virginia. Materials License SNM–42 authorizes the licensee to possess nuclear materials, manufacture nuclear fuel components, fabricate research and university reactor components, fabricate compact reactor fuel elements, perform research on spent fuel performance, and handle the resultant waste streams, including recovery of scrap uranium. Specifically, the amendment requests to continue operations as authorized in the current license and requests that the renewed license term be 20 years.

An NRC administrative review, documented in a letter to BWX Technologies, Inc., dated March 17, 2005, found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. 70–27. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding the license renewal for BWX Technologies, Inc. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004, (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, BWX Technologies, Inc., Nuclear Products Division, P.O. Box 785, Lynchburg, VA 24505–0785, Attention: Leah Morrell; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by May 5, 2006.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

The application, including the safety analysis report and other information referenced in the application, may be made available pursuant to a protective order and subject to applicable security requirements upon a showing that the petitioner has an interest that may be affected by the proceeding.

Dated at Rockville, Maryland, this 1st day of March 2006.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–3129 Filed 3–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License to Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Home page.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this request follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application number, docket number	Description of material	End use	Country of origin
Eastern Technologies, Inc., Ashford, AL, February 3, 2006. February 3, 2006 IW016 11005602	Class A radioactive waste consisting of corrosion activation and mixed fission products (predominantly Co-60, Co-58 and Mn-54) as contaminants on used protective clothing and other items.	Laundering and decontamination of protective clothing and related products used at the Laguna Verde Nuclear Power Plant located in Mexico.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 24th day of February 2006 at Rockville, Maryland.

Stephen Dembek,

Acting Director, Office of International Programs.

[FR Doc. 06–2094 Filed 3–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to PSEG Nuclear LLC (the licensee) for operation of the Hope Creek Generating Station located in Salem County, New Jersey.

The proposed amendment would relocate the primary containment penetration conductor overcurrent protective devices and the Class 1E isolation breaker overcurrent protective devices from the Technical Specifications to the Updated Final Safety Analysis Report.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not increase the probability of any previously evaluated accident. No safety function has been altered. The proposed changes relocate the Primary Containment Penetration Conductor Overcurrent Protective Devices Limiting Condition for Operation (LCO) and Class IE Isolation Breaker Overcurrent Protective Devices LCO requirements from the TS [technical specifications] to the Hope Creek Generating Station Updated Final Safety Analysis Report (UFSAR). Relocation of the Primary Containment Penetration Conductor Overcurrent Protective Devices LCO and Class IE Isolation Breaker Overcurrent Protective Devices LCO requirements is consistent with the NRC Final Policy Statement on TS Improvements and 10 CFR 50.36. In part, the Final Policy Statement provides screening criteria to evaluate TS requirements for the purpose of relocation to other licensee-controlled documents. LCOs which do not meet any of the Final Policy Statement criteria and any 10 CFR 50.36(c)(2)(ii) criteria may be proposed for relocation. The Primary Containment Penetration Conductor Overcurrent Protective Devices LCO and Class 1E Isolation Breaker Overcurrent Protective Devices LCO requirements do not satisfy any of the Final Policy Statement screening criteria. The proposed changes do not affect any operational characteristic, function, or reliability of any structure, system, or component (SSC). Thus the consequences of accidents previously analyzed are unchanged between the existing TS requirements and the proposed changes.

Based upon the above, the proposed change will not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No

new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, and no significant changes in operations are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not alter any assumptions, initial conditions, or results of any accident analyses. The proposed changes relocate the Primary Containment Penetration Conductor Overcurrent Protective Devices LCO and Class 1E Isolation Breaker Overcurrent Protective Devices LCO requirements from the TS to the UFSAR consistent with the NRC Final Policy Statement on TS Improvements and 10 CFR 50.36.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding

the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 11, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 27th day of February, 2006.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–3130 Filed 3–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on March 24, 2006, Room O–1G16, 11555 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Friday, March 24, 2006–1:30 p.m.–3:30 p.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael P. Lee (Telephone: 301/415–6887) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 28, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–3127 Filed 3–3–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Eligibility for Retroactive Duty Treatment Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to Section 205(b) of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act), the United States Trade Representative (USTR) is providing notice of his determination that El Salvador is an eligible country for purposes of retroactive duty treatment as provided in Section 205 of the Act.

DATES: Effective March 6, 2006.

ADDRESSES: Inquiries may be mailed, delivered, or faxed to Abiola Heyliger, Director of Textile Trade Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, fax number, (202) 395–5639.

FOR FURTHER INFORMATION CONTACT: Abiola Heyliger, Office of the United States Trade Representative, 202–395–3026.

SUPPLEMENTARY INFORMATION: Section 205(a) of the Act (Pub. Law 109–53; 119 Stat. 462, 483; 19 U.S.C. 4034) provides that certain entries of textile or apparel goods of designated eligible countries that are parties to the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR) made on or after January 1, 2004 may be liquidated or reliquidated at the applicable rate of duty for those goods established in the Schedule of the United States to Annex 3.3 of the CAFTA–DR. Section 205(b) of the Act requires the USTR to determine, in accordance with Article 3.20 of the CAFTA–DR, which CAFTA–DR countries are eligible countries for purposes of Section 205(a). Article 3.20 provides that importers may claim retroactive duty treatment for imports of certain textile or apparel goods entered on or after January 1, 2004 and before

the entry into force of CAFTA–DR from those CAFTA–DR countries that will provide reciprocal retroactive duty treatment or a benefit for textile or apparel goods that is equivalent to retroactive duty treatment.

Pursuant to Section 205(b) of the Act, I have determined that El Salvador will provide an equivalent benefit for textile or apparel goods of the United States within the meaning of Article 3.20 of the CAFTA–DR. I therefore determine that El Salvador is an eligible country for purposes of Section 205 of the Act.

Rob Portman,

U.S. Trade Representative.

[FR Doc. E6–3109 Filed 3–3–06; 8:45 am]

BILLING CODE 3190–W6–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c1–7; SEC File No. 270–146; OMB Control No. 3235–0134.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c1–7 (17 CFR 240.15c1–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the Federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place. The Commission estimates that 500 respondents collect information annually under Rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: February 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3110 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 22d–1; SEC File No. 270–275; OMB Control No. 3235–0310.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Rule 22d–1 [17 CFR 270.22d–1] under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a *et seq.*) provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 5,015 series of funds that might rely on the rule is estimated to be 1,254 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study.

The collection of information required by rule 22d–1 is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3111 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27253; File No. 812–13237]

ING Life Insurance and Annuity Company, et al., Notice of Application

February 28, 2006.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 ("1940 Act" or "Act"), approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the Act.

Applicants: ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, ReliaStar Life Insurance Company, ReliaStar Life Insurance Company of New York, and Security Life of Denver Insurance

Company (each a "Company" and together, the "Companies"), Variable Annuity Account B of ING Life Insurance and Annuity Company, Variable Annuity Account G of ING Life Insurance and Annuity Company, Variable Annuity Account I of ING Life Insurance and Annuity Company, Separate Account B of ING USA Annuity and Life Insurance Company, Separate Account EQ of ING USA Annuity and Life Insurance Company, Separate Account U of ING USA Annuity and Life Insurance Company, MFS ReliaStar Variable Account of ReliaStar Life Insurance Company, ReliaStar Select Variable Account of ReliaStar Life Insurance Company, Select*Life Variable Account of ReliaStar Life Insurance Company, Separate Account N of ReliaStar Life Insurance Company, ReliaStar Life Insurance Company of New York Separate Account NY-B, ReliaStar Life Insurance Company of New York Variable Annuity Funds A, B, C, D, E, F, G, H, I, M, P & Q, ReliaStar Life Insurance Company of New York Variable Life Separate Account I, Security Life Separate Account A1, Security Life Separate Account L1, Security Life Separate Account S-A1, and Security Life Separate Account S-L1 (each, an "Account" and together, the "Accounts"), ING Investors Trust, ING Partners, Inc., ING Variable Portfolios, Inc., ING Variable Products Trust, ING VP Balanced Portfolio, Inc., ING VP Intermediate Bond Portfolio, and ING VP Money Market Portfolio are collectively referred to herein as the "Applicants."

Summary of Application: The Applicants request an order, pursuant to Section 26(c) of the 1940 Act, permitting the substitutions of securities issued by certain registered investment companies held by the Accounts to support certain in force variable life insurance policies and variable annuity contracts (collectively, the "Contracts") issued by the Companies. More particularly, the Applicants propose to substitute shares of certain series of ING Investors Trust, ING Partners, Inc., ING Variable Portfolios, Inc. and ING Variable Products Trust, and shares of the ING VP Balanced Portfolio, Inc., ING VP Intermediate Bond Portfolio, and ING VP Money Market Portfolio (the "Substitute Funds") for shares of certain registered investment companies currently held by subaccounts of the various Accounts (the "Replaced Funds") as follows:

Replaced funds	Substitute funds
Pioneer Small Cap Value VCT Portfolio—Class I	ING Columbia Small Cap Value II Portfolio—I Class.
PIMCO VIT StocksPlus Growth and Income Portfolio—Administrative Class.	ING EquitiesPlus Portfolio—Class S.
ING FMR Diversified Mid Cap Portfolio—Class S	ING FMR Diversified Mid Cap Portfolio—Class I.
Neuberger Berman AMT Growth Portfolio—I Class	
Neuberger Berman AMT Mid-Cap Growth Portfolio—I Class	
Oppenheimer Aggressive Growth Fund/VA—Non-Service Shares	
AIM V.I. Demographic Trends Fund—Series I	ING FMR Earnings Growth Portfolio—Class I.
Alager American Growth Portfolio—Class O	
Fidelity VIP Growth Portfolio—Initial Class	
Fidelity VIP Growth Portfolio—Service Class	
MFS VIT Emerging Growth Series—Initial Class	
Fidelity VIP Growth Portfolio—Service Class 2	ING FMR Earnings Growth Portfolio—Class S.
ING FMR Earnings Growth Portfolio—Class S2	
Pioneer Small Company VCT Portfolio—Class II	ING FMR Small Cap Equity Portfolio—Class S.
Oppenheimer Balanced Fund/VA—Non-Service Shares	ING Franklin Income Portfolio—Class I.
Oppenheimer Balanced Fund—Class A	ING Franklin Income Portfolio—Class S.
Greenwich Street Appreciation Portfolio	ING Fundamental Research Portfolio—I Class.
Van Eck Worldwide Emerging Markets Fund—Initial Class	ING JPMorgan Emerging Markets Equity Portfolio—Class I.
Morgan Stanley UIF Value Portfolio—Class I	ING JPMorgan Value Opportunities Portfolio—Class S.
Neuberger Berman AMT Limited Maturity Bond Portfolio—I Class	ING Limited Maturity Bond Portfolio—Class S.
ING Liquid Assets Portfolio—Class S	ING Liquid Assets Portfolio—Class I.
Scudder VS I Money Market Portfolio	
AIM V.I. Government Securities Fund—Series I	ING Lord Abbett U.S. Government Securities Portfolio—I Class.
Federated Fund for U.S. Government Securities II	
American Century VP International Fund—Class I	ING Marsico International Opportunities Portfolio—Class S.
Oppenheimer Capital Appreciation Fund—Class A	ING Mercury Large Cap Growth Portfolio—Class S.
American Century VP Balanced Fund—Class I	ING MFS Total Return Portfolio—Class I.
Neuberger Berman AMT Partners Portfolio—I Class	ING Neuberger Berman Partners Portfolio—I Class.
Oppenheimer Main Street Fund/VA—Non-Service Shares	
MFS VIT Research Series—Initial Class	ING Oppenheimer Main Street Portfolio—Class I.
MFS VIT Strategic Income Series—Initial Class	ING Oppenheimer Strategic Income Portfolio—I Class.
Putnam VT Diversified Income Fund—Class IA	ING Oppenheimer Strategic Income Portfolio—S Class.
Eaton Vance Income Fund of Boston—Class A	ING PIMCO High Yield Portfolio—Class S.
Morgan Stanley UIF High Yield Portfolio—Class I	
Oppenheimer High Income Fund/VA—Non-Service Shares	
Oppenheimer High Yield Fund—Class A	
Pioneer Equity Income VCT Portfolio-Class II	ING Pioneer Equity-Income Portfolio—S Class.
Alger American Leveraged AllCap Portfolio—Class O	ING Salomon Brothers Aggressive Growth Portfolio—I Class.
Dreyfus Stock Index Fund—Initial Shares	ING Stock Index Portfolio—Class I.
MFS VIT Investors Trust Series—Initial Class	ING UBS U.S. Large Cap Equity Portfolio—I Class.
Neuberger Berman AMT Guardian Portfolio—I Class	ING Van Kampen Comstock Portfolio—I Class.
Fidelity VIP Asset Manager: Growth Portfolio—Initial Class	ING Van Kampen Equity and Income Portfolio—I Class.
Dreyfus VIF Growth and Income Portfolio—Initial Shares	ING Van Kampen Growth and Income Portfolio—Class I.
Premier VIT OpCap Managed Portfolio	ING Van Kampen Growth and Income Portfolio—Class S.
Fidelity VIP Asset Manager Portfolio—Initial Class	ING VP Balanced Portfolio—Class I
Fidelity VIP Asset Manager Portfolio—Service Class	
Liberty Asset Allocation Fund VS—Class A	
Fidelity VIP High Income Portfolio—Initial Class	ING VP High Yield Bond Portfolio—Class I.

Replaced funds	Substitute funds
Fidelity VIP High Income Portfolio—Service Class Scudder VS I International Portfolio—Class A Fidelity VIP Overseas Portfolio—Initial Class Fidelity VIP Overseas Portfolio—Service Class Fidelity VIP Overseas Portfolio—Service Class 2 Putnam VT International Growth and Income Fund—Class IB	ING VP Index Plus International Equity Portfolio—Class I. ING VP Index Plus International Equity Portfolio—Class S.
Fidelity VIP Growth Opportunities Portfolio—Initial Class Oppenheimer Core Bond Fund/VA—Non-Service Shares Oppenheimer Money Fund/VA Oppenheimer Money Market Fund—Class A.	ING VP Index Plus LargeCap Portfolio—Class I. ING VP Intermediate Bond Portfolio—Class I. ING VP Money Market Portfolio—Class I.
Putnam VT Small Cap Value Fund—Class 1A Putnam VT Small Cap Value Fund—Class 1B	ING Wells Fargo Small Cap Disciplined Portfolio—Class I. ING Wells Fargo Small Cap Disciplined Portfolio—Class S.

Applicants also seek an order of exemption pursuant to Section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitutions.

Filing Date: The Application was filed on September 23, 2005. The Application was amended and restated on February 15, 2006.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 27, 2006, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, J. Neil McMurdie, Esquire, ING Americas U.S. Legal Services, 151 Farmington Avenue, TS31, Hartford, CT 06156–8975.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Room 1580, Washington, DC 20549.

Applicants' Representations

1. Each of the Companies is an indirect wholly owned subsidiary of ING Groep, N.V. ("ING"). ING is a global financial services holding company based in The Netherlands which is active in the field of insurance, banking and asset management. As a result, each Company likely would be deemed to be an affiliate of the others.

2. ING Life Insurance and Annuity Company ("ING Life") is a stock life insurance company organized under the laws of the State of Connecticut in 1976 as Forward Life Insurance Company. Through a December 31, 1976 merger, ING Life's operations include the business of Aetna Variable Annuity Life Insurance Company (formerly known as Participating Annuity Life Insurance Company). Through a December 31, 2005 merger, ING Life's operations include the business of ING Insurance Company of America ("ING America"). Prior to May 1, 2002, ING Life was known as Aetna Life Insurance and Annuity Company ("Aetna"). ING Life is principally engaged in the business of issuing life insurance and annuities.

3. ING USA Annuity and Life Insurance Company ("ING USA") is an Iowa stock life insurance company which was originally organized in 1973 under the insurance laws of Minnesota. Through January 1, 2004 mergers, ING USA's operations include the business of Equitable Life Insurance Company of Iowa ("Equitable Life"), United Life and Annuity Insurance Company ("United Life and Annuity"), and USG Annuity and Life Company. Prior to January 1, 2004, ING USA was known as Golden American Life Insurance Company ("Golden"). ING USA is principally engaged in the business of issuing life insurance and annuities.

4. ReliaStar Life Insurance Company ("ReliaStar") is a stock life insurance company organized in 1885 and incorporated under the laws of the State of Minnesota. Through an October 1, 2002 merger, ReliaStar's operations include the business of Northern Life Insurance Company ("Northern"). ReliaStar is principally engaged in the business of issuing life insurance, annuities, employee benefits and retirement contracts.

5. ReliaStar Life Insurance Company of New York ("ReliaStar NY") is a stock life insurance company which was incorporated under the laws of the State of New York in 1917. Through an April 1, 2002 merger, ReliaStar NY's operations include the business of First Golden American Life Insurance Company of New York ("First Golden"). ReliaStar NY is principally engaged in the business of issuing life insurance and annuities.

6. Security Life of Denver Insurance Company ("Security Life") is a stock life insurance company organized under the laws of the State of Colorado in 1929. Through an October 1, 2004 merger, Security Life's operations include the business of Southland Life Insurance Company ("Southland"). Security Life is principally engaged in the business of issuing life insurance and annuities.

7. Each of the Accounts is a segregated asset account of the Company that is the depositor of such Account, and is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company of which it is a part to support the Contracts that it issues.

8. Variable Annuity Account B of ING Life Insurance and Annuity Company ("ING Life B") (File No. 811–2512) was established by Aetna in 1976 as a continuation of the separate account established in 1974 under the laws of the State of Arkansas by Aetna Variable Annuity Life Insurance Company to support certain Contracts.

9. Variable Annuity Account G of ING Life Insurance and Annuity Company ("ING Life G"), (formerly CLIAC Separate Account A) (File No. 811–5906), was originally established by Confederation Life Insurance and Annuity Company under the laws of the State of Georgia in 1988. ING Life G was transferred to Aetna in 1995 and re-established by Aetna under the laws of the State of Connecticut.

10. Variable Annuity Account I of ING Life Insurance and Annuity Company

("ING Life I"), (formerly ING Variable Annuity Account I of ING Insurance Company of America) (File No. 811–8582), was established by ING America (then known as Aetna Insurance Company of America) in 1994 under the laws of the State of Connecticut.

11. Separate Account B of ING USA Annuity and Life Insurance Company ("ING USA B") (File No. 811–5626) was established by Golden in 1988 under the laws of the State of Minnesota.

12. Separate Account EQ of ING USA Annuity and Life Insurance Company ("ING USA EQ"), (formerly Equitable Life Insurance Company of Iowa Separate Account A) (File No. 811–8524), was established by Equitable Life in 1988 under the laws of the State of Iowa.

13. Separate Account U of ING USA Annuity and Life Insurance Company ("ING USA U"), (formerly United Life and Annuity Separate Account One) (File No. 811–9026), was originally established by United Life and Annuity in 1994 under the laws of the State of Louisiana.

14. MFS ReliaStar Variable Account of ReliaStar Life Insurance Company ("MFS ReliaStar VA") (File No. 811–2997) was established by ReliaStar in 1979 under the laws of the State of Minnesota.

15. ReliaStar Select Variable Account of ReliaStar Life Insurance Company ("ReliaStar Select VA") (File No. 811–3341) was established by ReliaStar in 1981 under the laws of the State of Minnesota.

16. Select*Life Variable Account of ReliaStar Life Insurance Company ("ReliaStar SL") (File No. 811–4208) was established by ReliaStar in 1984 under the laws of the State of Minnesota.

17. Separate Account N of ReliaStar Life Insurance Company ("ReliaStar Separate Account N"), formerly Separate Account One of Northern Life Insurance Company (File No. 811–9002), was established by Northern in 1994 under the laws of the State of Washington.

18. ReliaStar Life Insurance Company of New York Separate Account NY–B ("ReliaStar NY B"), formerly Separate Account NY–B of First Golden American Life Insurance Company of New York (File No. 811–7935), was established by First Golden in 1996 under the laws of the State of New York.

19. ReliaStar Life Insurance Company of New York Variable Annuity Funds A, B, & C ("ReliaStar NY A, B, & C"), formerly Bankers Security Variable Annuity Funds 001, 002, and 003 (File No. 811–02579), were established by Bankers Security Life Insurance Society ("Bankers Security") in 1975 under the laws of the State of New York.

20. ReliaStar Life Insurance Company of New York Variable Annuity Funds D, E, F, G, H & I ("ReliaStar NY D, E, F, G, H & I"), formerly Bankers Security Variable Annuity Funds 121, 122, 123, 124, 125 and 126 (File No. 811–02580), were established by Bankers Security Life Insurance Society ("Bankers Security") in 1975 (Funds 121, 122, 123), 1977 (Fund 124), 1978 (Fund 125) and 1981 (Fund 126) under the laws of the State of New York.

21. ReliaStar Life Insurance Company of New York Variable Annuity Funds M, P & Q ("ReliaStar NY M, P&Q"), formerly Bankers Security Variable Annuity Funds P&Q of Bankers Security Life Insurance Society ("Bankers Security") (File No. 811–3098), were established by Bankers Security in 1981 and 1982, respectively, under the laws of the State of New York.

22. ReliaStar Life Insurance Company of New York Variable Life Separate Account I ("ReliaStar NY I") (File No. 811–3427) was established by ReliaStar NY in 1982 under the laws of the State of New York.

23. Security Life Separate Account A1 ("Security Life A1") (File No. 811–8196) was established by Security Life in 1993 under the laws of the State of Colorado.

24. Security Life Separate Account L1 ("Security Life L1") (File No. 811–8292) was established by Security Life in 1993 under the laws of the State of Colorado.

25. Security Life Separate Account S–A1 ("Security Life S–A1"), formerly Southland Separate Account A1 (File No. 811–8976), was originally established by Southland in 1994 under the laws of the State of Texas.

26. Security Life Separate Account S–L1 ("Security Life S–L1"), formerly Southland Separate Account L1 (File No. 811–9106), was originally established by Southland in 1994 under the laws of the State of Texas.

27. Certain of the Substitute Funds are series of ING Investors Trust, ING Partners, Inc., ING Variable Portfolios, Inc. or ING Variable Products Trust. ING VP Balanced Portfolio, Inc., ING VP Intermediate Bond Portfolio and ING VP Money Market Portfolio are also Substitute Funds.

28. ING Investors Trust, formerly known as the GCG Trust, was organized as a Massachusetts business trust on August 3, 1988. ING Investors Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–5629).

29. ING Partners, Inc. ("ING Partners"), formerly known as Portfolio Partners, Inc., was organized as a Maryland Corporation in 1997 and commenced operations on November 28, 1997. ING Partners is registered under the 1940 Act as an open-end management investment company (File No. 811–08319).

30. ING Variable Portfolios, Inc. ("ING Variable Portfolios"), formerly known as Aetna Variable Portfolios, Inc., was organized as a Maryland Corporation in 1996. ING Variable Portfolios is registered under the 1940 Act as an open-end management investment company (File No. 811–07651).

31. ING Variable Products Trust, formerly known as the Northstar Variable Trust, was organized as a Massachusetts business trust in 1993. ING Variable Product Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–08220).

32. ING VP Balanced Portfolio, Inc., formerly known as Aetna Investment Advisers Fund, Inc., was organized as a Maryland Corporation in 1988. ING VP Balanced Portfolio is registered under the 1940 Act as an open-end management investment company (File No. 811–05773).

33. ING VP Intermediate Bond Portfolio, formerly known as Aetna Income Shares, was originally established as a Maryland Corporation in 1973. It was converted to a Massachusetts business trust in January, 1984. ING VP Intermediate Bond Portfolio is registered under the 1940 Act as an open-end management investment company (File No. 811–02361).

34. ING VP Money Market Portfolio, formerly known as Aetna Variable Encore Fund, was originally established as a Maryland Corporation in 1974. It was converted to a Massachusetts business trust on January, 1984. ING VP Money Market Portfolio is registered under the 1940 Act as an open-end management investment company (File No. 811–02565).

35. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both throughout the insured's life and for a death benefit, upon the death of the insured. Under each of the prospectuses for the Contracts, each Company reserves the right to substitute shares of one fund or portfolio for shares of another.

A Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account as long as the Contract remains in effect and at any time up to 30 days before the due date of the first annuity payment for variable annuity contracts. For many of the Contracts, the Company issuing the Contract reserves the right to limit the number of transfers during a specified period.

Comparison of Fees and Expenses

36. The comparative fees and expenses for each fund in the proposed substitutions are as follows:

	Management fees (percent)	Distribution (12b–1) fees (percent)	Other expenses (percent)	Total annual expenses (percent)	Expense waivers (percent)	Net annual expenses (percent)
Substitute Fund:						
• ING Columbia Small Cap Value II Portfolio—I Class	0.75	.....	0.20	0.95	.....	0.95
Replaced Fund:						
• Pioneer Small Cap Value VCT Portfolio—Class I	0.75	.....	0.55	1.30	0.05	1.25
Substitute Fund:						
• ING EquitiesPlus Portfolio—Class S	0.30	.....	[1] 0.44	0.74	0.09	0.65
Replaced Fund:						
• PIMCO VIT StocksPlus Growth and Income—Administrative Class	0.40	.....	0.25	0.65	.....	0.65
Substitute Fund:						
• ING FMR Diversified Mid Cap Portfolio—Class I [2]	0.65	.....	0.01	0.66	.....	0.66
Replaced Fund:						
• ING FMR Diversified Mid Cap Portfolio—Class S [2]	0.65	.....	0.26	091	.....	0.91
Substitute Fund:						
• ING FMR Diversified Mid Cap Portfolio—Class I [2]	0.65	.....	0.01	0.66	.....	0.66
Replaced Fund:						
• Neuberger Berman AMT Growth Portfolio—I Class	0.85	.....	0.11	0.96	.....	0.96
Substitute Fund:						
• ING FMR Diversified Mid Cap Portfolio—Class I [2]	0.65	.....	0.01	0.66	.....	0.66
Replaced Fund:						
• Neuberger Berman AMT Mid-Cap Growth Portfolio-Class I	0.84	.....	0.08	0.92	.....	0.92
Substitute Fund:						
• ING FMR Diversified Mid Cap Portfolio—Class I [2]	0.65	.....	0.01	0.66	.....	0.66
Replaced Fund:						
• Oppenheimer Aggressive Growth Fund/VA—Non-Service Shares	0.67	.....	0.02	0.69	.....	0.69
Substituted Fund:						
• ING FMR Earnings Growth Portfolio—I Class	0.58	.....	0.15	0.73	0.05	0.68
Replaced Fund:						
• AIM V.I. Demographic Trends Fund—Series I	0.77	.....	0.37	1.14	0.13	1.01
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—I Class	0.58	.....	0.15	0.73	0.05	0.68
Replaced Fund:						
• Alger American Growth Portfolio—Class O	0.75	.....	0.11	0.86	.....	0.86
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—Class I	0.58	.....	0.15	0.73	0.05	0.68
Replaced Fund:						
• Fidelity VIP Growth Portfolio—Initial Class	0.58	.....	0.10	0.68	.....	0.68
Replaced Fund:						
• Fidelity VIP Growth Portfolio—Service Class	0.58	0.10	0.10	0.78	.....	0.78
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—Class S	0.58	.....	[3] 0.40	0.98	0.05	0.93
Replaced Fund:						
• Fidelity VIP Growth Portfolio—Service Class 2	0.58	0.25	0.10	0.93	.....	0.93
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—Class I	0.58	.....	0.15	0.73	0.05	0.68
Replaced Fund:						
• MFS VIT Emerging Growth Series—Initial Class	0.75	.....	0.12	0.87	.....	0.87
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—Class S	0.58	.....	[3] 0.40	0.98	0.05	0.93
Replaced Fund:						
• ING FMR Earnings Growth Portfolio—Class S2	0.58	0.25	[3] 0.40	1.23	[19] 15	1.08
Substitute Fund:						
• ING FMR Small Cap Equity Portfolio—Class S	0.75	.....	[3] 0.45	1.20	.....	1.20
Replaced Fund:						
• Pioneer Small Company VCT Portfolio—Class II	0.75	0.25	0.76	1.76	0.28	1.48
Substitute Fund:						
• ING Franklin Income Portfolio—Class I	0.65	.....	0.09	0.74	.....	0.74
Replaced Fund:						

	Management fees (percent)	Distribution (12b–1) fees (percent)	Other expenses (percent)	Total annual expenses (percent)	Expense waivers (percent)	Net annual expenses (percent)
• Oppenheimer Balanced Fund/VA—Non-Service Shares	0.72		0.02	0.74		0.74
Substitute Fund:						
• ING Franklin Income Portfolio—Class S	0.65		[3] 0.34	0.99		0.99
Replaced Fund:						
• Oppenheimer Balanced Fund—Class A	0.71	0.20	0.16	1.07		1.07
Substitute Fund:						
• ING Fundamental Research Portfolio—I Class	0.60		0.20	0.80	0.05	0.75
Replaced Fund:						
• Greenwich Street Appreciation Portfolio	0.73		0.02	0.75		0.75
Substitute Fund:						
• ING JPMorgan Emerging Markets Equity Portfolio—Class I [4]	1.25		0.02	1.27		1.27
Replaced Fund:						
• Van Eck Worldwide Emerging Markets Fund—Initial Class	1.00		0.39	1.39	0.03	1.36
Substitute Fund:						
• ING JPMorgan Value Opportunities Portfolio—Class S	0.40		[5] 0.40	0.80	0.02	0.78
Replaced Fund:						
• Morgan Stanley UIF Value Portfolio	0.55		0.40	0.95		0.95
Substitute Fund:						
• ING Limited Maturity Bond Portfolio—Class S [4]	0.28		[5] 0.25	0.53		0.53
Replaced Fund:						
• Neuberger Berman AMT Limited Maturity Bond Portfolio—Class I	0.65		0.08	0.73		0.73
Substitute Fund:						
• ING Liquid Assets Portfolio—Class I [4]	0.27		0.02	0.29		0.29
Replaced Fund:						
• ING Liquid Assets Portfolio—Class S [4]	0.27		[5] 0.27		0.54	0.54
Substitute Fund:						
• ING Liquid Assets Portfolio—Class I [4]	0.27		0.02	0.29		0.29
Replaced Fund:						
• Scudder VS I Money Market Portfolio	0.37		0.16	0.53		0.53
Substitute Fund:						
• ING Lord Abbett U.S. Government Securities Portfolio—I Class	0.47		0.22	0.69		0.69
Replaced Fund:						
• AIM V.I. Government Securities Fund—Class I	0.47		0.40	0.87		0.87
Substitute Fund:						
• ING Lord Abbett U.S. Government Portfolio—I Class	0.47		0.22	0.69		0.69
Replaced Fund:						
• Federated Fund for U.S. Government Securities II	0.60		0.38	0.98		0.98
Substitute Fund:						
• ING Marsico International Opportunities Portfolio—Class S	0.54		[5] 0.42	0.96	0.03	0.93
Replaced Fund:						
• American Century VP International Fund—Class I	1.27			1.27		1.27
Substitute Fund:						
• ING Mercury Large Cap Growth Portfolio—Class S [6]	0.80		[7] 0.25	1.05	0.05	1.00
Replaced Fund:						
• Oppenheimer Capital Appreciation Fund—Class A	0.57	0.24	0.28	1.09		1.09
Substitute Fund:						
• ING MFS Total Return Portfolio—Class I [6]	0.64			0.64		0.64
Replaced Fund:						
• American Century VP Balanced Fund—Class I	0.90			0.90		0.90
Substitute Fund:						
• ING Neuberger Berman Partners Portfolio—I Class	0.60		0.07	0.67		0.67
Replaced Fund:						
• Neuberger Berman AMT Partners Portfolio—I Class	0.83		0.08	0.91		0.91
Substitute Fund:						
• ING Neuberger Berman Partners Portfolio—I Class	0.60		0.07	0.67		0.67
Replaced Fund:						

	Management fees (percent)	Distribution (12b–1) fees (percent)	Other expenses (percent)	Total annual expenses (percent)	Expense waivers (percent)	Net annual expenses (percent)
• Oppenheimer Main Street Fund/VA—Non-Service Shares	0.66	.....	0.01	0.67	.....	0.67
Substitute Fund:						
• ING Oppenheimer Main Street Portfolio—Class I[6]	0.64	.....	.....	0.64	.....	0.64
Replaced Fund:						
• MFS VIT Research Series—Initial Class	0.75	.....	0.13	0.88	.....	0.88
Substitute Fund:						
• ING Oppenheimer Strategic Income Portfolio—I Class	0.50	.....	0.04	0.54	.....	0.54
Replaced Fund:						
• MFS VIT Strategic Income Series—Initial Class	0.75	.....	0.33	1.08	0.18	0.90
Substitute Fund:						
• ING Oppenheimer Strategic Income Portfolio—S Class	0.50	.....	[8]0.29	0.79	0.04	0.75
Replaced Fund:						
• Putnam VT Diversified Income Fund—Class IA	0.69	.....	0.14	0.83	0.02	0.81
Substitute Fund:						
• ING PIMCO High Yield Portfolio—Class S[9]	0.49	.....	[10]0.25	0.74	.....	0.74
Replaced Fund:						
• Eaton Vance Income Fund of Boston—Class A	0.63	.....	0.43	1.06	.....	1.06
Substitute Fund:						
• ING PIMCO High Yield Portfolio—Class S[9]	0.49	.....	[11]0.25	0.74	.....	0.74
Replaced Fund:						
• Morgan Stanley UIF High Yield Portfolio—Class I	0.45	.....	0.41	0.86	.....	0.86
Substitute Fund:						
• ING PIMCO High Yield Portfolio—Class S[9]	0.49	.....	[10]0.25	0.74	.....	0.74
Replaced Fund:						
• Oppenheimer High Income Fund/VA—Non-Service Shares	0.72	.....	0.03	0.75	.....	0.75
Substitute Fund:						
• ING PIMCO High Yield Portfolio—Class S[9]	0.49	.....	[10]0.25	0.74	.....	0.74
Replaced Fund:						
• Oppenheimer High Yield Fund—Class A	0.61	0.24	0.18	1.03	.....	1.03
Substitute Fund:						
• ING Pioneer Equity-Income Portfolio—S Class	0.65	.....	[10]0.45	1.10	0.15	0.95
Replaced Fund:						
• Pioneer Equity Income VCT Portfolio—Class II	0.65	0.25	0.08	0.98	.....	0.98
Substituted Fund:						
• ING Salomon Brothers Aggressive Growth Portfolio—I Class	0.69	.....	0.13	0.82	.....	0.82
Replaced Fund:						
• Alger American Leveraged AllCap Portfolio—Class O	0.85	.....	0.12	0.97	.....	0.97
Substituted Fund:						
• ING Stock Index Portfolio—Class I[9]	0.25	.....	.....	0.25	.....	0.25
Replaced Fund:						
• Dreyfus Stock Index Fund—Initial Shares	0.25	.....	0.01	0.26	.....	0.26
Substitute Fund:						
• ING UBS U.S. Large Cap Equity Portfolio—I Class	0.70	.....	0.15	0.85	.....	0.85
Replaced Fund:						
• MFS VIT Investors Trust Series—Initial Class	0.75	.....	0.11	0.86	.....	0.86
Substitute Fund:						
• ING Van Kampen Comstock Portfolio—I Class	0.60	.....	0.35	0.95	0.07	0.88
Replaced Fund:						
• Neuberger Berman AMT Guardian Portfolio—Class I	0.85	.....	0.13	0.98	.....	0.98
Substitute Fund:						
• ING Van Kampen Equity and Income Portfolio—I Class	0.55	.....	0.02	0.57	.....	0.57
Replaced Fund:						
• Fidelity VIP Asset Manager Growth Portfolio—Initial Class	0.58	.....	0.16	0.74	.....	0.74
Substitute Fund:						
• ING Van Kampen Growth and Income Portfolio—Class I[12]	0.66	.....	0.01	0.67	.....	0.67
Replaced Fund:						
• Dreyfus VIF Growth and Income Portfolio—Service Shares	0.75	.....	0.07	0.82	.....	0.82
Substitute Fund:						

	Management fees (percent)	Distribution (12b–1) fees (percent)	Other expenses (percent)	Total annual expenses (percent)	Expense waivers (percent)	Net annual expenses (percent)
• ING Van Kampen Growth and Income Portfolio—Class S [12]	0.66	.....	[13] 0.26	0.92	.....	0.92
Replaced Fund:						
• Premier VIT OpCap Managed Portfolio	0.80	.....	0.12	0.92	.....	0.92
Substitute Fund:						
• ING VP Balanced Portfolio—Class I	0.50	.....	0.09	0.59	.....	0.59
Replaced Fund:						
• Fidelity VIP Asset Manager Portfolio—Initial Class	0.53	.....	0.12	0.65	.....	0.65
Replaced Fund:						
• Fidelity VIP Asset Manager Portfolio—Service Class	0.53	0.10	0.13	0.76	.....	0.76
Substitute Fund:						
• ING VP Balanced Portfolio—Class I	0.50	.....	0.09	0.59	.....	0.59
Replaced Fund:						
• Liberty Asset Allocation Fund VS—Class A	0.60	.....	0.17	0.77	.....	0.77
Substitute Fund:						
• ING VP High Yield Bond Portfolio—Class I	0.58	.....	0.25	0.83	0.12	0.71
Replaced Fund:						
• Fidelity VIP High Income Portfolio—Initial Class	0.58	.....	0.13	0.71	.....	0.71
Replaced Fund:						
• Fidelity VIP High Income Portfolio—Service Class	0.58	0.10	0.13	0.81	.....	0.81
Substitute Fund:						
• ING VP Index Plus International Equity Portfolio—Class I	0.45	.....	0.22	0.67	0.12	0.55
Replaced Fund:						
• Scudder VS I International Portfolio—Class A	0.87	.....	0.17	1.04	.....	1.04
Substitute Fund:						
• ING VP Index Plus International Equity Portfolio—Class S	0.45	.....	[14] 0.47	0.92	0.12	0.80
Replaced Fund:						
• Fidelity VIP Overseas Portfolio—Initial Class	0.72	.....	0.19	0.91	.....	0.91
Replaced Fund:						
• Fidelity VIP Overseas Portfolio—Service Class	0.72	0.10	0.19	1.01	.....	1.01
Replaced Fund:						
• Fidelity VIP Overseas Portfolio—Service Class 2	0.72	0.25	0.19	1.16	.....	1.16
Substitute Fund:						
• ING VP Index Plus International Equity Portfolio—Class S	0.45	.....	[14] 0.47	0.92	0.12	0.80
Replaced Fund:						
• Putnam VT International Growth and Income Fund—Class IB	0.80	0.25	0.21	1.26	.....	1.26
Substitute Fund:						
• ING VP Index Plus LargeCap Portfolio—Class I	0.35	.....	0.09	0.44	.....	0.44
Replaced Fund:						
• Fidelity VIP Growth Opportunities Portfolio—Initial Class	0.58	.....	0.14	0.72	.....	0.72
Substitute Fund:						
• ING VP Intermediate Bond Portfolio—Class I	0.40	.....	0.08	0.48	.....	0.48
Replaced Fund:						
• Oppenheimer Core Bond Fund/VA—Non-Service Shares	0.72	.....	0.03	0.75	.....	0.75
Substitute Fund:						
• ING VP Money Market Portfolio—Class I	0.25	.....	0.09	0.34	.....	0.34
Replaced Fund:						
• Oppenheimer Money Fund/VA	0.45	.....	0.03	0.48	.....	0.48
Substitute Fund:						
• ING VP Money Market Portfolio—Class I	0.25	.....	0.09	0.34	.....	0.34
Replaced Fund:						
• Oppenheimer Money Market Fund—Class A	0.42	.....	0.31	0.73	.....	0.73
Substitute Fund:						
• ING Wells Fargo Small Cap Disciplined Portfolio—Class I	0.53	.....	0.34	0.87	.....	0.87
Replaced Fund:						
• Putnam VT Small Cap Value Fund—Class 1A Shares	0.77	.....	0.10	0.87	.....	0.87
Substitute Fund:						
• ING Wells Fargo Small Cap Disciplined Portfolio—Class S	0.53	.....	0.59	1.12	.....	1.12
Replaced Fund:						

	Management fees (percent)	Distribution (12b–1) fees (percent)	Other expenses (percent)	Total annual expenses (percent)	Expense waivers (percent)	Net annual expenses (percent)
• Putnam VT Small Cap Value Fund—Class 1B Shares	0.77	0.25	0.10	1.12	.....	1.12

[1] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.
[2] This Fund is subject to a unified fee arrangement.
[3] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.
[4] This Fund is subject to a unified fee arrangement.
[5] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.
[6] This Fund is subject to a unified fee arrangement.
[7] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%. This Shareholder Services Fee is permanently capped at 0.25%. Other expenses in excess of this Shareholder Services Fee, if any, cover operating expenses such as the cost of Trustees who are not interested persons of Directed Services, Inc. (including the cost of the Trustees and Officers Errors and Omissions Liability Insurance coverage) and any taxes paid by the portfolios. The portfolios also bear any extraordinary expenses.
[8] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.
[9] This Fund is subject to a unified fee arrangement.
[10] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.
[11] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%. This Shareholder Services Fee is permanently capped at 0.25%.
[12] This Fund is subject to a unified fee arrangement.
[13] The "Other Expenses" of this portfolio includes a Shareholder Service Fee of 25%.
[14] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.

Investment Objectives and Policies

The investment objectives of each Replaced and Substitute Fund follow:

37. ING Columbia Small Cap Value Portfolio for the Pioneer Small Cap Value VCT Portfolio. The investment objective of the ING Columbia Small Cap Value Portfolio is long-term growth. The investment objective of the Pioneer Small Cap Value Portfolio is capital growth.

38. ING EquitiesPlus Portfolio for the PIMCO VIT StocksPlus Growth and Income Portfolio. The investment objective of each portfolio is to seek a total return which exceeds that of the Standard & Poor's 500 Composite Stock Price Index ("S&P 500").

39. ING FMR Diversified Mid Cap Portfolio—Class I for the ING FMR Diversified Mid Cap Portfolio—Class S. The Substitute Fund is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser, but with lower overall fees.

40. ING FMR Diversified Mid Cap Portfolio for the Neuberger Berman AMT Growth Portfolio. The ING FMR Diversified Mid Cap Portfolio seeks long-term growth of capital, and the Neuberger Berman AMT Growth Portfolio seeks growth of capital.

41. ING FMR Diversified Mid Cap Portfolio for the Neuberger Berman AMT Mid-Cap Growth Portfolio. The ING FMR Diversified Mid Cap Portfolio seeks long-term growth of capital, and the Neuberger Berman AMT Mid-Cap Growth Portfolio seeks growth of capital.

42. ING FMR Diversified Mid Cap Portfolio for the Oppenheimer Aggressive Growth Fund/VA. The ING FMR Diversified Mid Cap Portfolio seeks long-term growth of capital, and the Oppenheimer Aggressive Growth Fund/VA seeks capital appreciation by investing in growth type companies.

43. ING FMR Earnings Growth Portfolio for the AIM V.I. Demographic Trends Fund. The investment objective of ING FMR Earnings Growth Portfolio and of the AIM V.I. Demographic Trends Fund is to seek long-term growth of capital.

44. ING FMR Earnings Growth Portfolio for the Alger American Growth Portfolio. The ING FMR Earnings Growth Portfolio seeks long-term growth of capital, and the Alger Portfolio seeks long-term capital appreciation.

45. ING FMR Earnings Growth Portfolio for the Fidelity VIP Growth Portfolio. The ING FMR Earnings Growth Portfolio seeks growth of capital over the long term, and the Fidelity VIP Growth Portfolio seeks capital appreciation.

46. ING FMR Earnings Growth Portfolio for the MFS VIT Emerging Growth Series. The investment objective of both the ING FMR Earnings Growth Portfolio and the MFS VIT Emerging Growth Portfolio is to seek growth of capital over the long term.

47. ING FMR Earnings Growth Portfolio—Class S for the ING FMR Earnings Growth Portfolio—Class S2. This Substitute Fund is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser, but with lower overall fees.

48. ING FMR Small Cap Equity Portfolio for the Pioneer Small Company VCT Portfolio. The investment objective of both the ING FMR Small Cap Equity Portfolio and the Pioneer Small Company VCT Fund is capital growth.

49. ING Franklin Income Portfolio for the Oppenheimer Balanced Fund/VA. The investment objective of the ING Franklin Income Portfolio is to maximize income while maintaining prospects for capital appreciation. The investment objective of the Oppenheimer Balanced Fund is high total investment return, which includes current income and capital appreciation.

50. ING Franklin Income Portfolio for the Oppenheimer Balanced Fund. The investment objective of the ING Franklin Income Portfolio is to maximize income while maintaining prospects for capital appreciation. The investment objective of the Oppenheimer Balanced Fund is high total investment return with preservation of principal.

51. ING Fundamental Research Portfolio for the Greenwich Street Appreciation Portfolio. The investment objective of ING Fundamental Research Portfolio is to maximize total return, while the investment objective for the Greenwich Street Portfolio is long-term appreciation of capital.

52. ING JPMorgan Emerging Markets Equity Portfolio for the Van Eck Worldwide Emerging Markets Fund. The investment objective of the ING JPMorgan Emerging Markets Equity Portfolio is capital appreciation, and the investment objective of the Van Eck Worldwide Emerging Markets Portfolio is long-term capital appreciation.

53. ING JPMorgan Value Opportunities Portfolio for the Morgan Stanley UIF Value Portfolio. The investment objective of the ING JPMorgan Value Opportunities Portfolio

is long-term capital appreciation. The investment objective of the Morgan Stanley UIF Value Portfolio is above-average returns over a market cycle of three to five years.

54. ING Limited Maturity Bond Portfolio for the Neuberger Berman AMT Limited Maturity Bond Portfolio. The investment objective of ING Limited Maturity Bond Portfolio is to seek the highest current income consistent with low risk to principal and liquidity. The investment objective of Neuberger Berman AMT Limited Maturity Bond Portfolio is to seek the highest available current income consistent with liquidity and low risk to principal.

55. ING Liquid Assets Portfolio—Class I for the ING Liquid Assets Portfolio—Class S. This Substitute Fund is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser, but with lower overall fees.

56. ING Liquid Assets Portfolio for the Scudder VS I Money Market Portfolio. The investment objective of the ING Liquid Assets Portfolio is to seek the highest level of current income consistent with the preservation of capital and liquidity. The investment objective of the Scudder VS Money Market Portfolio is to maintain stability of capital and maintain the liquidity of capital and to provide current income.

57. ING Lord Abbett U.S. Government Portfolio for the AIM V.I. Government Securities Fund. The investment objective of the ING Lord Abbett U.S. Government Portfolio is high current income consistent with reasonable risk. The investment objective of AIM V.I. Government Securities Fund is to achieve a high level of current income consistent with reasonable concern for safety of principal.

58. ING Lord Abbett U.S. Government Portfolio for Federated Fund for U.S. Government Securities II. The investment objective of the ING Lord Abbett U.S. Government Portfolio is the highest current income consistent with reasonable risk. The investment objective of Federated Fund for U.S. Government Securities is current income.

59. ING Marsico International Opportunities Portfolio for the American Century VP International Fund. The investment objective of the ING Marsico International Opportunities Portfolio is long-term growth of capital. The investment objective for the American Century Portfolio is capital growth.

60. ING Mercury Large Cap Growth Portfolio for the Oppenheimer Capital Appreciation Fund. The investment objective of the ING Mercury Large Cap Growth Portfolio is long-term growth of capital. The investment objective of the Oppenheimer Capital Appreciation Fund is capital appreciation.

61. ING MFS Total Return Portfolio for the American Century VP Balanced Fund. The investment objective of the ING MFS Total Return Portfolio is above average income consistent with prudent employment of capital. The investment objective of the American Century VP Balanced Fund is long-term capital growth and current income.

62. ING Neuberger Berman Partners Portfolio for the Neuberger Berman AMT Partners Portfolio. The ING Neuberger Berman Partners Portfolio is patterned after the Neuberger Berman AMT Partners Portfolio, and the investment objective of each portfolio is growth of capital.

63. ING Neuberger Berman Partners Portfolio for the Oppenheimer Main Street Fund/VA. The investment objective of the ING Neuberger Berman Partners Portfolio is growth of capital. The objective for the Oppenheimer Main Street Fund is high total return (which includes growth in the value of its shares as well as current income).

64. ING Oppenheimer Main Street Portfolio for the MFS VIT Research Series. The investment objective of both the ING Oppenheimer Main Street Portfolio and MFS VIT Research Series is long-term growth and future income.

65. ING Oppenheimer Strategic Income Portfolio for the MFS VIT Strategic Income Series. The investment objective of both the ING Oppenheimer Strategic Income Portfolio and MFS VIT Strategic Income Series is high current income.

66. ING Oppenheimer Strategic Income Portfolio for the Putnam VT Diversified Income Fund. The ING Oppenheimer Strategic Income Portfolio seeks a high level of current income and the Putnam VT Diversified Income Fund seeks as high a level of current income as the investment adviser believes is consistent with preservation of capital.

67. ING PIMCO High Yield Portfolio for the Eaton Vance Income Fund of Boston. The ING PIMCO High Yield Portfolio seeks maximum total return, consistent with the preservation of capital and prudent investment management. The Eaton Vance Income Fund of Boston seeks to provide as much current income as possible.

68. ING PIMCO High Yield Portfolio for the Morgan Stanley UIF High Yield Portfolio. The ING PIMCO High Yield Portfolio seeks maximum total return, consistent with the preservation of capital and prudent investment management. The Morgan Stanley UIF High Yield Portfolio seeks above-average total returns over a market cycle of three to five years.

69. ING PIMCO High Yield Portfolio for the Oppenheimer High Income Fund/VA. The ING PIMCO High Yield Portfolio seeks maximum total return, consistent with the preservation of capital and prudent investment management. The Oppenheimer High Income Fund/VA seeks a high level of current income.

70. ING PIMCO High Yield Portfolio for the Oppenheimer High Yield Fund. The ING PIMCO High Yield Portfolio seeks maximum total return, consistent with the preservation of capital and prudent investment management. The Oppenheimer High Yield Fund seeks a high level of current income.

71. ING Pioneer Equity-Income Portfolio for the Pioneer Equity Income VCT Portfolio. Both the ING Pioneer Equity-Income Portfolio and the Pioneer VCT Equity Income Portfolio seek current income and long-term growth of capital.

72. ING Salomon Brothers Aggressive Growth Portfolio for the Alger American Leveraged AllCap Portfolio. The ING Salomon Brothers Aggressive Growth Portfolio seeks long-term growth of capital. The Alger American Leveraged AllCap Portfolio seeks long-term capital appreciation.

73. ING Stock Index Portfolio for the Dreyfus Stock Index Fund. The investment objective of the ING Stock Index Portfolio and the Dreyfus Stock Index Fund is total return.

74. ING UBS U.S. Large Cap Equity Portfolio for the MFS VIT Investors Trust Series. The investment objective of both the ING UBS U.S. Large Cap Equity Portfolio and MFS VIT Investors Trust Series is long-term growth of capital and future income.

75. ING Van Kampen Comstock Portfolio for the Neuberger Berman AMT Guardian Portfolio. The investment objective of the ING Van Kampen Comstock Portfolio is capital growth and income. The investment objective of Neuberger Berman AMT Guardian Portfolio is long-term growth of capital and as a secondary objective, current income.

76. ING Van Kampen Equity and Income Portfolio for the Fidelity VIP Asset Manager: Growth Portfolio. The investment objective of the ING Van Kampen Equity and Income Portfolio is total return, consisting of long-term capital appreciation and current income. The investment objective of the

Fidelity VIP Asset Manager: Growth Portfolio is to maximize total return.

77. ING Van Kampen Growth and Income Portfolio for the Dreyfus VIF Growth and Income Portfolio. The investment objective of the ING Van Kampen Growth and Income Portfolio is long-term growth of capital and income. The investment objective of the Dreyfus VIF Growth and Income Portfolio is long-term capital growth, current income and growth of income consistent with reasonable investment risk.

78. ING Van Kampen Growth and Income Portfolio for the Premier VIT OpCap Managed Portfolio. The ING Van Kampen Growth and Income Portfolio seeks long-term growth of capital and income. The Premier VIT OpCap Managed Portfolio seeks growth of capital over time.

79. ING VP Balanced Portfolio for the Fidelity VIP Asset Manager Portfolio. The ING VP Balanced Portfolio seeks to maximize investment return, consistent with reasonable safety of principal. The Fidelity VIP II Asset Manager Portfolio seeks to obtain high total return with reduced risk over the long term.

80. ING VP Balanced Portfolio for the Liberty Asset Allocation Fund·VS. The investment objective of the ING VP Balanced Portfolio is to maximize investment return consistent with reasonable safety of principal. The investment objective of the Liberty Asset Allocation Fund is high total investment return.

81. ING VP High Yield Bond Portfolio for the Fidelity VIP High Income Portfolio. The ING VP High Yield Bond Portfolio seeks a high level of current income and total return. The Fidelity VIP High Income Portfolio seeks a high level of current income, while also considering growth of capital.

82. ING VP Index Plus International Equity Portfolio for the Scudder VS I International Portfolio. The ING VP IndexPlus International Equity Portfolio seeks to outperform the total return performance of the Morgan Stanley Capital International EAFE Index ("MSCI EAFE"). The Scudder SV I International Portfolio seeks long-term growth of capital.

83. ING VP Index Plus International Equity Portfolio for the Fidelity VIP Overseas Portfolio. The ING VP IndexPlus International Equity Portfolio seeks to outperform the total return performance of the MSCI EAFE. The Fidelity VIP Overseas Portfolio seeks long-term growth of capital.

84. ING VP Index Plus International Equity Portfolio for the Putnam VT International Growth and Income Fund. The ING VP IndexPlus International Equity Portfolio seeks to outperform the total return performance of the MSCI EAFE. The Putnam VT International Growth and Income Fund seeks capital growth with current income as a secondary objective.

85. ING VP Index Plus LargeCap Portfolio for the Fidelity VIP Growth Opportunities Portfolio. The ING VP Index Plus LargeCap Portfolio seeks to outperform the total return performance of the S&P 500. The Fidelity VIP Growth Opportunities Portfolio seeks capital growth.

86. ING VP Intermediate Bond Portfolio for the Oppenheimer Core Bond Fund/VA. The ING VP Intermediate Bond Portfolio seeks to maximize total return consistent with reasonable risk. The Oppenheimer Core Bond Fund/VA seeks a high level of current income.

87. ING VP Money Market Portfolio for the Oppenheimer Money Fund/VA. The ING VP Money Market Portfolio seeks high current return, consistent with the preservation of capital and liquidity, through investment in high-quality money market instruments. The Oppenheimer Money Fund seeks maximum current income from investments in money market securities consistent with low capital risk and the maintenance of liquidity.

88. ING VP Money Market Portfolio for the Oppenheimer Money Market Fund. The ING VP Money Market Portfolio seeks to provide high current return, consistent with the preservation of capital and liquidity, through investment in high-quality money market instruments. The Oppenheimer Money Market Fund seeks the maximum current income that is consistent with stability of principal.

89. ING Wells Fargo Small Cap Disciplined Portfolio for the Putnam VT Small Cap Value Fund. The investment objective of the ING Wells Fargo Small Cap Disciplined Portfolio is long-term capital appreciation. The investment objective of the Putnam VT Small Cap Value Fund is capital appreciation.

Implementation of the Substitutions

90. Applicants will effect the Substitutions as soon as practicable following the issuance of the requested order. As of the Effective Date of the Substitutions, shares of each Replaced Fund will be redeemed for cash or in-kind. The Companies, on behalf of each Replaced Fund subaccount of each relevant Account, will simultaneously place a redemption request with the Replaced Fund and a purchase order with the corresponding Substitute Fund so that the purchase of Substitute Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the applicable Substitute Fund.

91. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's account value or death benefit, or in the dollar value of his or her investment in the applicable Account. Any in-kind redemption of shares of a Replaced Fund or in-kind purchase of shares of the corresponding Substitute Fund will, except as noted below, take place in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. No brokerage commissions, fees or other remuneration will be paid by either the Replaced Fund or the corresponding Substitute Fund or by affected Contract owners in connection with the Substitutions. The transactions comprising the Substitutions will be consistent with the policies of each investment company involved and with the general purposes of the 1940 Act.

92. Affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on affected Contract owners. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Also, as described more fully below, after notification of the Substitutions and for 30 days after the Substitutions, affected Contract owners may reallocate to any other investment options available under their Contract the subaccount value of the Replaced Fund without incurring any administrative costs or allocation (transfer) charges.

93. Before the Effective Date of the Substitutions, all affected Contract owners will be notified of the Substitutions by means of supplements to the Contract prospectuses. Among other information regarding the Substitutions, the supplements will inform affected Contract owners that beginning on the date of the first supplement the Companies will not exercise any rights reserved by them under the Contracts to impose

restrictions or fees on transfers from the Replaced Funds (other than restrictions related to frequent or disruptive transfers) until at least 30 days after the Effective Date of the Substitutions. Following the date the order requested by the Application is issued, but before the Effective Date, affected Contract owners will receive a second supplement to the Contract prospectus or prospectus summary, as applicable, setting forth the Effective Date and advising affected Contract owners of their right, if they so choose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the relevant Replaced Fund subaccounts under their Contracts or otherwise terminate their interest therein in accordance with the terms and conditions of their Contracts. If affected Contract Owners reallocate account value prior to the Effective Date or within 30 days after the Effective Date, there will be no charge for the reallocation of accumulated value from each Replaced Fund subaccount and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts (other than restrictions related to frequent or disruptive transfers) for a period of at least 30 days following the Effective Date of the Substitutions. Additionally, all current Contract Owners will be sent prospectuses of the Substitute Funds before the Effective Date.

94. Within five (5) business days after the Effective Date, affected Contract Owners will be sent a written confirmation ("Post-Substitution Confirmation") indicating that shares of the Replaced Funds have been redeemed and that the shares of Substitute Funds have been substituted. The Post-Substitution Confirmation will show how the allocation of the Contract Owner's account value before and immediately following the Substitutions have changed as a result of the Substitutions and detail the transactions effected on behalf of the respective affected Contract Owner because of the Substitutions.

Applicant's Legal Analysis

1. Applicants represent that each of the prospectuses for the Contracts expressly discloses the reservation of the Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account.

2. Registrants state that the Companies reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit the Contract owners and Companies.

3. Applicants maintain that Contract owners will be better served by the proposed Substitutions. Applicants anticipate that the replacement of certain Replaced Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. For all of the proposed substitutions, each Substitute Fund (or sub-adviser managing a similar fund for those Substitute Funds without a performance history) generally has had comparable or more consistent investment performance than the corresponding Replaced Fund that it would replace. Moreover, each Substitute Fund has fees that are the same as or less than the corresponding Replaced Fund. Applicants state that for all of the proposed substitutions, the investment objective and policies of each Substitute Fund are the same as, similar to, or consistent with the investment objective and policies of the corresponding Replaced Fund.

4. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the remaining subaccounts as they could before the proposed substitutions. The number of available subaccounts varies from Contract to Contract, but the average number of available subaccounts in all Contracts is approximately 61 and the smallest number of available subaccounts in any one Contract after the Substitutions is nine, the same number of available subaccounts as before the Substitutions.

5. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the subaccounts which invest in the Replaced Funds into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

6. Applicants maintain that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific types of insurance coverages offered by the various Companies under the Contracts as well as numerous other rights and privileges set forth in each Contract. Contract owners may also have considered the size, financial condition, type, and reputation of ING and the various Companies. These factors will not change because of the proposed substitutions.

7. Applicants maintain that the terms of the Substitutions, including the consideration to be paid and received by each Replaced Fund or Substitute Fund, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted, and because the transactions will conform with the principal conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value, accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts.

8. Applicants submit that the Substitutions by the Companies are consistent with the policies of each Substitute Fund and each Replaced Fund, as recited in the current registration statements and reports filed by each under the 1940 Act. Applicants also submit that the proposed substitutions are consistent with the general purposes of the Act.

9. Applicants submit that, to the extent that the Substitutions are deemed to involve principal transactions

between affiliates, the procedures and terms and descriptions described in the Application demonstrate that neither the Replaced Funds, the Substitute Funds, the Accounts nor any other Applicant will be participating in the Substitutions on a basis less advantageous than that of any other participant. Even though the Applicants may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

10. The boards of trustees or directors, as applicable of each Replaced Fund and ING Investors Trust, ING Partners, Inc., ING Variable Portfolios, Inc., ING Variable Products Trust, ING VP Balanced Portfolio, Inc., ING VP Intermediate Bond Portfolio, Inc. and ING VP Money Market Portfolio have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the portfolios or funds of each may purchase and sell securities to and from their affiliates. The Companies and the investment advisers will carry out the Substitutions in conformity with the principal conditions of Rule 17a–7 and each Replaced Fund's and the Substitute Fund's procedures thereunder. Also no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions.

11. Except as noted below, applicants state that the Substitutions will take place in accordance with the requirements enumerated in Rule 17a–7 under the 1940 Act and with the approval of the applicable board of ING Investors Trust, ING Partners, Inc., ING Variable Portfolios, Inc., ING Variable Products Trust, ING VP Balanced Portfolio, Inc., ING VP Intermediate Bond Portfolio, Inc. and ING VP Money Market Portfolio, except that the Substitutions may be effected in cash or in-kind. Applicants further submit that the Substitutions are consistent with the investment policy of each Replaced Fund and each Substitute Fund, as recited in the current prospectuses relating to each.

12. With regard to the Substitutions involving in-kind transfers, the investment adviser of each Substitute Fund and the investment adviser to the corresponding Replaced Fund intend to value securities selected for transfer between the two funds in a manner that is consistent with the current methodology used to calculate the daily net asset value of the Replaced Fund. Where a Replaced Fund's investment adviser employs certain third party, independent pricing services to value securities held by the Replaced Fund ("Vendor Pricing"), the investment adviser of each Substitute Fund and the corresponding Replaced Fund's investment adviser intend to employ Vendor Pricing to value securities held by the Replaced Fund that are selected for transfer to the Substitute Fund. Vendor Pricing may be used in each of the Substitutions. Generally, the redemption of securities from the Replaced Fund and subsequent transfer to the Substitute Fund will be done on a pro-rata basis. In the event that a Replaced Fund holds illiquid or restricted securities or assets that are not otherwise readily distributable or if a pro-rata transfer of securities would result in the parties holding odd lots, the investment advisers may agree to have a Replaced Fund transfer to the Substitute Fund an equivalent amount of cash instead of securities.

13. Applicants submit that the Substitutions are consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Contract owners will be fully informed of the terms of the Substitutions through the supplements and the Post-Substitution Confirmation and will have an opportunity to withdraw from the Replaced Fund through reallocation to another subaccount or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract prior to the Effective Date.

Applicant's Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the substitutions described in the application will not be completed unless all of the following conditions are met:

1. Each Substitute Fund has an investment objective and investment policies that are the same as, similar to or consistent with the investment objective and policies of the corresponding Replaced Fund, so that the objective of the Affected Contract Owners can continue to be met.

2. For two years following the implementation of the Substitutions described herein, the net annual expenses of each Substitute Fund will not exceed the net annual expenses of the corresponding Replaced Fund immediately preceding the Substitutions. To achieve this limitation, Directed Services, Inc., ING Investments, LLC and ING Life, as applicable, will waive fees or reimburse the appropriate Substitute Fund in certain amounts to maintain expenses at or below the limit. Any adjustments or reimbursements will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges, including asset based charges such as mortality and expense risk charges deducted from the subaccounts, that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitutions.

3. The Shareholder Services Fee of the Class S shares of the ING Mercury Large Cap Growth Portfolio and the ING PIMCO High Yield Portfolio will be permanently capped at 0.25%.

4. Affected Contract Owners may reallocate amounts from any of the Replaced Funds without incurring a reallocation charge or limiting their number of future reallocations, or withdraw amounts under any Affected Contract or otherwise terminate their interest therein at any time prior to the Effective Date and for a period of at least 30 days following the Effective Date in accordance with the terms and conditions of such Contract. Any such reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers.

5. The Substitutions will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants.

6. The Substitutions will take place at relative net asset value without change in the amount or value of any Contract held by Affected Contract Owners. Affected Contract Owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Companies under such Contracts be altered in any way. In addition, the Companies will not increase the Contract fees and charges currently being assessed under the Contracts for a period of at least two years following the Substitutions.

7. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on affected Contract owners.

8. The Substitutions will be effected so that investment of securities will be consistent with the investment objectives, policies and diversification requirements of the relevant Substitute Fund. No brokerage commissions, fees or other remuneration will be paid by any Replaced Fund or the corresponding Substitute Fund or Affected Contract Owners in connection with the Substitutions.

9. The Substitutions will not alter in any way the annuity, life or tax benefits afforded under the Contracts held by any Affected Contract Owner.

10. The Companies will send to their Affected Contract Owners within five (5) business days of the Substitutions a written Post-Substitution Confirmation which will include the before and after account values (which will not have changed as a result of the Substitutions) and detail the transactions effected on behalf of the respective Affected Contract Owner with regard to the Substitutions. With the Post-Substitution Confirmations the Companies will remind Affected Contract Owners that they may reallocate amounts from any of the Replaced Funds without incurring a reallocation charge or limiting their number of future reallocations for a period of at least 30 days following the Effective Date in accordance with the terms and conditions of their Contract.

11. The Commission shall have issued an order: (a) Approving the Substitutions under Section 26(c) of the 1940 Act; and (b) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

12. A registration statement for each Substitute Fund is effective, and the investment objectives and policies and fees and expenses for each of the Substitute Funds as described herein have been implemented.

13. Each Affected Contract Owner will have been sent a copy of: (a) A supplement to the Contract prospectus informing shareholders of this Application; (b) a prospectus for the appropriate Substitute Fund; and (c) a second supplement to the Contract prospectus setting forth the Effective Date and advising Affected Contract Owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date and for 30 days thereafter, to reallocate or withdraw amounts under their affected Contract or otherwise terminate their interest therein in accordance with the terms and conditions of their Contract.

14. The Companies shall have satisfied themselves, that: (a) The Contracts allow the substitution of investment company shares in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sales have been complied with to the extent necessary to complete the transactions.

15. Under the manager-of-managers relief granted to the ING Investors Trust, ING Partners and relied upon by certain of the other ING funds, a vote of the shareholders is not necessary to change a sub-adviser, except for changes involving an affiliated sub-adviser. Notwithstanding, after the Effective Date of the Substitutions the Applicants agree not to change a Substitute Fund's sub-adviser without first obtaining shareholder approval of either: (a) The sub-adviser change or (b) the Applicants' continued ability to rely on their manager-of-managers relief.

Conclusion

Applicants assert that for the reasons summarized above the proposed substitutions and related transactions meet the standards of Section 26(c) of the 1940 Act and are consistent with the standards of Section 17(b) of the 1940 Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3116 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 6, 2006:

A Closed Meeting will be held on Thursday, March 9, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

• *tThe subject matter of the Closed Meeting scheduled for Thursday, March 9, 2006 will be:*

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Consideration of amicus participation; and

Report of an investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 1, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2121 Filed 3–2–06; 11:16 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 10085, February 28, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, March 2, 2006 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the 2 p.m. Closed Meeting scheduled for Thursday, March 2, 2006: a matter involving investigative techniques and procedures.

The Commission voted to consider the item listed for the closed meeting in closed session and determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 1, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2122 Filed 3–2–06; 11:16 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53386; File No. SR–Amex–2005–110]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to Specialist Clerks

February 28, 2006.

On October 31, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend Amex Rule 184 to require specialists and specialist units to employ an adequate number of clerks to enable the specialist unit to efficiently handle actual and reasonably anticipated trading volume in the specialist unit's registered securities. The proposed rule change was published for comment in the **Federal Register** on January 23, 2006.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, by requiring specialists and specialist units to employ an adequate number of clerks, is designed to help enable Exchange specialists and specialist units to handle efficiently the trading volume in the specialist unit's registered securities and to meet their regulatory responsibilities with respect to their specialist activities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2005–110) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3112 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53377; File No. SR–CBOE–2005–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Seeking Permanent Approval of a Pilot Program Relating to Market-Maker Access to the Exchange's Hybrid Automatic Execution System

February 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2005, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent its pilot program in CBOE Rule 6.13 relating to market-maker ("MM") access to the Exchange's automatic execution system. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2004, the Exchange implemented on a pilot basis CBOE Rule 6.13(b)(i)(C)(iii), which relates to the frequency with which certain market participants may submit orders for automatic execution through the Exchange's Hybrid Trading System ("Hybrid").[3] The Exchange has subsequently extended the pilot program, which expires on October 12, 2006, on two occasions.[4] CBOE Rule 6.13(b)(i)(C)(iii) currently provides in relevant part:

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on October 12, 2006.

Upon approval of the pilot program, the Exchange began allowing orders from options exchange MMs to be eligible for automatic execution, subject to the 15-second limitation described above.[5] The Exchange believes that the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53123 (January 13, 2006), 71 FR 3567.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (SR–CBOE–2004–33) (approving the pilot program).

[4] *See* Securities Exchange Act Release Nos. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR–CBOE–2004–91) (extending the pilot program until October 12, 2005); and 52494 (September 22, 2005), 70 FR 56943 (September 29, 2005) (SR–CBOE–2005–70) (extending the pilot program until October 12, 2006).

[5] CBOE Rule 6.13(b)(i)(C)(ii) governs the submission of orders from MMs (paragraph

pilot program has been successful and has helped to contribute to the maintenance of efficient markets and to attract MM volume to the Exchange. Given this success, the Exchange is requesting permanent approval of the pilot program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[6] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices[9] and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–112 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2005–112. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–112 and should be submitted on or before March 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3092 Filed 3–3–06; 8:45 am]

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(C)(ii)(A)) and stock exchange specialists (paragraph (C)(ii)(B)). It should be noted that, pursuant CBOE Rule 6.13(b)(i)(C)(iii), the floor procedures committees ("FPCs") determined to shorten to 5 seconds (from 15 seconds) the period required between entry of multiple market-maker orders (including non-CBOE MM orders) on the same side of the market in an option class for an account or accounts of the same beneficial owner using Hybrid. This change went into effect on July 18, 2005 and was announced to the membership via Regulatory Circular RG05–61.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] At the request of the Exchange, the Commission staff has added "and practices," which was inadvertently omitted from the proposed rule change. Telephone conversation between Jennifer M. Lamie, Managing Senior Attorney, CBOE, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on February 23, 2006.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53382; File No. SR–NYSE–2005–77]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6 and 8 Relating to the NYSE's Business Combination With Archipelago Holdings, Inc.

February 27, 2006.

I. Introduction

On November 3, 2005, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the NYSE's business combination with Archipelago Holdings, Inc. ("Archipelago"). On December 1, 2005, the NYSE filed Amendment No. 1 to the proposed rule change. The NYSE filed Amendment No. 2 to the proposed rule change on December 12, 2005, and withdrew Amendment No. 2 on December 12, 2005. On December 12, 2005, the NYSE filed Amendment No. 3.[3] The NYSE filed Amendment No. 4 to the proposed rule change on December 21, 2005, and withdrew Amendment No. 4 on December 21, 2005. On December 21, 2005, the NYSE filed Amendment No. 5.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 12, 2006.[5] The Commission has received 17 comments on the proposal.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated December 12, 2005 ("Amendment No. 3"). Amendment No. 3 replaced Amendment No. 1 in its entirety.

[4] *See* Partial Amendment dated December 21, 2005 ("Amendment No. 5").

[5] *See* Securities Exchange Act Release No. 53073 (January 6, 2006), 71 FR 2080 ("Notice").

[6] *See* letter from Michael Kanovitz, Attorney, Loevy & Loevy, to Nancy Morris, Secretary, Commission, dated February 2, 2006, with attachments, including a statement from Lewis J.

Continued

The NYSE filed a response to comments on February 8, 2006.[7]

On January 20, 2006, the NYSE filed Amendment No. 6 to the proposed rule change.[8] On February 21, 2006, the NYSE filed Amendment No. 7 to the proposed rule change, and withdrew Amendment No. 7 on February 22, 2006. On February 23, 2006, the NYSE filed Amendment No. 8 to the proposed rule change.[9] This order approves the proposed rule change, as amended, grants accelerated approval to Amendment Nos. 6 and 8 to the proposed rule change, and solicits comments from interested persons on Amendment Nos. 6 and 8.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[11] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act[12] also requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Accelerated Approval of Amendment Nos. 6 and 8

The Commission also finds good cause for approving Amendment Nos. 6 and 8 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment Nos. 6 and 8 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[13]

In Amendment No. 6, the NYSE made changes to the proposed Amended and Restated Bylaws of NYSE Regulation, Inc. ("NYSE Regulation") ("NYSE Regulation Bylaws") to (1) Reduce the number of NYSE Group, Inc. ("NYSE Group") directors on the NYSE Regulation board from a majority to a minority and increase the number of directors not affiliated with NYSE Group to a majority, (2) reduce the number of members of the NYSE Regulation nominating and governance committee that are also directors of NYSE Group from a majority to a minority, and (3) specify that NYSE Regulation will have a compensation committee responsible for setting the compensation for NYSE Regulation employees and that such committee will have a majority of directors that are not also NYSE Group directors. In addition, in Amendment No. 6, the NYSE (1) Acknowledged that NYSE Group, New York Stock Exchange LLC, and NYSE Market, Inc. ("NYSE Market") are responsible for referring possible rule violations to NYSE Regulation, (2) specified that there will be an explicit agreement among various of the NYSE Group entities to provide adequate funding for NYSE Regulation, and (3) represented that the NYSE has undertaken to work with NASD and securities firm representatives to eliminate inconsistent rules and duplicative examinations.

The Commission believes that these changes will provide additional safeguards to help ensure the independence of NYSE Regulation from the market operations and commercial interests of the exchange. Furthermore, the changes proposed in Amendment No. 6 will help ensure adequate funding of NYSE Regulation, through an explicit agreement with NYSE Group and its subsidiaries. In addition, the ability of NYSE Regulation to effectively carry out its regulatory responsibilities will be enhanced by the explicit acknowledgement that NYSE Group, New York Stock Exchange LLC, and NYSE Market each will be responsible for referring possible rule violations to NYSE Regulation, consistent with the self-regulatory obligations of New York Stock Exchange LLC and NYSE Market. The Commission therefore believes that these provisions of Amendment No. 6, which are designed to further the ability of the New York Stock Exchange LLC and its subsidiaries to comply with their statutory obligations, are consistent with

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Borsellino to the Commission ("Borsellino Letter"); letter from Dennis A. Johnson, Senior Portfolio Manager, Corporate Governance, California Public Employees' Retirement System, to Jonathan Katz, Secretary, Commission, dated February 2, 2006 ("CalPERS Letter"); letter from Warren Meyers, President, Independent Broker Action Committee, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2005 ("IBAC December Letter"); letter from Warren P. Meyers, President, Independent Broker Action Committee, Inc., to Nancy M. Morris, Secretary, Commission, dated February 2, 2006 ("IBAC February Letter"); letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006 ("ICI Letter"); letter from James L. Kopecky, James L. Kopecky, P.C., to Christopher Cox, Chairman, Commission, dated January 16, 2006, with attachments ("Kopecky Letter"); letter from Fane Lozman to Christopher Cox, Chairman, Commission, dated February 22, 2006, with attachments ("Lozman Letter"); letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Nancy M. Morris, Secretary, Commission, dated February 16, 2006 ("NASD Letter"); letter from Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, to Nancy M. Morris, Secretary, Commission, dated January 25, 2006 ("Nasdaq Extension Letter"); letter from Edward S. Knight, The Nasdaq Stock Market, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006 ("Nasdaq February Letter"); letter from Randall Edwards, President, National Association of State Treasurers, to Nancy M. Morris, Secretary, Commission, dated January 31, 2006 ("NAST Letter"); letter from Philip J. Nathanson, Philip J. Nathanson & Associates, to Christopher Cox, Chairman, Commission, dated February 2, 2006, with attachments ("Nathanson Letter"); letter from "The Undersigned NYSE Investors" to Jonathan G. Katz, Secretary, Commission, dated December 23, 2005, with attachments ("OTR Investors Letter"); letter from Andrew Rothlein to Nancy Morris, Secretary, Commission, dated February 12, 2006 ("OTR Investors Letter II"); letter from George R. Kramer, Deputy General Counsel, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated January 18, 2006 ("SIA Extension Letter"); letter from Marc E. Lackritz, President, Securities Industry Association and Micah S. Green, President and CEO, The Bond Market Association, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006, with attachments ("SIA/TBMA Letter"); and letter from Marjorie E. Gross, Senior Vice President & Regulatory Counsel, The Bond Market Association, to Nancy M. Morris, Secretary, Commission, dated January 23, 2006 ("TBMA Letter").

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated February 7, 2006 ("NYSE Response to Comments"). *See also* letter from Kevin J.P. O'Hara, Chief Administrative Officer, General Counsel and Secretary, to Nancy M. Morris, Secretary, Commission, dated February 24, 2006.

[8] *See* Partial Amendment dated January 20, 2006 ("Amendment No. 6").

[9] *See* Partial Amendment dated February 23, 2006 ("Amendment No. 8"). The text of Amendment Nos. 6 and 8, and Exhibits 5A through 5K of Amendment No. 8, which set forth the text of the NYSE rules and the governing documents, as proposed to be amended, is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's Web site (*http://www.nyse.com*).

[10] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

the Act, and therefore finds good cause exists to accelerate approval of these proposed rule changes in Amendment No. 6, pursuant to Section 19(b)(2) of the Act.[14]

The NYSE also represented in Amendment No. 6 that it will work with NASD and securities firm representatives to eliminate inconsistent rules and duplicative examinations, and will use its best efforts to submit to the Commission, within one year, proposed rule changes reconciling inconsistent rules and a report setting forth those rules that have not been reconciled.

Several commenters expressed concern about regulatory burdens in connection with the proposed new structure.[15] In particular, although Nasdaq recognizes that the NYSE has undertaken to work with NASD to eliminate inconsistent rules and duplicative examinations, it believes the proposal does not go far enough.[16] Nasdaq believes that the structure proposed by the NYSE is inherently problematic, and that the Commission should insist that the NYSE in this filing rationalize inconsistent and duplicative regulation.[17] In addition, while the ICI strongly supports the NYSE's initiative to work with NASD, it urges the Commission to set forth a specific time frame during which recommendations by the NYSE and NASD will be developed.[18] The SIA and TBMA also welcome the NYSE's undertaking, but believe that it falls far short of addressing the problem.[19] While they do not wish to delay approval of the NYSE's proposal, they urge the Commission to ask the NYSE to formally commit to work with NASD with a goal of developing, within a set time frame (such as sixty to ninety days) of approval, recommendations and an implementation timetable for appropriate consolidation of the broker-dealer regulatory functions of the two self-regulatory organizations ("SROs").[20]

The NASD believes that the NYSE's proposal will exacerbate the extent of duplicative regulation, and that even if the NYSE were to follow through on its undertaking to identify and reconcile inconsistencies in its and NASD's member rules, the harmonization of duplicative rules amounts to a treatment of some, but not all, of the symptoms of the larger problem.[21] In addition, NASD believes that harmonization fails to resolve the conflicts of interest that arise when an SRO operates a for-profit exchange and regulates that exchange's participants.[22] NASD urges the Commission to adopt a hybrid model of self-regulation to resolve these conflicts and eliminate duplication.[23] The SIA and TBMA also believe that combining the duplicative functions of NASD and NYSE broker-dealer regulation into one entity could address business conflict and regulatory duplication concerns,[24] and Nasdaq states that it believes a consolidated "hybrid" SRO is in the best interests of investor protection.[25]

The Commission recognizes that the existence of multiple SROs can result in duplicative and conflicting SRO rules, rule interpretations, and inspection regimes, and result in redundant SRO regulatory staff and infrastructure across SROs.[26] Congress and the Commission have taken steps to reduce regulatory duplication.[27] The question of what further steps should be taken, if any, with respect to this issue is part of a larger Commission review of the self-regulatory structure of our markets.[28] The NYSE cannot on its own eliminate inconsistent rules among SROs and duplicative examinations, and the Commission therefore believes eliminating such inconsistencies and duplication is beyond the scope of this proposed rule change. The Commission believes that the NYSE's representation to the Commission that it will work with NASD and securities firm representatives to eliminate inconsistent rules and duplicative examinations is encouraging. In furtherance of its commitment to work with other industry participants, the NYSE also has represented that it will use its best efforts, in cooperation with NASD, to submit to the Commission within one year proposed rule changes reconciling inconsistent rules and a report setting forth those rules that have not been reconciled.[29] The Commission believes that this undertaking by the NYSE should help advance the effort to make compliance with SRO rules and the examination process more efficient and is consistent with the Act. The Commission also finds good cause to accelerate approval of this undertaking pursuant to Section 19(b)(2) of the Act.[30] The Commission also believes that the issue of whether changes should be made with respect to the overall structure of our self-regulatory system is outside the scope of this proposed rule change and is best addressed in the context of the larger Commission review of the self-regulatory structure of our markets.[31]

In Amendment No. 8 the NYSE stated that the proposed rule change, as amended, would not be operative until the date of the closing of the Merger (as defined below). In addition, the NYSE made certain clarifying, technical, non-material, and non-substantive changes to the governing documents of the various NYSE Group entities and the proposed rules of New York Stock Exchange LLC. These changes are clarifying, technical, non-material, or non-substantive in nature, and raise no new or novel issues.

The NYSE also proposes in Amendment No. 8 to change the composition of the New York Stock Exchange LLC board to provide that a majority of the board will be directors of the NYSE Group (other than the CEO). The NYSE originally proposed that all of the NYSE Group directors (other than the CEO) would be on the New York Stock Exchange LLC board. In addition, although the NYSE Group board will have the ability to remove some of the directors on the New York Stock Exchange LLC board, with or without cause, the NYSE proposes in Amendment No. 8 to limit NYSE Group to removing directors on the New York Stock Exchange LLC board that are selected by the members only for cause. Further, the NYSE proposes to eliminate the ability of New York Stock Exchange LLC to remove without cause the directors on the NYSE Market board selected by members and Non-Affiliated Regulation Directors (as defined

[14] 15 U.S.C. 78s(b)(2).

[15] *See* ICI Letter, Nasdaq February Letter, and SIA/TBMA Letter, *supra* note . *See also* Nasdaq Extension Letter, *supra* note 6.

[16] Nasdaq February Letter, *supra* note 6, at 7.

[17] *Id.* at 7–8.

[18] *See* ICI Letter, *supra* note 6, at 2–3.

[19] *See* SIA/TBMA Letter, *supra* note 6, at 5.

[20] Id. at 23.

[21] *See* NASD Letter, *supra* note 6, at 2–4. For instance, NASD believes that it will not eliminate all duplicative costs of having two organizations, rather than one, write, administer, and enforce the rules.

[22] *Id.* at 1–2, 4.

[23] *Id.* NASD's proposed hybrid model would unify all regulation of broker-dealer interaction with the public under a single SRO. Regulation of exchange operations—promulgation and enforcement of trading rules, market surveillance and listing standards—would be left to the separate trading market SROs. *Id.* at 2.

[24] SIA/TBMA Letter, *supra* note 6, at 3.

[25] Nasdaq February Letter, *supra* note 6, at 7.

[26] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) ("Concept Release Concerning Self-Regulation"). The Concept Release Concerning Self-Regulation contains a discussion of "Inefficiencies of Multiple SROs."

[27] *See, e.g.*, Concept Release Concerning Self-Regulation and Section 17(d) of the Act and Rules 17d–1 and 17d–2 thereunder, 15 U.S.C. 78q and 17 CFR 240.17d–1 and 240.17d–2.

[28] *See* Concept Release Concerning Self-Regulation, *supra* note 26.

[29] *See* Amendment No. 6, *supra* note 8.

[30] 15 U.S.C. 78s(b)(2).

[31] *See* Concept Release Concerning Self-Regulation, *supra* note 26.

below)[32] on the NYSE Regulation board. These changes will help to strengthen the independence of the exchange's regulatory functions from its commercial interests.

Given the practical necessities of providing time to allow members to participate in the process for the selection of directors following the closing of the Merger, the NYSE in Amendment No. 8 proposes transitional boards of directors for New York Stock Exchange LLC, NYSE Market, and NYSE Regulation until no later than the first annual meetings of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, which are expected to occur in June 2006.[33]

The Commission believes that the changes proposed in Amendment No. 8 are consistent with the Act and therefore finds good cause to accelerate approval of Amendment No. 8 to the proposed rule change, pursuant to Section 19(b)(2) of the Act.[34]

B. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 6 and 8, including whether Amendment Nos. 6 and 8 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Amendment Nos. 6 and 8 of File Number SR-NYSE–2005–77 and should be submitted on or before March 27, 2006.

The Commission received several requests to extend the comment period for this proposed rule change, citing the length and complexity of the proposed rule change and the critical policy issues raised by the proposed rule change.[35] The proposed rule change was publicly available when originally filed on November 3, 2005, and Amendment Nos. 1, 3, and 5 were publicly available when filed by the NYSE on December 1, 12, and 21, 2005, respectively.[36] In addition, during this time period, the proposed rule change, as amended, was posted on the NYSE Web site.[37] On January 12, 2005, the proposed rule change, as amended by Amendment Nos. 1, 2, 3, 4, and 5, was published in the **Federal Register**, for a three week comment period. The Commission believes that the public has had sufficient time to review the substance of the NYSE's proposed rule change and provide the Commission with comments.

II. Discussion

The NYSE and Archipelago entered into an agreement ("Merger Agreement") to effect a merger ("Merger"). Following the Merger, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company, NYSE Group. The NYSE's current businesses and assets will be held in three separate entities affiliated with NYSE Group—New York Stock Exchange LLC, NYSE Market, and NYSE Regulation. NYSE Market and NYSE Regulation will carry out their respective responsibilities pursuant to a delegation agreement with New York Stock Exchange LLC ("NYSE Delegation Agreement"). PCX Holdings, Inc. ("PCX Holdings") will remain a wholly owned subsidiary of Archipelago. The Pacific Exchange, Inc. ("Pacific Exchange") will remain a wholly owned subsidiary of PCX Holdings. Archipelago also will continue to own Archipelago Exchange, L.L.C., the equities trading facility of the Pacific Exchange ("ArcaEx").

The Merger will have the effect of converting the NYSE from a New York not-for-profit entity into a for-profit entity and demutualizing the NYSE by separating equity ownership in the NYSE from trading privileges on the NYSE.

Through the Merger, Archipelago will become a wholly owned subsidiary of NYSE Group. The governing documents of Archipelago will remain unchanged other than amendments required to permit NYSE Group to own all of the outstanding shares of Archipelago.[38] The Merger will have no effect on the right of any party to trade securities on the trading facilities of the Pacific Exchange, including ArcaEx.

This proposed rule change, as amended, is necessary to effectuate the consummation of the Merger.[39]

A. Corporate Reorganization

In connection with the Merger, the NYSE proposes to reorganize so that the NYSE Group will be a for-profit, publicly traded stock corporation and the holding company for the businesses of the NYSE and Archipelago. NYSE Group will hold all of the equity interests in New York Stock Exchange

[32] *See infra* note 86 and accompanying text.

[33] To facilitate the interim board structure, Amendment No. 8 also eliminates the set number of directors for the initial boards of NYSE Market and NYSE Regulation. *See* Amendment No. 8, *supra* note 9.

[34] 15 U.S.C. 78s(b)(2).

[35] *See* ICI Letter, Nasdaq Extension Letter, Nasdaq February Letter, SIA Extension Letter, and TBMA Letter, *supra* note 6. One commenter also requested that the Commission hold a public hearing on the proposed rule change. *See* IBAC February Letter, *supra* note 6, at 9.

[36] Amendment Nos. 2, 4, and 7 were withdrawn by the NYSE.

[37] *See* 17 CFR 240.19b–4(l), which requires that an SRO post a proposed rule change and any amendments thereto on the SRO's Web site within two days after the filing of the proposed rule change, and any amendments thereto.

[38] These amendments are the subject of a proposed rule change filed by the Pacific Exchange, which proposed rule change the Commission is approving today. *See* Securities Exchange Act Release Nos. 53077 (January 9, 2006), 71 FR 2095 (January 12, 2006) (notice), and 53383 (February 27, 2006) (approval order).

[39] One commenter states that its concern that the NYSE intends to phase out the auction market completely in the context of the NYSE's Hybrid proposal (*see* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005)) has grown since the announcement of the NYSE's proposed Merger. IBAC February Letter, *supra* note 6, at 13. The Commission notes that the NYSE has not proposed any substantive changes to its trading market structure or trading rules in this rule filing, and that any future changes to its trading market structure or its trading rules would need to be filed with the Commission pursuant to Section 19(b) of the Act.

LLC and Archipelago. The current NYSE businesses and assets will be held in New York Stock Exchange LLC, NYSE Market, and NYSE Regulation.

New York Stock Exchange LLC will be a direct, wholly owned subsidiary of NYSE Group [40] and will be the successor to the registration of the NYSE as a national securities exchange.[41] The NYSE represents that New York Stock Exchange LLC is not expected to hold any material assets other than all of the equity interests of NYSE Market and NYSE Regulation.

After the Merger, there will be "members" and "member organizations" of the New York Stock Exchange LLC. However, such members or member organizations by virtue of their membership will not be equity owners of NYSE Group or any of its subsidiaries. Organizations that obtain licenses to trade on NYSE Market ("Trading Licenses") will be member organizations.[42] In addition, broker-dealers that submit to the jurisdiction and rules of New York Stock Exchange LLC, without obtaining a Trading License and thus without having rights to directly access the trading facilities of NYSE Market, will be member organizations.

NYSE Market will be a wholly owned subsidiary of New York Stock Exchange LLC. After the Merger, NYSE Market will hold all of the assets and liabilities currently held by the NYSE, other than the NYSE's registration as a national securities exchange and the assets and liabilities relating to regulatory functions. The market functions of New York Stock Exchange LLC will be delegated pursuant to the NYSE Delegation Agreement to NYSE Market, which will conduct the exchange business that is currently conducted by the NYSE and will issue Trading Licenses, which are described below.

NYSE Regulation, a New York Type A not-for-profit corporation, will be a wholly owned subsidiary of New York Stock Exchange LLC. After the Merger, NYSE Regulation will hold all of the assets and liabilities related to the regulatory functions currently conducted by the NYSE. Pursuant to the NYSE Delegation Agreement, NYSE Regulation will perform the regulatory functions of New York Stock Exchange LLC. NYSE Regulation also will perform many of the regulatory functions of the Pacific Exchange pursuant to a regulatory services agreement.

1. NYSE Group

Following the closing of the Merger, NYSE Group will be the sole owner of New York Stock Exchange LLC. Section 19(b) of the Act [43] and Rule 19b–4 thereunder [44] require an SRO to file proposed rule changes with the Commission. Although NYSE Group is not an SRO, certain provisions of its certificate of incorporation and bylaws are rules of an exchange [45] if they are stated policies, practice, or interpretations, as defined in Rule 19b–4 of the Act,[46] of the exchange, and must be filed with the Commission pursuant to Section 19(b) of the Act [47] and Rule 19b–4 thereunder.[48] Accordingly, the NYSE has filed the proposed Amended and Restated Certificate of Incorporation of NYSE Group ("NYSE Group Certificate of Incorporation") and the proposed Amended and Restated Bylaws of NYSE Group ("NYSE Group Bylaws") with the Commission.

a. Board of Directors

Because the directors of NYSE Group will also serve on the boards of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, the composition of, and selection process for, the NYSE Group's board of directors is described below. The NYSE Group board of directors will consist of a number of directors set by the NYSE Group board of directors, and may include its chief executive officer. The initial term of directors will end with the first annual meeting of shareholders held by NYSE Group. Thereafter, the directors will serve one-year terms.

Except for the NYSE Group board immediately following the closing of the Merger, nominees to the NYSE Group board of directors will be recommended by the nominating and governance committee of the NYSE Group board of directors.[49] The nominating and governance committee will consider shareholder and public investor recommendations for candidates for the NYSE Group board of directors. Directors will be elected by the NYSE Group shareholders at each annual meeting of shareholders.[50] The NYSE represents that the vast majority of the NYSE Group board of directors immediately after the closing of the Merger will be the current NYSE board of directors.[51]

Each member of the NYSE Group board of directors, other than the chief executive officer,[52] must be independent from (i) NYSE Group and its subsidiaries, (ii) any member or member organization of New York Stock Exchange LLC or the Pacific Exchange,[53] and (iii) any company whose securities are listed on New York Stock Exchange LLC or the Pacific Exchange. The independent nature of the NYSE Group board of directors is modeled on the current Commission-approved structure of the NYSE board of directors.[54] The proposed independence policy of the NYSE Group board of directors is similar to the NYSE's current independence policy,[55] but has been expanded to cover relationships with the Pacific Exchange and its affiliates, and the members and member

[40] The New York Limited Liability Company Act, under which New York Stock Exchange LLC is organized, uses the term "members" to describe those that have rights, including a share of the profits and losses of the company, to receive distributions from the company, and the right to vote and participate in the management of the company. NYSE Group will be the sole "member" of New York Stock Exchange LLC within the meaning of the New York Limited Liability Company Act, but this term should not be confused with the concept of a member or member organization of New York Stock Exchange LLC under its rules and for purposes of Section 6 of the Act. To avoid confusion, NYSE Group will be referred to as the "sole owner" of New York Stock Exchange LLC.

[41] In connection with the reorganization, the NYSE proposes to eliminate its Constitution and to include in the rules of New York Stock Exchange LLC relevant provisions of the NYSE Constitution.

[42] *See infra* notes 197 to 216 and accompanying text for a discussion of Trading Licenses.

[43] 15 U.S.C. 78s(b).

[44] 17 CFR 240.19b–4.

[45] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If NYSE Group decides to change its Certificate of Incorporation or Bylaws, NYSE Group must submit such change to the board of directors of the New York Stock Exchange LLC, NYSE Market, NYSE Regulation, the Pacific Exchange, and PCX Equities, Inc. ("PCX Equities"), and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* proposed NYSE Group Certificate of Incorporation, Article XIII and NYSE Group Bylaws, Article VII, Section 7.9.

[46] 17 CFR 240.19b–4.

[47] 15 U.S.C. 78s(b).

[48] 17 CFR 240.19b–4.

[49] Telephone conversation between James F. Duffy, Senior Vice-President and Deputy General Counsel, NYSE, and Kim M. Allen, Special Counsel, Division of Market Regulation ("Division"), Commission, on February 15, 2006.

[50] *See* proposed NYSE Group Certificate of Incorporation, Article VI, Section 4.

[51] *See* Amendment No. 8, *supra* note 9.

[52] The chairman of the board of directors may be the chief executive officer of NYSE Group. If the chairman is not the chief executive officer, then he or she must satisfy the board's independence criteria.

[53] This includes non-member broker-dealers that engage in business involving substantial direct contact with securities customers.

[54] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) ("NYSE 2003 Governance Approval Order").

[55] *See* Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) ("NYSE Independence Policy Approval Order").

organizations and listed companies of the Pacific Exchange.

The NYSE Group board of directors may create one or more committees. It is expected that, upon completion of the Merger, the NYSE Group board of directors will have an audit committee, a human resource and compensation committee, and a nominating and governance committee. Committees of the NYSE Group board of directors will not include the chief executive officer and therefore will consist solely of directors meeting the independence requirements of NYSE Group. These committees also will perform relevant functions for New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, as described below.

b. Voting and Ownership Limitations; Changes in Control of New York Stock Exchange LLC

The proposed NYSE Group Certificate of Incorporation includes restrictions on the ability to vote and own shares of stock of NYSE Group. Under the proposed NYSE Group Certificate of Incorporation, no person (either alone or together with its related persons [56]) will be entitled to vote or cause the voting of shares of stock of NYSE Group representing in the aggregate more than 10% of the total number of votes entitled to be cast on any matter, and no person (either alone or together with its related persons) may acquire the ability to vote more than 10% of the aggregate number of votes being cast on any matter by virtue of agreements entered into with other persons not to vote shares of NYSE Group's outstanding capital stock. NYSE Group will disregard any such votes purported to be cast in excess of these limitations.[57]

In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[58] In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of NYSE Group in excess of the 20% threshold, such person and its related persons will be obligated to sell, and NYSE Group will be obligated to purchase, to the extent that funds are legally available for such purchase, that number of shares necessary to reduce the ownership level of such person and its related persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.[59]

NYSE also has proposed to permit the NYSE Group board of directors to require any person and its related persons that the board reasonably believes to own beneficially an aggregate of five percent (5%) or more of the then outstanding shares of NYSE Group stock to provide NYSE Group with information regarding such ownership upon the board of directors' request.[60] This requirement will allow NYSE Group to monitor potential changes in control to ensure that none of the limits are reached.

The NYSE Group board of directors may waive the provisions regarding voting and ownership limits after making certain determinations, including that such person is not subject to any statutory disqualification as defined in Section 3(a)(39)[61] of the Act.[62] Any such waiver must be filed with and approved by the Commission under Section 19[63] of the Act.[64] However, for so long as NYSE Group directly or indirectly controls New York Stock Exchange LLC or NYSE Market, the NYSE Group board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member or member organization of New York Stock Exchange LLC.[65] In addition, for so long as NYSE Group directly or indirectly controls the Pacific Exchange, PCX Equities or any facility of the Pacific Exchange, the NYSE Group board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is an ETP Holder, OTP Holder or OTP Firm.[66]

Members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[67] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions. In this regard, one commenter expressed concern regarding undue influence by certain NYSE members that own a large number of seats, and thus will own substantial equity interests in NYSE Group after the Merger, noting such members would have "an influence on its board composition."[68]

In addition, as proposed, New York Stock Exchange LLC will be a wholly owned subsidiary of NYSE Group. The Operating Agreement of New York Stock Exchange LLC identifies this ownership structure. Any changes to the Operating Agreement of New York Stock Exchange LLC, including any change in the provision that identifies NYSE Group as the sole owner, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[69] In addition, pursuant to the Operating Agreement of New York Stock Exchange LLC, NYSE Group may not transfer or assign its interest in New York Stock Exchange LLC, in whole or part, to any entity, unless such transfer or assignment is filed with and approved by the Commission under Section 19 of the Act.[70] Further, NYSE Group may resign from New York Stock Exchange LLC only if an additional owner is admitted to New York Stock Exchange LLC. The resignation of NYSE Group and the admission of a replacement member (or admission of an additional member, without NYSE Group's resignation) must be filed with

[56] *See* proposed NYSE Group Certificate of Incorporation, Article V, Section 1(E) and note 12 of the Notice for the definition of "related person."

[57] *See* proposed NYSE Group Certificate of Incorporation, Article V, Section 1(A).

[58] *See* proposed NYSE Group Certificate of Incorporation, Article V, Section 2(A).

[59] *See* proposed NYSE Group Certificate of Incorporation, Article V, Section 2(D).

[60] *See* proposed NYSE Group Certificate of Incorporation, Article V, Section 4.

[61] 15 U.S.C. 78c(a)(39).

[62] *See* proposed NYSE Group Certificate of Incorporation, Article V, Sections 1(A) and 2(C).

[63] 15 U.S.C. 78s.

[64] *See* proposed NYSE Group Certificate of Incorporation, Article V, Sections 1(A) and 2(B).

[65] *See* proposed NYSE Group Certificate of Incorporation, Article V, Sections 1(A) and 2(C).

[66] *Id.* ETP Holder is defined in the PCX Equities rules of the Pacific Exchange. OTP Holder and OTP Firm are defined in the rules of the Pacific Exchange.

[67] *See* Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19).

[68] IBAC February Letter, *supra* note, at 6. The commenter pointed to prior charges of regulatory favoritism by SROs (citing in part to a comment letter on the Concept Release Concerning Self-Regulation). *Id.*

[69] 15 U.S.C. 78s.

[70] *See* proposed Operating Agreement of New York Stock Exchange LLC, Article III, Section 3.03.

and approved by the Commission under Section 19 of the Act.[71]

The Commission finds the ownership and voting restrictions in the NYSE Group Certificate of Incorporation and the change in control provisions in the Operating Agreement of New York Stock Exchange LLC are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, New York Stock Exchange LLC, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

2. New York Stock Exchange LLC and Its Subsidiaries

a. New York Stock Exchange LLC

The New York Stock Exchange LLC board of directors will consist of a number of directors to be set by NYSE Group, as the sole owner of New York Stock Exchange LLC. All directors of New York Stock Exchange LLC must qualify as independent under the independence policy of the NYSE Group board of directors. A majority of the directors of New York Stock Exchange LLC will be directors of the NYSE Group (other than its chief executive officer), and twenty percent (20%), and not less than two, of the directors will be chosen by the members of New York Stock Exchange LLC ("LLC Fair Representation Directors").[72] The New York Stock Exchange LLC board of directors also may include other directors that are not NYSE Group directors ("Non-Affiliated LLC Directors").

NYSE Group will be obligated to appoint or elect as LLC Fair Representation Directors those candidates who are recommended jointly by the NYSE Market Director Candidate Recommendation Committee ("NYSE Market DCRC")[73] and the NYSE Regulation Director Candidate Recommendation Committee ("NYSE Regulation DCRC"),[74] including those candidates who emerge from the petition process of New York Stock Exchange LLC members (as described below).[75] If the New York Stock Exchange LLC board of directors includes Non-Affiliated LLC Directors, the nominating and governance committee of the NYSE Group board of directors will nominate candidates for such positions, and NYSE Group will appoint or elect such candidates as directors.

Immediately following the closing of the Merger, however, the New York Stock Exchange LLC board of directors will not include any LLC Fair Representation Directors because the process for choosing these directors will not have taken place. Accordingly, initially, it is expected that the New York Stock Exchange LLC board of directors will be comprised solely of NYSE Group directors.[76] As noted above, the vast majority of the initial NYSE Group directors will be the current NYSE board. These directors were elected by current NYSE members following a nomination process that permits the industry members of the NYSE Board of Executives to recommend 20% of the nominees and members to petition for alternate nominees. No New York Stock Exchange LLC members participated in the selection of directors for the initial board because New York Stock Exchange LLC does not yet have members. In light of these circumstances, and the NYSE's representation that the LLC Fair Representation Directors will be chosen by members and elected by NYSE Group as promptly as possible following the Merger,[77] the Commission believes that the proposed composition of the initial New York Stock Exchange LLC board of directors is consistent with the Act.

The Operating Agreement of New York Stock Exchange LLC permits the board of directors to delegate its powers to a committee appointed by the board which may consist partly or entirely of non-directors. The NYSE stated, however, that the board of directors of New York Stock Exchange LLC is not expected to have its own committees and that any necessary functions with respect to audit, compensation, nomination, and governance will be performed by the relevant committees of the NYSE Group board of directors.

b. NYSE Market

The NYSE Market board of directors will consist of a number of directors to be set by New York Stock Exchange LLC, as the sole equity owner of NYSE Market.[78] In addition, the board of directors will be composed as follows:

- The chief executive officer of NYSE Group will be a director of NYSE Market;
- A majority of the directors of NYSE Market will be NYSE Group directors (excepting the chief executive officer); and
- Twenty percent (20%), and not less than two, of the NYSE Market directors will be directors chosen by the members of New York Stock Exchange LLC ("Market Fair Representation Directors").

The NYSE Market board of directors also may include other directors that are not NYSE Group directors ("Non-Affiliated Market Directors"). The Market Fair Representation Directors and the Non-Affiliated Market Directors do not need to be independent, and must meet all status or constituent affiliation qualifications prescribed by any NYSE Market rule or policy filed with the Commission.[79]

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[71] *See* proposed Operating Agreement of New York Stock Exchange LLC, Article III, Sections 3.04 and 3.05.

[72] The NYSE amended the New York Stock Exchange LLC board composition in Amendment No. 8 to provide that a majority of the New York Stock Exchange LLC directors will be NYSE Group directors (other than the chief executive officer). The NYSE had previously proposed that all NYSE Group directors (other than the chief executive officer) would be on the New York Stock Exchange LLC board.

[73] On an annual basis, the NYSE Market board of directors will appoint a NYSE Market DCRC comprised of representatives of upstairs firms, specialists, and floor brokers.

[74] On an annual basis, the NYSE Regulation board of directors will appoint a NYSE Regulation DCRC comprised of representatives of upstairs firms, specialists, and floor brokers.

[75] *See infra* notes 98 to 100 and accompanying text. One commenter believes that the fair representation candidate recommendation process is extremely complex and confusing, questioning in particular how this process will work in practice if the two DCRC committees cannot agree on joint recommendations. SIA/TBMA Letter, *supra* note 6, at 18. The NYSE believes that, as a practical matter, there will be no conflicts between the two committees because they will act as one committee in making recommendations for LLC Fair Representation Directors and it is expected that the two committees will be comprised of the same persons. *See* NYSE Response to Comments, *supra* note 7, at 14.

[76] Although the size of the New York Stock Exchange LLC board will be fixed from time to time by NYSE Group, the NYSE represents that the board of directors of New York Stock Exchange LLC is not expected to have more than ten directors. *See* Amendment No. 8, *supra* note 9.

[77] The NYSE represented that the individuals who will serve on the initial NYSE Market DCRC and NYSE Regulation DCRC will be identified and meet informally prior to the closing of the Merger, so that promptly thereafter these committees may be formally constituted and recommend candidates for LLC Fair Representation Directors. Following the petition process, *infra* notes 98 to 100 and accompanying text, NYSE Group will promptly elect to the board candidates for LLC Fair Representation Directors chosen by members. Such election will occur no later than (and may occur prior to) the annual meeting of New York Stock Exchange LLC, which is expected to be held in June 2006. These directors will serve until the New York Stock Exchange LLC annual meeting in 2007. *See* Amendment No. 8, *supra* note 9.

[78] In Amendment No. 8, the NYSE proposes to eliminate the set initial number of directors. *See* Amendment No. 8, *supra* note 9.

[79] The SIA and TBMA in their comment letter questioned whether "status or constituent affiliation qualifications" refers to qualifications that applied to member directors prior to 2003. SIA/TBMA Letter, *supra* note 6, at note 24. The NYSE notes that the reference refers to qualifications that may be filed with the Commission in the future, and that it does not have any proposed

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New York Stock Exchange LLC will be obligated to appoint or elect as Market Fair Representation Directors, those candidates who are recommended by the NYSE Market DCRC, including those who emerge from the petition process of New York Stock Exchange LLC members (as described below).[80] If the NYSE Market board of directors includes Non-Affiliated Market Directors, the nominating and governance committee of the NYSE Group board of directors will nominate candidates for such positions, and New York Stock Exchange LLC will appoint or elect such candidates as directors.

Immediately following the closing of the Merger, however, the process for choosing Market Fair Representation Directors will not have taken place, and the NYSE Market board of directors will not include any Market Fair Representation Directors. Accordingly, immediately following the closing of the Merger, the NYSE Market board of directors will be comprised of the chief executive officer of NYSE Group and NYSE Group directors, and is expected to have only one Non-Affiliated Market Director.[81] As noted above, the vast majority of the initial NYSE Group directors will be the current NYSE board. These directors were elected by current NYSE members following a nomination process that permits the industry members of the NYSE Board of Executives to recommend 20% of the nominees and members to petition for alternate nominees. No New York Stock Exchange LLC members participated in the selection of directors for the initial board because New York Stock Exchange LLC does not yet have members. In light of these circumstances, and the NYSE's representation that the Market Fair Representation Directors will be chosen by members and elected by New York Stock Exchange LLC as promptly as possible following the Merger,[82] the Commission believes that the proposed composition of the initial NYSE Market board of directors is consistent with the Act.

The NYSE Market board of directors may create one or more committees comprised of NYSE Market directors. The NYSE has represented that it expects that the committees of the NYSE Group board of directors will perform the committee functions relating to audit, governance, nomination, and compensation. The NYSE Market board of directors also may create committees comprised in whole or in part of individuals who are not directors.

The NYSE has represented that upon completion of the Merger, the NYSE Market board of directors will establish one or more advisory committees to facilitate communication and provide input to the board of directors, management, and staff of NYSE Market and its affiliated entities on policies, programs, products, and services. The NYSE Market board of directors will create a Market Performance Committee comprised of representatives of member organizations. The Market Performance Committee will act in an advisory capacity regarding trading rules and other matters to be specified in its charter.[83]

The officers of NYSE Market will manage the business and affairs of NYSE Market, subject to the oversight by the NYSE Market board of directors. The chief executive officer of NYSE Group will serve as the chief executive officer of NYSE Market (and as a director of NYSE Market).

c. NYSE Regulation

The NYSE Regulation board of directors will consist of a number of directors to be set by New York Stock Exchange LLC, as the sole equity owner of NYSE Regulation.[84] The chief executive officer of NYSE Regulation will be a director of NYSE Regulation [85] and a majority of the directors of NYSE Regulation will be persons who are not NYSE Group directors, but who otherwise qualify as independent under the independence policy of the NYSE Group board of directors ("Non-Affiliated Regulation Directors").[86] Except for the NYSE Regulation board of directors immediately following the closing of the Merger, 20%, and not less than two, of the NYSE Regulation directors will be chosen by the members of New York Stock Exchange LLC ("Regulation Fair Representation Directors").[87] The remaining NYSE Regulation directors will be NYSE Group directors (other than its chief executive officer).

New York Stock Exchange LLC will be obligated to appoint or elect as Regulation Fair Representation Directors those candidates who are recommended by the NYSE Regulation DCRC, including those candidates who emerge from the petition process of New York Stock Exchange LLC members (as described below).[88] Non-Affiliated Regulation Directors will be nominated by the nominating and governance committee of NYSE Regulation. New York Stock Exchange LLC will appoint or elect such nominees to the board of directors of NYSE Regulation.

Immediately following the closing of the Merger, the NYSE Regulation board of directors will be comprised of three Non-Affiliated Directors and two NYSE Group directors. There will be no Regulation Fair Representation Directors because, as discussed above, the process for choosing such directors will not yet have taken place. The board of directors will, however, have a majority of Non-Affiliated Regulation Directors. The chief executive officer of NYSE Regulation will not become a member of the board of directors of NYSE Regulation until the Regulation Fair Representation Directors are elected to that board.[89]

Prior to the closing of the Merger, the NYSE's current nominating and governance committee will select directors to serve as the three Non-Affiliated Directors on the initial NYSE Regulation board.[90] The directors on NYSE's nominating and governance committee were elected by current NYSE members following a nomination

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qualifications filed with the Commission at this time. NYSE Response to Comments, *supra* note 7, at note 13 and telephone conversation between James F. Duffy, Senior Vice-President and Deputy General Counsel, NYSE, *et al.*, and Heather A. Seidel, Senior Special Counsel, Commission, Division, *et al.*, on February 10, 2006.

[80] *See infra* notes 98 to 100 and accompanying text.

[81] *See* Amendment No. 8, *supra* note 9. Although the size of NYSE Market board will be fixed from time to time by New York Stock Exchange LLC, the NYSE represents that the board of directors of NYSE Market is not expected to have more than ten directors. *See* Amendment No. 8, *supra* note 9.

[82] The NYSE represented that the individuals who will serve on the initial NYSE Market DCRC will be identified and meet informally prior to the closing of the Merger, so that promptly thereafter this committee may be formally constituted and recommend candidates for Market Fair Representation Directors. Following the petition process, *infra* notes 98 to 100 and accompanying text, New York Stock Exchange LLC will promptly elect to the board of NYSE Market candidates for Market Fair Representation Directors chosen by members. Such election will occur no later than (and may occur prior to) the annual meeting of NYSE Market, which is expected to be held in June 2006. These directors will serve until the annual meeting of NYSE Market in 2007. *See* Amendment No. 8, *supra* note 9.

[83] *See* proposed NYSE Rule 20(b). In connection with establishing these advisory committees, the NYSE proposes to eliminate references to the Board of Executives from the rules of the exchange.

[84] In Amendment No. 8, the NYSE proposes to eliminate the set initial number of directors. *See* Amendment No. 8, *supra* note 9.

[85] *See infra* note 89 and accompanying text.

[86] *See* Amendment No. 6, *supra* note 8.

[87] The Fair Representation Directors will compose part of the majority that are Non-Affiliated Regulation Directors.

[88] *See infra* notes 98 to 100 and accompanying text.

[89] *See* Amendment No. 8, *supra* note 9.

[90] The current NYSE nominating and governance committee is comprised of all of the independent directors on the current NYSE board. The current NYSE board is composed of only independent directors, plus the chief executive officer of the NYSE.

process that permits the industry members of the NYSE Board of Executives to recommend 20% of the nominees and members to petition for alternate nominees. No New York Stock Exchange LLC members participated in the selection of directors for the initial board because it does not yet have members. Moreover, NYSE Regulation does not yet have a nominating and governance committee to nominate candidates to serve as Non-Affiliated Directors. Prior to the first annual meeting of NYSE Regulation, the NYSE Regulation nominating and governance committee will be required, pursuant to the proposed NYSE Regulation Bylaws, to nominate Non-Affiliated Directors to be elected at the first annual meeting, which is expected to occur no later than June 2006. In light of these circumstances, and the NYSE's representation that the Regulation Fair Representation Directors will be chosen by members and elected by New York Stock Exchange LLC as promptly as possible following the Merger,[91] the Commission believes that the proposed composition of the initial NYSE Regulation board of directors is consistent with the Act.

The NYSE Regulation board of directors may create one or more committees comprised of NYSE Regulation directors. It will create a nominating and governance committee and a compensation committee, each of which will be comprised of a majority of Non-Affiliated Regulation Directors. The compensation committee will be responsible for setting the compensation for NYSE Regulation employees.[92] The nominating and governance committee will bear responsibility for nominating Non-Affiliated Regulation Director candidates. The NYSE has represented that it is expected that the audit committee of the NYSE Group board of directors will perform the board committee functions relating to audit.

The NYSE Regulation board of directors also may create committees comprised in whole or in part of individuals who are not directors. The NYSE Regulation board of directors will appoint a committee that, among other things, will review disciplinary decisions on behalf of the NYSE Regulation board of directors ("Committee for Review").[93] This committee will be comprised of directors of NYSE Regulation that satisfy the independence requirements (thus, any NYSE Regulation director, other than the chief executive officer), as well as persons who are not directors. A majority of the members of the Committee for Review voting on a matter must be directors of NYSE Regulation. Among the persons on the Committee for Review who are not directors, will be included representatives of member organizations that engage in a business involving substantial direct contact with securities customers (upstairs firms), specialists, and floor brokers.[94] In addition, the NYSE Regulation board of directors will create a Regulatory Advisory Committee, which will include representatives of member organizations. The Regulatory Advisory Committee will act in an advisory capacity regarding disciplinary matters and regulatory rules other than trading rules.[95]

The NYSE has represented that upon completion of the Merger, the NYSE Regulation board of directors is expected to establish one or more additional advisory committees to facilitate communication and provide input to the board of directors, management, and staff of NYSE Regulation and its affiliated entities on policies, programs, regulatory aspects of products, and services.

d. Fair Representation of New York Stock Exchange LLC Members

Section 6(b)(3) of the Act[96] requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs. This requirement helps to ensure that members have a voice in the self-regulatory authority and that the exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. As discussed below, the Commission believes that the NYSE's proposed requirement that 20% of the directors of the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation be chosen by members and the means by which they will be chosen satisfies the fair representation of members in the selection of directors and the administration of the exchange consistent with the requirements in Section 6(b)(3) of the Act.[97]

The DCRC committees, composed of member representatives, will nominate candidates to be LLC Fair Representation Directors, Market Fair Representation Directors, and Regulation Fair Representation Directors. In addition, members will be able to nominate directly candidates to be Fair Representation Directors through a petition process.

Specifically, member organizations may nominate candidates by submitting a petition signed by at least ten percent (10%) of the eligible signatures.[98] No member organization, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate.[99] If the number of candidates after the petition process is greater than 20% (or two) of the total number of members on the board of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, as applicable, then the member organizations will vote on the candidates.[100] No member organization, either alone or together with its affiliates, may account for more than 20% of the votes cast for a particular candidate. The candidates receiving the

[91] The NYSE represented that the individuals who will serve on the initial NYSE Regulation DCRC will be identified and meet informally prior to the closing of the Merger, so that promptly thereafter this committee may be formally constituted and recommend candidates for Regulation Fair Representation Directors. Following the petition process, *infra* notes 98 to 100 and accompanying text, New York Stock Exchange LLC will promptly elect to the board candidates for Regulation Fair Representation Directors chosen by members. Such election will occur no later than (and may occur prior to) the annual meeting of NYSE Regulation, which is expected to be held in June 2006. These directors will serve until the annual meeting of NYSE Regulation in 2007. *See* Amendment No. 8, *supra* note 9.

[92] *See* Amendment No. 6, *supra* note 8.

[93] This committee will be the successor committee to the current regulation, enforcement, and listing standards committee ("RELS Committee"). *See infra* note 192 and accompanying text.

[94] *See* proposed NYSE Regulation Bylaws, Article III, Section 5.

[95] *See* proposed NYSE Rule 20(b).

[96] 15 U.S.C. 78f(b)(3).

[97] *Id.* The Commission does not believe that there is only one method to satisfy the fair representation requirements of Section 6(b)(3) of the Act, and reviews each SRO proposal on its own terms to determine if it is consistent with the Act.

[98] For a candidate for the New York Stock Exchange LLC board of directors or the NYSE Regulation board of directors, each member organization is entitled to one signature for each Trading License owned by it, and each member organization that does not own a Trading License is entitled to one signature. For a candidate for the NYSE Market board of directors, each member organization is entitled to one signature for each Trading License owned by it, and a member organization that does not own a Trading License is not entitled to sign a petition.

[99] *See* proposed Operating Agreement of New York Stock Exchange LLC, Article II, Section 2.03(iv), proposed Bylaws of NYSE Market ("NYSE Market Bylaws"), Article III, Section 1(C), and proposed NYSE Regulation Bylaws, Article III, Section 1(C).

[100] For a candidate for the New York Stock Exchange LLC board of directors or the NYSE Regulation board of directors, each member organization is entitled to one vote for each Trading License owned by it, and each member organization that does not own a Trading License is entitled to one vote. For a candidate for the NYSE Market board of directors, each member organization is entitled to one vote for each Trading License owned by it, and a member organization that does not own a Trading License is not entitled to vote.

highest number of votes will become the Fair Representation Directors.

The Commission believes that members' participation on various committees, including the Market Performance Committee of the NYSE Market, and the Regulatory Advisory Committee and Committee for Review of NYSE Regulation, further provides for the fair representation of members in the administration of the affairs of the exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.[101]

In their joint comment letter on the proposed rule change, the SIA and TBMA state that the requirement that all New York Stock Exchange LLC and NYSE Regulation directors, including the 20% selected by the membership, be independent, as well as the way that "independence" is defined, does not comport with the "fair representation" requirement.[102] They also do not believe that such a structure is desirable from a policy perspective because it will exclude nearly all persons with significant and recent industry experience, which will result in inferior regulatory oversight.[103] The SIA and TBMA further believe that the need for direct member representation on these boards is heightened in a for-profit structure, particularly when directors of the for-profit parent, NYSE Group, are heavily represented on, or dominate, the exchange and regulatory boards.[104] They are concerned about conflicts of interest between the exchange's commercial interests and its regulatory responsibilities, particularly its regulation of members that are its competitors, and believe that such direct member representation is necessary to act as a "check against the [e]xchange misusing its regulatory power to gain advantage over its competitors."[105] Another commenter also questions whether the proposed structure meets the fair representation requirements of the Act, noting that NYSE Group's board lacks any industry input and that other boards or committees may have only token participation.[106]

The Commission believes that the fair representation requirement would not prohibit exchanges and associations from having boards of directors composed solely of independent directors, and that if a board of directors is composed wholly of independent directors, the candidate or candidates selected by members would have to be independent. The Commission also notes that it previously approved the NYSE's fully independent board, finding that such a board could be consistent with the Act and the fair representation and issuer and investor representation requirements.[107] The Commission recognizes the SIA's and TBMA's concern regarding potential heightened conflicts in a for-profit entity between an exchange's commercial interests and its regulation of members that are competitors. It would be a violation of the Act if the NYSE Regulation board were to advance the commercial interests of the NYSE Group at the expense of fulfilling New York Stock Exchange LLC's regulatory obligations.[108] The Commission finds that overall the composition of and selection process for the NYSE Regulation board of directors, as well as the New York Stock Exchange LLC and NYSE Market boards of directors, are consistent with Section 6(b)(3) of the Act,[109] and would permit the exchange to carry out its obligations under Section 6(b)(1) of the Act[110] to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.[111]

The SIA and TBMA also believe that NYSE's regulatory structure should ensure meaningful member representation in the rulemaking and funding processes of New York Stock Exchange LLC and NYSE Regulation, and that representation on purely advisory committees, such as the proposed Regulatory Advisory Committee, is insufficient to provide fair representation in the administration of the affairs of the exchange.[112] Specifically, the SIA and TBMA believe that the Regulatory Advisory Committee's advisory role is insufficient since its recommendations are non-binding, and that the mandate of the Committee is too narrow because it has no authority over rulemaking, spending, funding, or budget decisions of NYSE Regulation.[113] They believe that

[101] 15 U.S.C. 78f(b)(3). Each of the Market Performance and Regulatory Advisory Committees will include representatives of member organizations that do business on the floor and those that do not. The Market Performance Committee shall act in an advisory capacity regarding trading rules and other matters within its charter, and the Regulatory Advisory Committee shall act in an advisory capacity regarding disciplinary matters and regulatory rules other than trading rules. *See* proposed NYSE Rule 20(b). The Committee for Review, which will hear disciplinary appeals on behalf of the NYSE Regulation board of directors, will be composed of NYSE Regulation directors and member representatives. *See* NYSE Regulation Bylaws, Article III, Section 5. *See alsa infra* note and accompanying text.

[102] SIA/TBMA Letter, *supra* note 6, at 11.

[103] *Id.* at 14–16.

[104] The SIA and TBMA note that other demutualized SROs allow for direct member representation on their boards of directors. *Id.* at 12–13. The Commission does not believe that there is only one method to satisfy the fair representation requirements of Section 6(b)(3) of the Act, and reviews each SRO proposal on its own terms to determine if it is consistent with the Act.

[105] *Id.* at 11–12. *See alsa infra* discussion in Section II.C. on the independence of the exchange's regulatory function.

The SIA and TBMA, noting that the question of whether self-regulation remains a viable concept was posed by the Commission in the Concept Release Concerning Self-Regulation, believe that approval of the NYSE's proposal would be "tantamount" to the Commission concluding that members should not exercise a meaningful voice in regulating their business activities through existing SROs. *Id.* at 12. The Commission notes that its responsibility is to determine whether the NYSE's instant proposal is consistent with the Act, and that if the Commission were in the future to take action on the issue of whether the self-regulatory structure of the U.S. securities markets remains a viable structure, such action would impact all SROs.

[106] Nasdaq February Letter, *supra* note 6, at 6–7. The Commission notes that it has not required the board of directors of a holding company of an exchange to satisfy the requirements of Section 6(b)(3) of the Act. *See, e.g.*, Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[107] *See* NYSE 2003 Governance Approval Order, *supra* note 54. The Commission approved the current independence policy of the NYSE on February 16, 2005. *See* NYSE Independence Policy Approval Order, *supra* note 55.

[108] *See, e.g.*, Report pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market, August 8, 1996, available at the Commission's Web site (*http://www.sec.gav/litigatian/investrepart/nasdaq21a.htm*) ("1996 21(a) Report"), and Securities Exchange Act Release No. 51524 (April 12, 2005), available at the Commission's Web site (*http://www.sec.gav/litigatian/admin/34–51524.pdf*) ("2005 NYSE Administrative Cease-and-Desist Proceeding").

[109] 15 U.S.C. 78f(b)(3).

[110] 15 U.S.C. 78f(b)(1).

[111] One commenter recommended that to ensure that the views of the NYSE floor brokers will be heard and their interests protected, the governing documents of NYSE Group, NYSE Market, and NYSE Regulation should provide that their respective boards of directors at all times include at least one director that is currently affiliated with an active independent floor brokerage business on the NYSE floor. IBAC February Letter, *supra* note 6, at 22. The Commission notes that each of the DCRC committees of NYSE Market and NYSE Regulation, which are responsible for recommending the "fair representation" candidates for the boards of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, must have at least two individuals each of whom is associated with a member organization and spends a majority of his time on the trading floor of NYSE Market and has as a substantial part of his business the execution of transactions on the floor for other than his own account or the account of his member organization. *See* NYSE Market Bylaws, Article III, Section 5, and NYSE Regulation Bylaws, Article III, Section 5. In addition, any person that holds a Trading License, including a floor broker, will be able to utilize the petition process as described in this section.

[112] SIA/TBMA Letter, *supra* note 6, at 4.

[113] *Id.* at 16–17. The Commission notes that proposed NYSE Rule 20(b) provides that the Regulatory Advisory Committee shall act in an

member involvement in rulemaking is essential to counter the conflicts of interest posed by a for-profit exchange regulating its members, and that member representation in funding is an appropriate safeguard against excessive fees and budgeting demands.[114] Another commenter believes that fair representation in the governance process is crucial to prevent preferential treatment of certain members, and notes that the NYSE, although "concededly complying with minimum fair representation requirements," proposes to decrease the involvement of its independent constituencies in management by eliminating the Board of Executives.[115]

The Commission notes that the NYSE has proposed two specific member advisory committees, the Market Performance and the Regulatory Advisory Committees, pursuant to which members [116] will have a voice in the rulemaking process and disciplinary matters, as well as the Committee for Review, which will contain member representatives and will hear disciplinary appeals.[117] Although member participation through these committees will be advisory (except with respect to the Committee for Review), the board of NYSE Regulation will have to approve all rule changes of New York Stock Exchange LLC filed with the Commission. As discussed above, the Commission believes that members will have representation on the boards of directors of New York Stock Exchange LLC and NYSE Regulation (as well as NYSE Market) in compliance with the fair representation requirements of the Act. Further, the Commission notes that all proposed rule changes, including those imposing fees, must be filed by New York Stock Exchange LLC with the Commission. The Commission finds that these requirements, together with the composition of and selection process for the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, provide for the fair representation of members in the administration of the exchange consistent with the requirement in Section 6(b)(3) of the Act.[118]

e. Representation of Issuers and Investors

Section 6(b)(3) of the Act [119] also requires that the rules of an exchange provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange or with a broker or dealer. One commenter recommended that the Commission require that a certain number of directors on the boards of NYSE Group and its various subsidiaries be investor representatives.[120] The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[121] Further, public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the exchange board to address issues in a non-discriminatory fashion and foster the integrity of the New York Stock Exchange LLC.

The Commission finds that the New York Stock Exchange LLC, NYSE Market, and NYSE Regulation boards of directors satisfy the issuer and investor representation requirement in Section 6(b)(3) of the Act.[122] Furthermore, in nominating candidates to serve on the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation, the NYSE has represented that the nominating and governance committees of NYSE Group and NYSE Regulation will each nominate at least one director candidate to represent issuers and one director candidate to represent investors.[123] In addition, the Commission finds that public, non-industry representation on these boards is consistent with the Act, and in particular, Section 6(b)(1).[124]

B. Relationship of NYSE Group and Its Regulated Subsidiaries; Jurisdiction Over NYSE Group

Although NYSE Group will not itself carry out regulatory functions, its activities with respect to the operation of any of New York Stock Exchange LLC, NYSE Market, NYSE Regulation, ArcaEx, Pacific Exchange or PCX Equities (each, a "Regulated Subsidiary" and together, the "Regulated Subsidiaries") must be consistent with, and not interfere with, the Regulated Subsidiaries' self-regulatory obligations. The proposed NYSE Group corporate documents include certain provisions that are designed to maintain the independence of the Regulated Subsidiaries' self-regulatory functions from NYSE Group, enable the Regulated Subsidiaries to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act,[125] and facilitate the ability of the Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.[126]

For example, under the proposed NYSE Group Certificate of Incorporation, NYSE Group shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Regulated Subsidiaries.[127] Also, each director,

advisory capacity regarding regulatory rules other than trading rules, and that the Market Performance Committee of NYSE Market shall act in an advisory capacity regarding trading rules.

[114] *Id.* at 17–18. The SIA and TBMA also believe that it is appropriate and necessary that members participate in decisions regarding the use and allocation of funds collected from members, through membership and trading activity fees, and that member involvement is necessary to ensure that fees for market data and other services are cost-justified and not used to cross-subsidize other products or services. *Id.* at 18.

The SIA and TBMA recommend that members be represented on standing committees of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation responsible for rulemaking, assessing the effectiveness of the regulatory programs and funding, as well as on the nominating, governance, and audit committees. *Id.* at 24.

[115] IBAC February Letter, *supra* note 6, at 7.

[116] These two committees will contain representatives of member organizations doing business on the floor of the exchange and those that do not do business on the floor. *See* proposed NYSE Rule 20(b).

[117] *See supra* note and accompanying text. In its response to comments, the NYSE also notes the continuing role of the Compliance Advisory Committee. NYSE Response to Comments, *supra* note 7, at 11. In addition, New York Stock Exchange LLC and NYSE Regulation have the ability to appoint additional advisory committees comprised of persons that are not directors. The Commission notes that in its filing, the NYSE represented that the NYSE Market and NYSE Regulation boards of directors will establish one or more advisory committees. The purpose of these advisory committees is to facilitate communication and provide input to the boards of directors, management, and staff of each of NYSE Market and NYSE Regulation and their affiliated entities on policies, programs, products, regulatory aspects of products (with respect to NYSE Regulation), and services. *See supra* Sections II.A.2.b. and II.A.2.c.

[118] 15 U.S.C. 78f(b)(3).

[119] *Id.*

[120] ICI Letter, *supra* note 6, at 2.

[121] *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[122] 15 U.S.C. 78f(b)(3). The Commission notes that it has not required the board of directors of a holding company of an exchange to satisfy the requirements of Section 6(b)(3) of the Act. *See, e.g.*, Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[123] *See* Notice, *supra* note 5, at note 37.

[124] 15 U.S.C. 78f(b)(1).

[125] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[126] *See* proposed NYSE Group Certificate of Incorporation Article VI, Section 8; Article X; Article XI; Article XII; and Article XIII. *See also* NYSE Group Bylaws, Article VII, Section 7.9.

[127] *See* proposed NYSE Group Certificate of Incorporation, Article XII.

officer, and employee of NYSE Group, in discharging his or her responsibilities shall comply with the federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the Regulated Subsidiaries.[128] In addition, in discharging his or her responsibilities as a member of the board, each director of NYSE Group must, to the fullest extent permitted by applicable law, take into consideration the effect that NYSE Group's actions would have on the ability of the Regulated Subsidiaries to carry out their responsibilities under the Act.[129] NYSE Group, its directors, officers, and employees also shall give due regard to the preservation of the independence of the self-regulatory functions of the Regulated Subsidiaries.[130] Further, the NYSE Group agrees to keep confidential all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC, NYSE Market, NYSE Regulation, the Pacific Exchange, and PCX Equities, and not use such information for any commercial[131] purposes.[132]

In addition, NYSE Group's books and records will be subject at all times to inspection and copying by the Commission and, to the extent related to its operation or administration, any Regulated Subsidiary, and are deemed to be the books and records of the Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act.[133] NYSE Group, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States, also submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the Regulated Subsidiaries.[134]

Finally, the NYSE Group Certificate of Incorporation and Bylaws require that, for so long as NYSE Group controls any of the Regulated Subsidiaries, any changes to the NYSE Group Certificate of Incorporation and Bylaws be submitted to the board directors of the New York Stock Exchange LLC, NYSE Market, NYSE Regulation, the Pacific Exchange, and PCX Equities, and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act[135] and the rule thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.[136] The Commission finds that these provisions are consistent with the Act, and that they will assist New York Stock Exchange LLC in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

Under Section 20(a) of the Act,[137] any person with a controlling interest in New York Stock Exchange LLC and the Pacific Exchange would be jointly and severally liable with and to the same extent that New York Stock Exchange LLC and the Pacific Exchange are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[138] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[139] authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to NYSE Group's dealing with its Regulated Subsidiaries.

The Commission received four comment letters on the proposed rule change questioning Gerald Putnam's fitness to serve as an officer of NYSE Group or to lead the NYSE upon consummation of the Merger.[140] The issue of Mr. Putnam's fitness to serve as an officer or director of a public company or the NYSE is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,[141] an SRO (such as the NYSE) is required to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,[142] the Commission shall approve a proposed rule change filed by an SRO if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO. The NYSE is not providing in this filing for any particular person to serve as an officer or director of NYSE Group or any of its subsidiaries. In addition, Section 19(h)(4) of the Act[143] authorizes the Commission, if in its opinion 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, to remove or censure an officer or director of a national securities exchange if it finds, after notice and opportunity for a hearing, that such officer or director has willfully violated any provision of the Act, the rules or regulations thereunder, or the rules of such exchange, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any such provision by any member or person associated with a member.

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[128] *See* proposed NYSE Group Certificate of Incorporation, Article VI, Section 8.

[129] *See id.*

[130] *See* proposed NYSE Group Certificate of Incorporation, Article XII.

[131] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[132] *See* proposed NYSE Group Certificate of Incorporation, Article XI. The NYSE Group Certificate of Incorporation states that none of its provisions shall be interpreted so as to limit or impede the rights of the Commission or any of the Regulated Subsidiaries to access and examine such confidential information pursuant to the Federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees, or agents of NYSE Group to disclose such confidential information to the Commission or the Regulated Subsidiaries. *Id.*

The SIA and TBMA note that the NYSE Delegation Agreement provides that trading data that comes into the possession of NYSE Regulation from either New York Stock Exchange LLC or NYSE Market shall be treated as confidential and not be made available to the public. They believe this provision should be modified to clarify it is not intended to restrict access to market data, and that all trading data (other than counterparty names) should be available at cost after a brief period of time. SIA/TBMA Letter, *supra* note 6, at 20. The NYSE notes that this provision by its terms applies only to confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC or a delegated regulatory responsibility and therefore would not apply to the type of market data that has been for years disseminated to the public. NYSE Response to Comments, *supra* note 7, at A–2.

[133] *See* proposed NYSE Group Certificate of Incorporation, Article XI.

[134] *See* proposed NYSE Group Certificate of Incorporation, Article X.

[135] 15 U.S.C. 78s.

[136] *See* proposed NYSE Group Certificate of Incorporation, Article XIII and NYSE Group Bylaws, Article VII, Section 7.9.

[137] 15 U.S.C. 78t(a).

[138] 15 U.S.C. 78t(e).

[139] 15 U.S.C. 78u–3.

[140] *See* Borsellino Letter, Kopecky Letter, Lozman Letter, and Nathanson Letter, *supra* note 6. After the Merger, NYSE Group will be a publicly traded company and the holding company for the businesses of the NYSE and Archipelago. Mr. Putnam is currently the chairman of the board of directors and chief executive officer of Archipelago and the chairman of the Pacific Exchange. Upon completion of the Merger, it is intended that Mr. Putnam will be named as co-president and chief operating officer of NYSE Group. *See* letter from Kevin J.P. O'Hara, Chief Administrative Officer, General Counsel, and Secretary, Pacific Exchange, to Nancy M. Morris, Secretary, Commission, dated February 8, 2006.

[141] 15 U.S.C. 78s(b)(1).

[142] 15 U.S.C. 78s(b)(2).

[143] 15 U.S.C. 78s(h)(4).

C. Independence of Self-Regulatory Function

The NYSE has proposed several measures to help ensure the independence of its regulatory function from its market operations and other commercial interests. For example, all directors on the board of NYSE Regulation (other than its chief executive officer) will be required to be independent of management of NYSE Group and its subsidiaries, as well as of members and listed companies. In addition, a majority of the members of the NYSE Regulation board must be directors that are not also directors of NYSE Group. Although the NYSE will not have a regulatory oversight committee, the board of NYSE Regulation is expected to function in such capacity. Further, NYSE Regulation will have its own nominating and governance committee, rather than share the NYSE Group nominating and governance committee, and this committee also will be composed of a majority of directors that are not also directors of NYSE Group.

The chief executive officer of NYSE Regulation will function as the exchange's chief regulatory officer. This position will report solely to the NYSE Regulation board and not to any other NYSE Group entity, although he or she may attend the board meetings of such other entities as deemed appropriate to carry out his or her responsibilities.

The NYSE also proposes to establish a separate compensation committee for NYSE Regulation. This committee also will have a majority of non-NYSE Group directors. The NYSE Regulation compensation committee will be responsible for setting the compensation for NYSE Regulation employees; thus, the NYSE Group compensation committee will not have a say in this process.

The Commission further notes that the NYSE has taken steps to safeguard the use of regulatory monies. Specifically, New York Stock Exchange LLC will not be permitted to use any assets of, or any regulatory fees, fines, or penalties collected by, NYSE Regulation for commercial purposes or distribute such assets, fees, fines, or penalties to NYSE Group or any entity other than NYSE Regulation.[144]

The Commission is concerned about potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[145] In the Notice, the NYSE acknowledged that ownership of, or a control relationship with, a member organization by NYSE Group or any of its subsidiaries would necessitate that the foregoing concerns be first addressed with, and to the satisfaction of, the Commission.[146] Proposed NYSE Rule 2B provides that without prior Commission approval, the exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the exchange, or an affiliate of any affiliate of the exchange.[147]

One commenter on the proposed rule change specifically expressed the view that the proposed merger is structured in a manner to safeguard the regulatory and enforcement functions of the NYSE.[148] In particular, the commenter, noting that the future location and oversight of the regulatory functions of the NYSE is a key issue, believes that the proposed rule change "presents a very thoughtful structure designed to ensure the independence of NYSE Regulation, while maintaining its closeness to the market."[149] The commenter believes that this structure will assure that the for-profit status of NYSE Group does not interfere with NYSE Regulation meeting its duties to investors and other market participants, while promoting market-sensitive regulation.[150]

Several other commenters express concerns about potential conflicts of interest between the NYSE's self-regulatory obligations and its commercial activities, particularly in a for-profit structure. These commenters do not believe that the NYSE's proposal provides for adequate separation of such functions.[151]

The SIA and TBMA emphasize their concern that the exchange may use its regulatory power to disadvantage its competitors (*i.e.*, its members).[152] They believe this concern is heightened with a governance structure that provides NYSE Group, the for-profit entity, control of the exchange board and a dominant role on the regulatory board (coupled with no direct member representation on those boards).[153] They also believe that, because New York Stock Exchange LLC is the sole owner of NYSE Regulation and the NYSE Delegation Agreement gives New York Stock Exchange LLC authority to review, approve, or reject action taken by NYSE Regulation (other than action taken upon review of disciplinary decisions by the board of NYSE Regulation),[154] there cannot be

[144] The NYSE originally included this covenant in the NYSE Delegation Agreement. In Amendment No. 8, the NYSE deleted this provision from the NYSE Delegation Agreement and included the provision in the Operating Agreement of New York Stock Exchange LLC. The substance remains the same.

[145] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving Archipelago's acquisition of the Pacific Exchange).

[146] The NYSE represented that it does not currently, nor after the Merger will it, own or control any of its member organizations. The NYSE also stated that to the extent that a member organization will be the owner of NYSE Group common stock, the ownership limitations described above are intended to deal with the issues that might otherwise be presented. *See* Notice, *supra* note 5, at 2084.

[147] Proposed NYSE Rule 2B also provides that it does not prohibit a member organization from acquiring or holding an equity interest in NYSE Group that is permitted by the ownership limitations contained in the NYSE Group Certificate of Incorporation.

[148] *See* NAST Letter, *supra* note 6.

[149] *Id.* at 2.

[150] *Id.* at 2.

[151] *See* CalPERS Letter, IBAC February Letter, ICI Letter, NASD Letter, Nasdaq February Letter, and SIA/TBMA Letter, *supra* note 6. *See also* Nasdaq Extension Letter, *supra* note 6.

[152] SIA/TBMA Letter, *supra* note 6, at 3. The SIA and TBMA also note the potential for the profit motive of a shareholder-owned exchange to detract from self-regulation through, for example, insufficient funding of regulation. *Id.* at 6.

[153] *Id.* at 6–7. Other commenters also point to NYSE Group's control of NYSE Regulation as a reason there is insufficient regulatory independence within the proposed structure. Nasdaq states that the selection of NYSE Regulation directors is ultimately controlled by NYSE Group. Nasdaq February Letter, *supra* note 6, at 5. IBAC believes that NYSE Group will have control over a majority of NYSE Regulation's board, through its appointment of the NYSE Group directors and non-NYSE Group directors (which must constitute a majority) on NYSE Regulation's board. IBAC February Letter, *supra* note 6, at 5, 8. The Commission notes that the NYSE Group directors on the NYSE Regulation board will be a minority, and thus will not by themselves be able to control any decisions of the board. In addition, the non-NYSE Group directors on the NYSE Regulation board—which must be a majority of the board—will not be selected by NYSE Group or New York Stock Exchange LLC. Rather, they will be selected either by (1) the NYSE Regulation DCRC, which is composed of member representatives, or members, through a petition process, or (2) the NYSE Regulation nominating and governance committee, which must have a majority of non-NYSE Group directors. New York Stock Exchange LLC must appoint or elect such persons as directors (unless they do not meet the independence requirements or are subject to a statutory disqualification). *See supra* Sections II.A.2.c. and II.A.2.d. for a more detailed description of the board nomination and election process for NYSE Regulation.

[154] Although proposed New York Stock Exchange Rules 475, 476, and 476A state that the New York Stock Exchange LLC board will be able to review disciplinary decisions pursuant to those rules, New York Stock Exchange LLC has delegated such authority to NYSE Regulation pursuant to the NYSE

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sufficient regulatory independence with the presence of NYSE Group directors on the New York Stock Exchange LLC board.[155] The SIA and TBMA recommend that the NYSE be required to create greater structural separation by reducing or eliminating NYSE Group representation on the New York Stock Exchange LLC and NYSE Regulation boards and by permitting direct member representation on those boards.[156]

Several commenters believe that a for-profit structure is inconsistent with self-regulatory obligations. Nasdaq believes that it is fundamentally inconsistent with the mission of a for-profit entity for the entire regulatory apparatus to exist within the for-profit entity, given the fiduciary duty to maximize profits.[157] IBAC also emphasizes its view that the corporate fiduciary duty of directors in a for-profit entity to maximize profits is inconsistent with SRO obligations. As long as NYSE Group controls the appointment of a majority of NYSE Regulation directors, IBAC believes that its profit motive will "reign supreme," [158] and is concerned about compromising exchange operations in favor of short term profits.[159] The SIA and TBMA also raise this issue, questioning why language requiring the directors of NYSE Group to take into consideration the effect their actions would have on the ability of the Regulated Subsidiaries to carry out their responsibilities under the Act, and the language requiring the NYSE Group directors to give due regard to the preservation of the independence of the self-regulatory function of the Regulated Subsidiaries, would carry more weight than the fiduciary obligation to maximize profits.[160]

Nasdaq believes that it is not appropriate to have all front-line member regulatory responsibilities in the overall entity that operates the trading facility.[161] Nasdaq notes that, pursuant to its exchange registration application, it has vested most of its front-line regulatory responsibilities in NASD through contract, and that NASD will no longer be affiliated with Nasdaq. Nasdaq contrasts its structure with the NYSE's proposed structure, noting that all of the regulatory responsibilities of the New York Stock Exchange LLC and the Pacific Exchange will be vested in entities that are subject to the control of NYSE Group, a for-profit entity.[162] IBAC requests that the Commission consider spinning off NYSE Regulation as separate not-for-profit entity completely independent of NYSE Group,[163] while CalPERS recommends a model that has complete separation between the regulatory and non-regulatory functions, such as the enterprise model for the Public Company Accounting Oversight board.[164] NASD believes that implementing a hybrid model of self-regulation will eliminate inherent conflicts when a regulator operates a market.[165]

To the extent that a well-regulated market is considered by an SRO's owners to be in their commercial interests, demutualization could better align the goals of SRO owners with their statutory obligations. The NYSE believes that NYSE Group has "every incentive" to ensure robust regulatory oversight of its market, members, and listed companies because a well-regulated marketplace is essential to attracting, and retaining, listing and trading on its market.[166] To the extent that there is a concern that profit motives may override the incentive to have a well-regulated market, as detailed above in this section the NYSE has proposed an overall structure, with several specific safeguards, designed to allow the exchange's regulatory program to function independently from its market operations and other commercial interests. As a result, the Commission finds that the NYSE's proposal, taken together, is consistent with the Act, particularly with Section 6(b)(1),[167] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.

D. Delegation of Authority From New York Stock Exchange LLC

As described in detail in the Notice, the NYSE Delegation Agreement provides that New York Stock Exchange LLC will delegate to NYSE Regulation the performance of regulatory functions.[168] New York Stock Exchange LLC will delegate performance of its market functions to NYSE Market pursuant to the NYSE Delegation Agreement.[169] The NYSE also proposes to add NYSE Rule 20(a), which codifies New York Stock Exchange LLC delegation to NYSE Market and NYSE Regulation to act on behalf of New York Stock Exchange LLC, pursuant to the NYSE Delegation Agreement.[170]

New York Stock Exchange LLC, however, expressly retains ultimate responsibility for the fulfillment of its statutory and self-regulatory obligations under the Act. Accordingly, New York Stock Exchange LLC will retain ultimate responsibility for such delegated responsibilities and functions, and any actions taken pursuant to delegated authority will remain subject to review, approval, or rejection by the board of directors of New York Stock Exchange LLC in accordance with procedures established by that board of directors (provided however, that action taken upon review of disciplinary decisions by the NYSE Regulation board of directors shall be final action of the New York Stock Exchange LLC). The NYSE has filed the NYSE Delegation Plan as part of its rules.

New York Stock Exchange LLC expressly retains the authority to: (1) Delegate authority to NYSE Regulation and, to the extent applicable, NYSE Market to take actions on behalf of the New York Stock Exchange LLC; (2) elect the members of the boards of directors of NYSE Market and NYSE Regulation; (3) coordinate actions of NYSE Regulation and NYSE Market as necessary; (4) resolve as appropriate any disputes between NYSE Regulation and NYSE Market; and (5) direct NYSE Regulation and NYSE Market to take

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Delegation Agreement, and has explicitly stated in such agreement that action taken by NYSE Regulation shall be final action of the exchange. Thus, New York Stock Exchange LLC will not be able to review any disciplinary action taken by NYSE Regulation. Any change to the NYSE Delegation Agreement would be required to be filed as a proposed rule change pursuant to Section 19(b) of the Act 15 U.S.C. 78f(b).

[155] SIA/TBMA Letter, *supra* note 6, at 8–9.

[156] *Id.* at 4. The ICI also suggests that the NYSE increase the number of NYSE Regulation board members that are not NYSE Group board members to more than a simple majority. ICI Letter, *supra* note 6, at 2.

See also *supra* notes 102 to 110 and accompanying text for a discussion of the SIA and TBMA's comments on, and the Commission's response to, the NYSE's proposal that all board members be independent.

[157] Nasdaq February Letter, *supra* note 6, at 5. Nasdaq specifically mentions a concern regarding under or over regulation of members. *Id.*

[158] IBAC February Letter, *supra* note 6, at 3–5.

[159] *Id.* at 4.

[160] SIA/TBMA Letter, *supra* note 6, at 9–10.

[161] Nasdaq February Letter, *supra* note 6, at 5.

[162] *Id.* at 5.

[163] IBAC February Letter, supra note 6, at 22.

[164] CalPERS Letter, *supra* note 6, at 2. This model would require the Commission to appoint directly the members of the entity overseeing NYSE Regulation. CalPERS also recommends that, in the absence of complete separation, at a minimum the Commission and NYSE Group monitor the effectiveness of NYSE Regulation over the next 18 months and report publicly on their findings. *Id.* In this regard, the Commission notes that it has ongoing regulatory, examination, and enforcement programs designed to carry out its oversight obligations with respect to the exchanges and other SROs that it regulates.

[165] NASD Letter, *supra* note 6. *See also supra* notes 21 to 25 and accompanying text.

[166] NYSE Response to Comments, *supra* note 7, at 5.

[167] 15 U.S.C. 78f(b)(1).

[168] *See* Notice at "Delegation and Protection of SRO Functions; Services Agreement" and NYSE Delegation Agreement, II.A.

[169] *See* Notice at "Delegation and Protection of SRO Functions; Services Agreement" and NYSE Delegation Agreement, III.A.

[170] *See* proposed NYSE Rule 20(a).

action necessary to effectuate the purposes and functions of New York Stock Exchange LLC, consistent with the independence of the regulatory functions delegated to NYSE Regulation, exchange rules, policies and procedures, and the federal securities laws.[171] All other regulatory and market functions are delegated to NYSE Regulation and NYSE Market.

1. Delegation to NYSE Regulation

NYSE Regulation will have delegated authority to, among other things, determine regulatory and trading policy relating to the business of New York Stock Exchange LLC members and member organizations and trading on NYSE Market, develop and adopt necessary and appropriate rule changes, monitor the qualifications of members and member organizations, and their associated persons, administer programs for the surveillance and enforcement of trading on NYSE Market and any of its facilities, initiate disciplinary actions to assure compliance with the rules and procedures of New York Stock Exchange LLC and the federal securities laws, and establish and assess regulatory fees. No assets of, and no regulatory fees, fines or penalties collected by NYSE Regulation, will be distributed or otherwise used by the rest of NYSE Group.

As noted above in Section II.C., in their comment letter the SIA and TBMA express concern about the fundamental conflict between the interests of a for-profit entity and the members that it regulates, and their belief that the NYSE proposal does not provide for adequate separation of its regulatory and commercial functions.[172] To support this contention, the SIA and TBMA point, in part, to the provision of the NYSE Delegation Agreement that provides that actions taken by NYSE Regulation or NYSE Market pursuant to delegated authority remain subject to review, approval, or rejection by the board of directors of New York Stock Exchange LLC (other than action taken upon review of disciplinary decisions by the board of NYSE Regulation, which shall be final action of the New York Stock Exchange LLC).[173]

The Commission recognizes the SIA's and TBMA's concern with respect to oversight by New York Stock Exchange LLC of functions that have been delegated to NYSE Regulation. As discussed more fully above in Section II.C., the NYSE has proposed certain measures that are designed to ensure the independence of regulation from the NYSE's commercial interests. For example, NYSE Regulation will have its own compensation and nominating and governance committees, both of which must be composed of a majority of non-NYSE Group directors. In addition, New York Stock Exchange LLC will not have the right to review any disciplinary action taken by NYSE Regulation. Further, the Commission notes that any proposed rule change of New York Stock Exchange LLC is required to be filed with, or filed with and approved by, the Commission pursuant to Section 19(b) of the Act.[174] The Commission also notes its own oversight responsibility with respect to the regulatory obligations of New York Stock Exchange LLC and NYSE Regulation, as well as the SRO's own legal obligations.[175]

The Commission finds that New York Stock Exchange LLC's plan of delegation is consistent with the requirements of Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act.[176] The Commission finds it is consistent with the Act for New York Stock Exchange LLC to delegate its regulatory functions, while retaining ultimate responsibility for ensuring that its exchange business is conducted in a manner consistent with the requirements of the Act.

2. Delegation to NYSE Market

NYSE Market will have delegated authority to, among others, oversee the operation of NYSE Market, develop and adopt listing rules and rules governing the issuance of Trading Licenses, and establish and assess listing, access, transaction, and market data fees.[177] The Commission finds it is consistent with the Act for New York Stock Exchange LLC to delegate its market functions, while retaining ultimate responsibility for ensuring that its exchange business is conducted in a manner consistent with the requirements of the Act.

In addition, NYSE Market will have the authority to act as a securities information processor ("SIP") for quotations and transaction information related to securities traded on NYSE Market and other trading facilities operated by NYSE Market.[178] Section 11A(b)(1) of the Act[179] provides for the registration with the Commission of a securities information processor[180] that is acting as an exclusive processor.[181] Because NYSE Market will be engaging on an exclusive basis on behalf of New York Stock Exchange LLC in collecting, processing, or preparing for distribution or publication information with respect to transactions or quotations on or effected or made by means of a facility of New York Stock Exchange LLC, it is an exclusive processor that will, as of the closing date of the Merger, be required to register pursuant to Section 11A(b) of the Act.[182]

Section 11A(b)(1) of the Act[183] provides that the Commission may, by rule or order, upon its own motion or upon application by a SIP, conditionally or unconditionally exempt-any SIP from

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[171] *See* Notice at "Delegation and Protection of SRO Functions; Services Agreement" and NYSE Delegation Agreement, I.

[172] *See* SIA/TBMA Letter, *supra* note 6.

[173] *Id.* at 8.

[174] 15 U.S.C. 78s(b).

[175] *See, e.g.*, 1996 21(a) Report and 2005 NYSE Administrative Cease-and-Desist Proceeding, *supra* note 108, and Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding The Nasdaq Stock Market, Inc., as Overseen By Its Parent, The National Association of Securities Dealers, Inc., February 9, 2005, available at the Commission's Web site (*http://www.sec.gov/litigation/investreport/34-51163.htm*).

[176] 15 U.S.C. 78f(b)(1).

[177] *See* Notice at "Delegation and Protection of SRO Functions; Services Agreement" and NYSE Delegation Agreement, III.A. NYSE Market's responsibilities will include the operation of Market Watch, a unit whose functions include, among others, coordination with listed companies, floor officials, and regulatory staff of NYSE Regulation with respect to dissemination of news and trading halts. This unit is distinguished from the Stock Watch unit within NYSE Regulation, whose functions will include review of exception reports, alerts, and investigations. One commenter questions whether it is appropriate to include the Market Watch function within NYSE Market's responsibilities, in light of the indictment of several NYSE floor officials and related Commission cease and desist proceedings. Nasdaq February Letter, *supra* note 6, at 9. The NYSE notes that Market Watch's duties are primarily informational, not regulatory, in nature. NYSE Response to Comments, *supra* note 7, at 14. In addition, NYSE represents that Market Watch will coordinate with regulatory staff of NYSE Regulation. *See* Notice, *supra* note 5, at note 29. The Commission believes that this delegation of functions to NYSE Market is consistent with the Act.

The NYSE also represented that NYSE Market will establish the principles and policies under which trading on NYSE Market will be conducted, and those principles and policies will be codified by NYSE Regulation in the rules of New York Stock Exchange LLC. In addition, the NYSE represented that, in light of the self-regulatory responsibilities of New York Stock Exchange LLC and NYSE Market, those entities as well as NYSE Group, will be responsible for referring to NYSE Regulation, for investigation and action as appropriate, any possible rule violations that come to their attention. *See* Amendment No. 6.

[178] *See* NYSE Delegation Agreement, Section III.A.3.

[179] 15 U.S.C. 78k–1(b)(1).

[180] *See* Section 3(a)(22)(A) of the Act, 15 U.S.C. 78c(a)(22)(A), for the definition of a SIP. An SRO is explicitly excluded from the definition of a SIP.

[181] Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B) defines an exclusive processor. Rule 609 under the Act, 17 CFR 242.609, requires that the registration of a SIP be on Form SIP, 17 CFR 249.1001.

[182] 15 U.S.C. 78k–1(b)(1). An SRO that is an exclusive processor is exempt from registration under Section 11A(b)(1) of the Act because it is excluded from designation as a SIP.

[183] 15 U.S.C. 78k–1(b)(1).

any provision of Section 11A of the Act [184] or the rules or regulation thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 11A of the Act,[185] including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system.[186]

The Commission has determined to grant NYSE Market a temporary exemption from registration under Section 11A(b)(1) of the Act and Rule 609 thereunder for a period of thirty (30) days from the date of closing of the Merger, while an application for registration or an application for an exemption pursuant to Section 11A(b)(1) of the Act and Rule 609 thereunder is prepared.[187] The Commission also has determined to grant a conditional continuation of the 30-day temporary exemption from registration of NYSE Market, conditioned upon its filing of an application for registration or application for an exemption from registration within the 30-day time period. Such continuation shall continue for a period of 90 days following the end of the 30-day period and will afford interested persons an opportunity to submit written comments concerning the application filed with the Commission.[188]

Upon closing of the Merger, NYSE Market will succeed to the exchange business of the NYSE and will be regulated as a facility of New York Stock Exchange LLC.[189] The Commission therefore finds that such temporary exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 11A of the Act. The exemptions are for a limited period of time during which the Commission will have regulatory authority over NYSE Market.

E. Regulation and Disciplinary Process

Currently, the regulatory responsibilities of the NYSE are performed within the NYSE through the NYSE regulatory group.[190] The Office of the Hearing Board and the Chief Hearing Officer are not currently within the NYSE regulatory group; instead, they report to the NYSE board of directors through its regulatory oversight committee. The heads of Corporate Audit and Regulatory Quality Review ("RQR") likewise currently report to the regulatory oversight committee with respect of RQR functions.

After the Merger, the current NYSE regulatory group will operate as NYSE Regulation, a separate not-for-profit entity. NYSE Regulation will have the same responsibilities as the NYSE regulatory group's current responsibilities, and will contract to provide certain regulatory services to the Pacific Exchange. The NYSE Regulation board of directors will perform all the functions of the current NYSE regulatory oversight committee, with the Office of the Hearing Board and the RQR reporting to the NYSE Regulation board.

The NYSE has not proposed in this filing any changes to the initial disciplinary process.[191] Initial disciplinary hearings will be held before a Hearing Panel, the members of which will be drawn from the Hearing Board. The members of the Hearing Board will be appointed by the chairman of NYSE Regulation, subject to the approval of the board of directors of NYSE Regulation, as will a chief hearing officer and one or more other hearing officers.

The NYSE has proposed changes to its process for review of disciplinary decisions. The proposed changes to NYSE Rules 475 and 476 provide that appeals of disciplinary decisions will be to the New York Stock Exchange LLC board of directors. However, pursuant to the NYSE Delegation Agreement, New York Stock Exchange LLC has delegated such authority to the board of directors of NYSE Regulation. Action taken by the board of directors of NYSE Regulation will be final action of the New York Stock Exchange LLC.

The NYSE has proposed that the board of directors of NYSE Regulation will delegate the authority to hear disciplinary appeals to the new Committee for Review, which will be the successor committee to the current RELS Committee of the NYSE board of directors.[192] The Committee for Review will include both NYSE Regulation directors and other individuals representing member constituencies. The NYSE represented that the Committee for Review also is expected to include individuals representing investor and listed company constituencies.[193]

In addition to the division or department of NYSE Regulation that brought the charges, the respondent, or any member of the board of directors of NYSE Regulation, the proposed rules provide that any member of the Committee for Review will be authorized to call up disciplinary decisions of a Hearing Panel for review. In addition, newly proposed Executive Floor Governors, who will include at least two specialists and two floor brokers and will constitute the most senior level of practitioner supervision on the trading floor,[194] will be able to call up disciplinary decisions for review.

The NYSE Regulation board of directors can elect to review decisions by the Committee for Review. Any such

[184] 15 U.S.C. 78k–1.

[185] *Id.*

[186] *See also* Rule 609(c), 17 CFR 242.609(c).

[187] See Securities Exchange Act Release No. 12079 (February 6, 1976) (order granting temporary exemption from SIP registration for Nasdaq for (1) a period of 30 days following the consummation of the sale of the Nasdaq system to NASD and the assignment of NASD's rights in such purchase to Nasdaq, a subsidiary of NASD and (2) an additional period of ninety (90) days following the day of publication of notice of filing of an application for registration or exemption from registration, if such application is received within the original 30 days). *See also* Securities Exchange Act Release Nos. 13278 (February 17, 1977) (granting Bradford National Clearing Corporation, which was to perform SIP functions for the Pacific Exchange, a 90-day temporary exemption from registration as a SIP pending Commission determination of Bradford's application for a permanent exemption, such 90-day period to begin from the consummation of the agreement calling for Bradford's assumption of the SIP services) and 27957 (April 27, 1990), 55 FR 19140 (May 8, 1990) (granting NASD a 90-day temporary exemption from registration of its subsidiary, Market Services, Inc., which was to operate NASD's PORTAL market, as a SIP pending Commission review of its application for registration filed with the Commission).

[188] Publication of notice of the filing of an application for registration is required by Section 11A(b)(3) of the Act, 15 U.S.C. 78k–1(b)(3).

[189] After the Merger, NYSE Market will hold all of the current assets and liabilities of the NYSE other than its registration as a national securities exchange and other than assets or liabilities relating to regulator functions. See Notice, *supra* note 5.

[190] This group is currently referred to as "NYSE Regulation" and was so referenced in the Notice. To avoid confusion with NYSE Regulation, the not-for profit entity that will be a wholly owned subsidiary of New York Stock Exchange LLC after the Merger, we are referring to the current regulatory group as "NYSE regulatory group."

[191] The Commission notes that it has recently approved a rule change by the NYSE that makes several substantive changes to NYSE Rules 475 and 476. The NYSE does not intend to implement these changes, however, until April 1, 2006. *See* Securities Exchange Act Release No. 53124 (January 13, 2006), 71 FR 3595 (January 23, 2006). For purposes of clarity, Exhibit 5A of Amendment No. 8 reflects the changes proposed in this filing against the current operating version of NYSE Rules 475 and 476. The NYSE represents that it will file a proposed rule change to update Rules 475 and 476, as amended by this proposed rule change, to reflect the changes that will be implemented on April 1, 2006. *See* Amendment No. 8, *supra* note 9, at 7.

[192] See proposed NYSE Regulation Bylaws, Article III, Section 5.

[193] See Notice, *supra* note 5, at 2093.

[194] *See* proposed NYSE Rule 46A. Executive Floor Governors will be appointed by the board of directors of New York Stock Exchange LLC, in consultation with the board of directors of NYSE Regulation. Executive Floor Governors shall generally have the responsibilities of the current floor representatives on the Board of Executives, including being able to call matters for review.

decision of the NYSE Regulation board of directors will be considered final action of the exchange.[195] There will be no review by the New York Stock Exchange LLC board of directors.

The Commission finds that the changes proposed to the disciplinary process are consistent with the Act, in particular Sections 6(b)(6) and 6(b)(7) of the Act,[196] in that they provide fair procedures for the disciplining of members and persons associated with members.

F. Trading Licenses; Access to NYSE Market

Following the Merger, NYSE Market will issue Trading Licenses that will entitle their holders to have physical and electronic access to the trading facilities of NYSE Market, subject to the limitations and requirements specified in the rules of the New York Stock Exchange LLC.[197] An organization may acquire and hold a Trading License only if and for so long as such organization is qualified and approved to be a member organization of New York Stock Exchange LLC. A member organization holding a Trading License may designate a natural person to effect transactions on its behalf on the floor of NYSE Market, subject to such qualification and approvals as may be required in the rules of the New York Stock Exchange LLC.

The price and number of Trading Licenses to be issued will be determined annually by means of a Dutch auction, through which NYSE Market will establish the clearing price ("Clearing Price") at which all Trading Licenses are sold.[198] For each auction, NYSE Market will determine the minimum price that a bidder will be required to pay for each Trading License ("Minimum Bid Price"), which will be no greater than 80% of the auction price at the last annual auction. Auction participants may enter either priced bids or unpriced "at the market" bids. At the end of the auction, NYSE Market will select the highest bid price that will allow it to maximize its auction revenue. The Clearing Price, however, may not be greater than the price that will result in the sale of at least 1,000 Trading Licenses.

NYSE Market will not sell in the auction more than 1,366 Trading Licenses. If the bids at the Clearing Price would bring the total number of licenses to be sold to more than 1,366, NYSE Market will first sell licenses to the unpriced "at the market" bids and higher priced bids, and then will allocate the remaining available Trading Licenses among the bids at the Clearing Price by lot. NYSE Market also may, in its discretion, sell the number of Trading Licenses determined by the Clearing Price at a price less than the Clearing Price, but not lower than the Minimum Bid Price.

If there are insufficient bids at the Minimum Bid Price (including unpriced "at the market" bids) for the purchase of at least 1,000 Trading Licenses, NYSE Market may sell the largest number of Trading Licenses that can be sold at the Minimum Bid Price, even if such number of Trading Licenses is less than 1,000. NYSE Market also may choose to conduct another auction or auctions and set a new Minimum Bid Price (which may be lower than the initial Minimum Bid Price) and NYSE Market will not be required to establish a Clearing Price that will result in the sale of at least 1,000 Trading Licenses.

In each auction, NYSE Market will limit the number of Trading Licenses that may be bid for by a single member organization to a number that is the greater of (i) 35 and (ii) 125% of the number of Trading Licenses utilized by that member organization in its business immediately prior to the auction.

Except for the Trading Licenses to be issued for the year in which the Merger occurs, each Trading License will be valid for one year. Trading Licenses will not be transferable, and may not be assigned, sublicensed, or leased, in whole or in part.[199] Trading Licenses may be transferred, however, with the prior written consent of NYSE Market, to a qualified and approved member organization that (i) is an affiliate of the Trading License holder, or (ii) continues substantially the same business of the Trading License holder without regard to the form of the transaction used to achieve such continuation (*e.g.*, merger, sale of substantially all assets, reincorporation, reorganization or similar transaction).

During the periods between auctions, NYSE Market will make available for sale additional Trading Licenses. The price for Trading Licenses sold between auctions will be equal to the auction price of the most recent auction, plus a premium of ten percent (10%), with the total prorated to reflect the amount of time remaining in the year. NYSE Market will not issue in any one year more than 1,366 Trading Licenses.

Trading Licenses will expire at the end of the calendar year for which they are issued. However, the holder of a Trading License may terminate the license prior to the end of the calendar year by providing at least ten days' prior written notice to NYSE Market of such termination and paying a termination fee equal to one monthly installment of the Trading License Price. In addition, if a Trading License holder has ceased to be a member organization of New York Stock Exchange LLC for any reason, such holder will be deemed to have terminated its Trading License as of the date it ceased to be a member organization.

The NYSE also proposed to establish auction procedures for the issuance of Trading Licenses in the year in which the Merger occurs. Under proposed NYSE Rule 300T, the first auction will be conducted in accordance with the procedures outlined in proposed NYSE Rule 300, except that a maximum bid price ("Maximum Bid Price") also will be established. The Minimum Bid Price and Maximum Bid Price will be 80% and 120%, respectively, of the average annual lease price for leases (including renewal leases), which leases (or renewals) commenced during the six-month period ending on the last business day of the last calendar month ending at least thirty days before the opening of the auction. Trading Licenses issued in such auction will expire at the end of the calendar year in which the Merger occurs.

The Commission observes that the NYSE's proposal makes certain modifications to the Dutch auction model that are designed to provide that qualified member organizations will have fair access to NYSE Market. In particular, the proposed rules restrict the number of Trading Licenses that each member organization may bid for in an auction to the greater of 35 Trading Licenses and 125% of the Trading Licenses used by such member organization in its business immediately prior to the auction. In addition, the Dutch auction procedure for issuing Trading Licenses requires that the Minimum Bid Price be set at a price that is no greater than 80% of the prior year's auction price.

The proposal also restricts NYSE Market from selecting an auction Clearing Price greater than the price

[195] *See* NYSE Delegation Agreement at I and II.A.5.

[196] 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

[197] The Trading Licenses will be issued pursuant to the conditions and procedures outlined in proposed NYSE Rule 300. The NYSE also proposed a transition rule, NYSE Rule 300T, covering the initial sale of Trading Licenses.

[198] Trading Licenses for the following calendar year will be sold annually through an auction conducted in December. The price of a Trading License will be payable in equal monthly installments in advance over the period in which the Trading License is in effect.

[199] Accordingly, lease-related provisions of the NYSE Constitution will not be carried over and any references to leases in the NYSE Rules will be deleted.

needed to sell 1,000 Trading Licenses, provided that the Clearing Price is at least the Minimum Bid Price. Moreover, the provision that allows NYSE Market to sell additional Trading Licenses at a 10% premium from the auction price, subject to the overall limitation of 1,366 outstanding Trading Licenses, will provide new member organizations, member organizations that did not bid successfully in the auction, or member organizations with a need for additional licenses with the opportunity to obtain Trading Licenses outside of the auction.

The Commission further notes that each Trading License will include the rights to electronic and physical access to the trading facilities of NYSE Market, which are substantially similar to the access rights of current NYSE seat holders and lessees. In addition, the proposal provides that the aggregate number of Trading Licenses to be issued in any one year will be limited to 1,366, a figure that is equal to the number of seats under the NYSE's current structure.

For the foregoing reasons, the Commission finds that proposed NYSE Rules 300 and 300T provide fair access to member organizations with respect to the issuance of Trading Licenses by NYSE Market and are consistent with the Act and in particular with Sections 6(b)(2) and 6(b)(5) of the Act.[200] The Commission believes it would not be consistent with the Act and in particular Section 6(b)(5), which prohibits the rules of an exchange from unfairly discriminating between broker-dealers, to provide information about the auction to one member that is not available to all members.

In essence, the Dutch auction mechanism for issuing Trading Licenses involves the setting of a fee by NYSE Market for member organizations seeking access to the facility of an exchange. Thus, the proposed rules governing the Dutch auction procedure also must be examined in light of the requirement of Section 6(b)(4) of the Act[201] that these rules provide for the equitable allocation of reasonable dues, fees, and charges among members and issuers and other persons using the NYSE Market. The NYSE asserts that pricing Trading Licenses through a Dutch auction will establish a reasonable price because the price is determined by the "market," that is, by member organizations that wish to obtain Trading Licenses. The NYSE also states that the Dutch auction mechanism will allow each member organization to determine the price that it is willing to pay for a Trading License, subject to the auction procedures. Moreover, the NYSE notes that the Dutch auction mechanism for issuance of Trading Licenses is not dissimilar from the manner in which access to the NYSE was traditionally priced, with supply and demand governing the price at which traditional memberships were purchased or leased.

The Commission finds that proposed NYSE Rules 300 and 300T are consistent with Section 6(b)(4) of the Act.[202] With respect to the price for Trading Licenses that will be sold between auctions, the NYSE states that the price for such Trading Licenses is reasonable because it is based on the latest actual auction price, but with a 10% premium. The NYSE asserts that this premium is necessary to encourage participation in the annual auction as a way to promote price and quantity discovery in the auction, and also to defray out-of-cycle administrative costs. In the Commission's view, the Act does not require the NYSE to charge the same fee for Trading Licenses sold between auctions as for those licenses sold in the auction. Rather, the Act requires that the rules of an exchange provide for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that it is reasonable for NYSE Market to impose a 10% premium for Trading Licenses that are sold between auctions as a means to encourage participation in the auction and to help defray administrative costs for issuing Trading Licenses outside of the auction.

The Commission received three comment letters on the Trading Licenses proposal.[203] The IBAC December Letter objected to the NYSE's plan to hold the initial Trading License auction on December 20, 2005.[204] IBAC argued that, while the results of the initial auction would not be effective until the approval of the proposed rule change, the exchange's holding the auction prior to the end of the comment period contravened the statutory process for proposed rule changes under Section 19(b)(1) of the Act. In Amendment No. 5, the NYSE disagreed that holding the initial auction prior to the proposal's approval would prejudice IBAC's ability to comment. The NYSE stated that provisionally conducting the initial auction would give members and others increased certainty in planning for post-Merger business and also provide the NYSE and the Commission with the opportunity to observe whether the auction procedures resulted in a fair and orderly pricing of the Trading Licenses and fair access to the facilities of the exchange.

The IBAC February Letter claimed that the proposed auction process for Trading Licenses could have a significant burden on competition, and noted that the NYSE failed to justify this burden in the proposal's Form 19b–4.[205] IBAC asserted that, the proposed rule change, along with NYSE's Hybrid Market proposal,[206] would unfairly disadvantage floor brokers and their customers. IBAC also expressed concern that in future auctions specialists and large institutional broker-dealers could bid for an increasingly higher number of licenses (up to 125% of their prior year's allotment) and at higher prices than the prior year's auction price. IBAC argued that, as a result, it could be difficult for floor brokers to purchase Trading Licenses and compete with these larger firms. IBAC recommended that each auction for Trading Licenses have both a minimum and maximum bid price set at 20% below and above the prior year's auction price, respectively; that existing holders be entitled to acquire a Trading License in the following year at a price equal to the prior year's clearing price, plus a maximum 20% premium; and that stricter bidding limits be imposed to prevent an excessive concentration of Trading Licenses by one or more firms over time.[207]

The NYSE Response to Comments disputed that the auction procedures to price and allocate Trading Licenses would create a burden on competition.[208] The NYSE noted that the IBAC February Letter suggested that most IBAC members currently lease seats on the exchange. The NYSE pointed out that the competitive

[200] 15 U.S.C. 78f(b)(2) and 15 U.S.C. 78f(b)(5).

[201] 15 U.S.C. 78f(b)(4).

[202] 15 U.S.C. 78f(b)(4). NYSE Market conducted its first auction and announced that following the Merger, it will issue 1,274 Trading Licenses at a price of $49,290 each. The Commission notes that the NYSE cannot issue Trading Licenses at the price established by such auction until the Commission approves this proposed rule change, as amended. The NYSE represented that, at that time, New York Stock Exchange LLC will file a proposed rule change under Section 19(b)(1) of the Act to amend its fee schedule to set forth the price at which Trading Licenses will be sold in the auction and the price at which Trading Licenses will be sold before the next auction. The NYSE also represented that New York Stock Exchange LLC will file a similar proposed rule change following each subsequent annual auction.

[203] See IBAC December Letter, IBAC February Letter, and SIA/TBMA Letter, *supra* note 6.

[204] See IBAC December Letter, *supra* note 6.

[205] See IBAC February Letter, *supra* note 6, at 17–19.

[206] See SR–NYSE–2004–05.

[207] See IBAC February Letter, *supra* note 6, at 22–23.

[208] See NYSE Response to Comments, *supra* note 7, at 16–18.

concerns that the IBAC February Letter raised are similar to the competitive risks that floor brokers and other lessees currently face in the seat lease market. The NYSE noted that seat leases, like the proposed Trading Licenses, are typically one-year contracts and prices for these leases are negotiated on an annual basis. The NYSE also noted that, under its existing structure, lessees had no assurance that they could continue to lease seats or that the price of their leases would not increase to a level that would be difficult for them to pay. The NYSE noted that to the extent a member organization today expanded its number of memberships, there could be economic pressure on the finite supply of seats.[209] The NYSE further contended that, under the proposed rule change, floor brokers would have greater protection than they currently have, because there would be a limit on the number of Trading Licenses that a member organization may bid for in each auction.[210] Finally, the NYSE asserted that the exchange is not statutorily compelled to adopt measures like the ones proposed by IBAC to protect floor brokers or any other group of users from market vicissitudes.[211]

With respect to IBAC's argument that the NYSE's proposed rule change would impose burdens on competition and would unfairly discriminate against floor brokers, the Commission believes that the proposed auction procedures for pricing and allocating Trading Licenses are consistent with the Act. In particular, the Commission believes that these proposed procedures will provide a fair opportunity for floor brokers to acquire Trading Licenses and therefore that such procedures are not unfairly discriminatory and will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[212] In addition, the exchange has represented that after each auction it will file with the Commission a proposed rule change that sets forth the price for Trading Licenses to be issued in the auction and between auctions. Thus, interested persons will have the opportunity to comment annually on the fees to be charged, and their impact on the ability to compete, for Trading Licenses.

The SIA/TBMA Letter argued that the NYSE's proposal to offer Trading Licenses that provide full access to NYSE Market does not provide for fair access by smaller broker-dealers that trade debt securities.[213] The SIA/TBMA Letter noted that the NYSE has submitted to the Commission an exemptive request to permit unlisted debt securities to be traded on its Automated Bond System. The SIA/TBMA Letter contended that the proposed rule change would compel smaller debt dealers to either forego direct access to NYSE's Automated Bond System or apply for equity trading rights that they do not need. The NYSE Response to Comments expressed skepticism that small debt dealers currently are paying to own or lease NYSE memberships to access its Automated Bond System.[214] Thus, the NYSE surmised that the SIA/TBMA Letter's comments pertained to its pending exemptive application to trade unlisted debt securities on its Automated Bond System. The NYSE stated that, if NYSE Market ultimately is able to trade unlisted debt securities and, as a result, debt-only dealers are interested in direct access to the Automated Bond System, NYSE Market likely would be interested in determining how direct access can be provided with fairness to those debt dealers, NYSE Market, and other participants in the market for debt securities.[215] The NYSE noted that the need for direct access to its Automated Bond System has not been an issue for smaller debt-only broker-dealers under its current structure and thus the Trading License proposal is not deficient with respect to fair access by these debt market participants.[216] The NYSE further stated that it may decide in the future to issue separate licenses for electronic only access or access limited to particular products. The Commission agrees with the NYSE and believes that the NYSE's proposal will continue to provide fair access to trading of securities on its market, including debt securities.

G. Listing and Allocation of NYSE Group's or an Affiliate's Securities

NYSE Group intends to list its shares of common stock for trading on New York Stock Exchange LLC. The Commission believes that such "self-listing" raises questions as to an SRO's ability to independently and effectively enforce its own and the Commission's rules against itself or an affiliated entity, and thus comply with its statutory obligations under the Act.[217] For instance, an SRO might be reluctant to vigorously monitor for compliance with its initial and continued listing rules by the securities of an affiliated issuer or its own securities, and may be tempted to allow its own securities, or the securities of an affiliate, to be listed (and continue to be listed) on the SRO's market even if the security is not in full compliance with the SRO's listing rules. Similar conflicts of interest could arise in which the SRO might choose to selectively enforce, or not enforce, its trading rules with respect to trading in its own stock or that of an affiliate so as to benefit itself.

In an effort to minimize any potential conflicts involving the listing of its own securities or those of an affiliate (together, "Affiliated Securities"), the NYSE has proposed that an Affiliated Security may not be approved for listing on New York Stock Exchange LLC unless NYSE Regulation finds that such security satisfies New York Stock Exchange LLC's rules for listing, and such finding is approved by the NYSE Regulation board of directors prior to such listing.[218] However, such proposed procedure will not apply to the initial listing of the common stock of NYSE Group because proposed NYSE Rule 497 will not be in effect, the Merger will not have closed, and the NYSE Regulation board of directors will not have been constituted as contemplated in proposed NYSE Rule 497 prior to the time by which the initial listing of the NYSE Group common stock must be approved. Instead, the initial listing of NYSE Group common stock will be reviewed by the regulatory staff of NYSE and approved by the Regulatory Oversight Committee of the current board of directors of NYSE, as the most logical predecessor to the NYSE Regulation board.[219] In light of these circumstances, the Commission finds that the proposed procedure for the initial listing of the NYSE Group common stock is consistent with the Act.

To minimize any potential conflicts that could arise relating to the selective enforcement, or non-enforcement, of the listing or trading rules of New York Stock Exchange LLC with respect to continued listing of and trading in any Affiliated Security, the NYSE has

[209] *Id.* at 17.

[210] *Id.*

[211] *Id.*

[212] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78f(b)(8).

[213] *See* SIA/TBMA Letter, *supra* note 6, at 20.

[214] *See* NYSE Response to Comments, *supra* note 7, at 18.

[215] *Id.*

[216] *Id.*

[217] *See* Securities Exchange Act Release Nos. 51123 (February 2, 2005), 70 FR 6743 (February 8, 2005) (SR–NASD–2004–169), and 50171 (August 9, 2004), 69 FR 50427 (August 16, 2004) (SR–PCX–2004–76).

[218] *See* proposed NYSE Rule 497. In Amendment No. 8, the NYSE proposes to clarify that such approval by the NYSE Reguolation board of directors must be prior to initial listing.

[219] *See* Notice, *supra* note 5, at note 38 and accompanying text, and proposed NYSE Rule 4971, as included in Amendment No. 8.

proposed to prepare and send to the Commission a quarterly report summarizing NYSE Regulation's monitoring of an Affiliated Security's compliance with listing standards and its monitoring of trading in such securities.[220] The NYSE has proposed that any notification of lack of compliance with any applicable listing standard from NYSE Regulation to NYSE Group or an affiliate, and any corresponding plan of compliance, must be reported to the Commission.[221] Proposed NYSE Rule 497(d) also will require an annual audit of compliance by NYSE Group or the affiliated issuer with the listing standards by an independent accounting firm. The Commission believes that the proposed procedures for monitoring of the listing of and trading in Affiliated Securities are consistent with the Act.

In addition, the NYSE proposes to amend NYSE Rule 103B, the Allocation Policy, with respect to the allocation of NYSE Group stock to (i) give NYSE Group the right to determine the number and identity of specialist firms that will be included in the group from which it shall choose its specialist, provided the group consists of at least four specialist firms, and (ii) provide NYSE Group with the same material with respect to each specialist firm applicant as would have been reviewed by the Allocation Committee in allocating other securities. All other aspects of the policy will continue to apply. The NYSE stated in the Notice, that it expects that the independent directors of NYSE Group will select the specialist for NYSE Group common stock.[222] The NYSE also stated in the Notice that it proposed this change to the Allocation Policy in recognition of the special circumstances involved in determining which of its specialist firms will be the specialist for the NYSE Group's stock. The Commission finds this proposed rule change is consistent with the Act.

H. Regulatory Funding

The NYSE has identified several different sources of revenue for its regulatory program. An exchange has the authority to assess its members to cover its costs of regulation, subject to the requirements of the Act. New York Stock Exchange LLC has delegated this authority to NYSE Regulation with respect to regulatory and certain other fees. Subject to Commission approval, NYSE Regulation will determine, assess, collect, and retain examination, access, registration, qualification, continuing education, arbitration, dispute resolution, and other regulatory fees. The NYSE has represented that NYSE Regulation expects to continue to fund its examination programs for assuring financial responsibility and compliance with sales practice rules, testing, and continuing education through fees assessed directly on member organizations.

NYSE Regulation also will receive funding independently from the markets for which it will provide regulatory services. The NYSE has represented the services agreement between NYSE Regulation and the Pacific Exchange will ensure the provision of adequate funding to NYSE Regulation to carry out the regulatory services it will provide to the Pacific Exchange. In addition, the NYSE has represented that there will be an explicit agreement among NYSE Group, New York Stock Exchange LLC, NYSE Market, and NYSE Regulation to provide adequate funding to NYSE Regulation.[223]

One commenter questions whether NYSE Regulation will have to generate sufficient sanctions and penalties to fund its own operations, or, alternatively, whether NYSE Group and New York Stock Exchange LLC will be willing to adequately fund NYSE Regulation's expenses without regard to the impact on NYSE Group's "bottom line."[224] This commenter does not believe that the undertaking by the NYSE that there will be an explicit agreement among NYSE Group, New York Stock Exchange LLC, NYSE Market, and NYSE Regulation to provide adequate funding for NYSE Regulation is sufficient.[225] Another commenter believes that the governing documents of NYSE Regulation should explicitly provide the sources of its funding.[226]

The Commission notes that SROs are required to enforce their own rules and the federal securities laws against their members, and that any disciplinary action taken by an SRO (including the assessment of a fine or penalty) must be done in compliance with its rules as approved by the Commission. The Commission also notes that a member has a right of appeal of a disciplinary determination by its SRO to the Commission.[227] In addition, as noted above, NYSE Regulation has been delegated the authority to raise revenue through member and regulatory fees.[228] The NYSE states that, as is currently the case, a large portion of NYSE Regulation's revenues will continue to be derived from member fees paid as a percentage of gross revenues.[229] The Commission does not believe that the absence of specificity in an exchange's rules regarding regulatory funding precludes the Commission from finding that the exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.[230] The Commission finds that the proposed funding of NYSE Regulation's regulatory responsibilities, which includes the assessment of member and other fees, as well as funding from other entities for which NYSE Regulation will be providing regulatory services, is designed to provide sufficient funding to NYSE Regulation to enable it and New York Stock Exchange LLC to carry out their responsibilities consistent with the Act.[231]

I. Options Trading Rights

The Commission received a comment letter on the proposed rule change from a group of individuals who own NYSE Option Trading Rights ("OTRs") that are separate from full NYSE seat ownership

[220] *See* proposed NYSE Rule 497(c).

[221] *See* proposed NYSE Rule 497(c)(3).

[222] *See* Notice, *supra* note 5, at 2094.

[223] *See* Amendment No. 6, *supra* note 8.

[224] IBAC February Letter, *supra* note 6, at 5.

[225] *Id.* at 6.

[226] SIA/TBMA Letter, *supra* note 6, at 25.

[227] Section 19(d)(2) of the Act, 15 U.S.C. 78s(d)(2).

[228] New York Stock Exchange LLC will be prohibited from using any regulatory fees, fines, or penalties for commercial purposes, and NYSE Regulation may not distribute such funds to NYSE Group or any entity other than NYSE Regulation. *See supra* note 144 and accompanying text.

[229] NYSE Response to Comments, *supra* note 7, at 10.

[230] The issue of what further steps, if any, should be taken with respect to transparency of an exchange's regulatory revenues and expenses is part of a Commission proposal relating to SRO governance and administration, and is better addressed in the context of the larger proposal. *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("SRO Governance Proposal").

[231] The NYSE represents that no provision of this proposed rule change, including any grant of authority from New York Stock Exchange LLC to NYSE Regulation to assess, collect, and retain regulatory fees, fines, or penalties, or any limitation on the use by NYSE Regulation of such regulatory monies, will prohibit NYSE Regulation from making charitable donations if its board of directors determines such donations would be consistent with its and New York Stock Exchange LLC's obligations under the Act. The NYSE also represents that, in the future, it will file with the Commission a proposed rule change as to NYSE Regulation's use of regulatory fees, fines, and penalties. Telephone conversation between Richard P. Bernard, Executive Vice President and General Counsel, NYSE, and Elizabeth K. King, Associate Director, Division, Commission, on February 27, 2006.

("Separated OTRs").[232] These commenters argue that they held on to their Separated OTRs, even after the NYSE exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of the NYSE or its successor entity. They now argue that such ownership does, and should continue to after the Merger, give them such right.

The NYSE has not traded options since 1997, when the Commission approved the transfer of NYSE's options business to the Chicago Board Options Exchange, Incorporated ("CBOE").[233] At that time, the NYSE and CBOE put in place a program to provide certain persons that traded options on the NYSE with trading permits to trade options on CBOE. Benefits from the leasing of the CBOE options trading permits not so issued ("lease pool") were distributed to a group of approximately 92 persons that owned OTRs.[234] The CBOE trading permits and lease pool had a duration of seven years. The Commission found the 1997 proposal to be consistent with the Act, noting that there is nothing in the Act that compels the NYSE to continue to trade a particular product line and the NYSE was free to terminate its options business entirely (in which case OTR holders would not have received any lease payments).[235]

It has been over eight years since the NYSE operated an options business. The Commission notes, as do the OTR investors in their comment letter, that holders of Separated OTRs do not have any membership vote and do not have ownership in the assets of the NYSE. As a result, the Commission finds it is consistent with Section 6(b)(1) of the Act[236] and the NYSE's rules for the NYSE to eliminate its rules that provide for options trading rights.

J. Market Data

One commenter raises a concern about the market data function of the NYSE being within the control of a for-profit entity.[237] This commenter believes that all market data fees should be cost-based and that market data revenue should not be used to cross-subsidize the costs of regulation, and that a for-profit entity may be motivated to engage in profit-motivated market data pricing.[238] The Commission notes that the fees charged for consolidated market data (*i.e.*, the "top-of-book" quotations of SROs and all reported trades) are established by the joint SRO plans that govern the collection, consolidation, and dissemination of such market data, and that all such fees must be filed with the Commission pursuant to the Act. In addition, "depth-of-book" quotations can be disseminated by all SROs, as well as non-SRO entities, such as ATSs.[239] The question of what steps, if any, should be taken by the Commission to address the level and use of market data revenue, as well as transparency of regulatory revenue and expenses, is part of a larger Commission review of the self-regulatory structure of our markets, and is better addressed in the context of this larger review.[240]

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[241] that the proposed rule change (SR–NYSE–2005–77), as amended, is approved, and Amendment Nos. 6 and 8 are approved on an accelerated basis.

It is therefore further ordered, pursuant to Section 11A(b)(1) of the Act, that NYSE Market shall be exempt from registration as a securities information processor for a period of thirty (30) days following the date of closing of the Merger.

It is therefore further ordered, pursuant to Section 11A(b)(1) of the Act, that upon the filing by NYSE Market of an application for registration or an exemption from registration as a securities information processor within the 30-day period prescribed above, NYSE Market shall be exempt from registration as a securities information processor for an additional period of ninety (90) days following the end of the original 30-day period.

By the Commission (Chairman Cox and Commissioners Glassman, Atkins, Campos, and Nazareth).

Nancy M. Morris,

Secretary.

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[232] *See* OTR Investors Letter, *supra* note 6. *See also* OTR Investors Letter II, *supra* note 6, filed in response to the NYSE Response to Comments.

[233] *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[234] Holders of Separated OTRs were included in this group, and were allowed to participate in the lease pool without surrendering their OTRs.

[235] *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[236] 15 U.S.C. 78f(b)(1).

[237] *See* SIA/TBMA Letter, *supra* note 6, at 19.

[238] *Id.* The commenter believes that tying market data fees to the cost of producing the data, while keeping costs of regulation separate, will enable full and transparent funding of regulation without overcharging for market data. *Id.*

[239] The NYSE notes in its response to comments that each of the members of Consolidated Tape Association can compete with the NYSE (and each other) by providing its own depth-of-book data. NYSE Response to Comments, *supra* note 7, at 19.

[240] *See* Concept Release Concerning Self-Regulation, *supra* note 26. *See also* SRO Governance Proposal, *supra* note 230.

[241] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53383; File No. SR–PCX–2005–134]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc.

February 27, 2006.

I. Introduction

On December 5, 2005, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change in connection with the proposed merger ("Merger") of New York Stock Exchange, Inc., a New York Type A not-for-profit corporation ("NYSE"), and Archipelago Holdings, Inc., a Delaware corporation and the parent company of the Exchange ("Archipelago"). On December 15, 2005, the Exchange amended its proposal.[3] The proposed rule change, as amended, was published for comment on January 12, 2006.[4] On February 13, 2006, the Exchange filed Amendment No. 2.[5] This order approves the proposed rule change, as amended, grants accelerated approval to Amendment No. 2 to the proposed rule change, and solicits

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced PCX's original filing in its entirety.

[4] Securities Exchange Act Release No. 53077 (January 9, 2006), 71 FR 2095.

[5] In Amendment No. 2, the Exchange clarified that the proposed rule change would become operative concurrently with the closing of the Merger. The complete text of Amendment No. 2 is available on the Commission's Web site *http://www.sec.gov/rules/sro.shtml*, at the Commission's Public Reference Room, at the Exchange, and on PCX's Web site, *http://www.pacificex.com*.

comments from interested persons on Amendment No. 2.

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,[7] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[8] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Accelerated Approval of Amendment No. 2

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[9]

In Amendment No. 2, the Exchange represented that the proposed rule change would be operative concurrently with the closing of the Merger. Amendment No. 2 does not otherwise modify or change PCX's proposal. The Commission believes that Amendment No. 2 clarifies the timing of the rule changes proposed by PCX, raises no novel issues, and is consistent with the Act. Therefore, the Commission finds good cause exists to accelerate approval of Amendment No. 2, pursuant to Section 19(b)(2) of the Act.[10]

B. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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–PCX–2005–134 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–PCX–2005–134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Amendment No. 2 of File Number SR–PCX–2005–134 and should be submitted on or before March 27, 2006.

C. Comments on the Proposal

The Commission received four comment letters on the proposed rule change.[11] PCX filed a response to the comment letters on February 9, 2006 and a further response on February 27, 2006.[12] Each of the commenters expressed concern about Gerald Putnam's fitness to serve as an officer of NYSE Group, Inc. ("NYSE Group") or to lead the NYSE upon consummation of the Merger.[13]

The issue of Mr. Putnam's fitness to serve as an officer or director of a public company or the NYSE is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,[14] a self-regulatory organization ("SRO") (such as PCX) is required to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,[15] the Commission shall approve a proposed rule change filed by an SRO if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO. PCX is not providing in this filing for any particular person to serve as an officer or director of NYSE Group or any of its subsidiaries. In addition, Section 19(h)(4) of the Act[16] authorizes the Commission, if in its opinion 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, to remove or censure an officer or director of a national securities exchange if it finds, after notice and opportunity for a hearing, that such officer or director has

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[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[10] 15 U.S.C. 78s(b)(2).

[11] *See* letters from James L. Kopecky, Attorney, James L. Kopecky, P.C., to Christopher Cox, Chairman, Commission, dated January 16, 2006 ("Kopecky Letter"); Michael Kanovitz, Attorney, Loevy & Loevy, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006 (enclosing a statement from Lewis J. Borsellino to the Commission); Philip J. Nathanson, Attorney, Philip J. Nathanson & Associates, to Christopher Cox, Chairman, Commission, dated February 3, 2006 (following up on the Kopecky Letter); and letter from Fane Lozman to Christopher Cox, Chairman, Commission, dated February 22, 2006, with attachments (responding to PCX Response to Comments, *infra* note 12).

[12] *See* letters from Kevin J. P. O'Hara, Chief Administrative Officer, General Counsel & Secretary, PCX, to Nancy M. Morris, Secretary, Commission, dated February 8, 2006 ("PCX Response to Comments") and February 24, 2006.

[13] After the Merger, NYSE Group will be a publicly traded company and the holding company for the businesses of the NYSE and Archipelago. New York Stock Exchange LLC will be a wholly-owned subsidiary of NYSE Group and will succeed to the registration of the NYSE as a national securities exchange. Mr. Putnam is currently the chairman of the board of directors and chief executive officer of Archipelago and the chairman of PCX. Upon completion of the Merger, it is intended that Mr. Putnam will be named as co-president and chief operating officer of NYSE Group. *See* PCX Response to Comments, *supra* note 12, at 2.

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(h)(4).

willfully violated any provision of the Act, the rules or regulations thereunder, or the rules of such exchange, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any such provision by any member or person associated with a member.

II. Discussion

On April 20, 2005, the NYSE and Archipelago entered into an Agreement and Plan of Merger ("Merger Agreement").[17] Following the Merger, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company, NYSE Group. In the Merger, NYSE members will receive cash and/or shares of NYSE Group common stock, and Archipelago stockholders will receive solely shares of NYSE Group common stock.

PCX proposes to allow NYSE Group and its related persons to wholly own and vote all of the outstanding capital stock of Archipelago upon consummation of the Merger, subject to certain exceptions described herein. PCX also proposes certain new rules of PCX and PCX Equities, Inc. ("PCXE") prohibiting certain relationships between NYSE Group and PCX members. Finally, PCX proposes to amend the rules of PCX and PCXE to impose restrictions on certain rights of PCX members with respect to the nomination and election of the directors of PCX and PCXE.

A. NYSE Group Ownership of Archipelago

The Archipelago Certificate of Incorporation imposes certain limitations on ownership and voting of Archipelago stock, unless waived by the board of directors of Archipelago ("Archipelago Board") and approved by the Commission.

1. Current PCX Rules

a. Ownership Limitation in the Archipelago Certificate of Incorporation

The Archipelago Certificate of Incorporation currently provides that no person,[18] either alone or together with its related persons,[19] may own beneficially shares of Archipelago stock representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter ("Ownership Limitation"). The Ownership Limitation will apply unless and until (1) a person, either alone or with its related persons, delivers to the Archipelago Board a notice in writing regarding its intention to acquire shares of Archipelago stock that would cause such person, either alone or with its related persons, to own beneficially shares of stock of Archipelago in excess of the Ownership Limitation, at least 45 days (or such shorter period as the Archipelago Board may expressly consent) prior to the intended acquisition, and (2) such person, either alone or with its related persons, receives prior approval by the Archipelago Board and the Commission to exceed the Ownership Limitation.[20] Specifically, (1) The Archipelago Board must adopt a resolution approving such person and its related persons to exceed the Ownership Limitation, (2) the resolution must be filed with the Commission under Section 19(b) of the Act,[21] and (3) such proposed rule change must be approved by the Commission and become effective thereunder.[22]

Pursuant to the Archipelago Certificate of Incorporation, subject to its fiduciary obligations under the Delaware General Corporation Law, as amended ("DGCL"), before adopting any such resolution, the Archipelago Board must first determine that: (1) Such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair any of Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair the Commission's ability to enforce the Act; and (3) such person and its related persons are not subject to any statutory disqualification.[23]

In addition, the Archipelago Certificate of Incorporation provides that for so long as Archipelago Exchange, L.L.C. ("ArcaEx") remains a facility of PCX and PCXE and the Facility Services Agreement among Archipelago, PCX, and PCXE, dated as of March 22, 2002 ("Facility Services Agreement"), which currently governs the regulatory relationship of PCX and PCXE to ArcaEx, remains in full force and effect, no Equity Trading Permit Holder ("ETP Holder"),[24] either alone or with its related persons, shall be permitted at any time to own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[25] Furthermore, unlike the Ownership Limitation described earlier, the Archipelago Certificate of Incorporation does not give the Archipelago Board the authority to waive the 20% ownership limitation with respect to ETP Holders and their related persons.

b. Voting Limitation in the Archipelago Certificate of Incorporation

The Archipelago Certificate of Incorporation also currently provides that no person, either alone or with its related persons, shall be entitled to (1) vote or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter ("Voting Limitation") or (2) enter into any agreement, plan, or arrangement not to vote shares, the effect of which agreement, plan, or arrangement would be to enable any person, either alone or with its related persons, to vote, possess the right to vote, or cause the voting of shares that would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter ("Nonvoting Agreement Prohibition").[26] The Voting Limitation and the Nonvoting Agreement Prohibition shall apply unless and until (1) a person, either alone or with its related persons, delivers to the Archipelago Board a notice in writing regarding such person's intention to vote, possess the right to vote, or cause the voting of shares of Archipelago stock that would cause such person, either alone or with its related persons, to violate the Voting Limitation or the

[17] *See* Amendment No. 3 to the Registration Statement on Form S–4, Registration No. 333–126780, filed with the Commission on November 3, 2005, for a description of the Merger Agreement and the transactions contemplated thereby. *See also* Securities Exchange Act Release No. 53382 (February 27, 2006) (SR–NYSE–2005–77) ("NYSE Order").

[18] *See* Archipelago Certificate of Incorporation, Article Fourth H(2) for the definition of a "Person."

[19] *See* Archipelago Certificate of Incorporation, Article Fourth H(3) for the definition of "Related Persons."

[20] Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

[21] 15 U.S.C. 78s(b).

[22] Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

[23] Archipelago Certificate of Incorporation, Article Fourth D(1)(b). The term "statutory disqualification" is defined in Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39). In making such determinations, the Archipelago Board may impose any conditions and restrictions on such person and its related persons owning any shares of stock of Archipelago entitled to vote on any matter as the Archipelago Board in its sole discretion deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago. Archipelago Certificate of Incorporation, Article Fourth D(1)(b).

[24] "ETP Holder" is defined in PCXE Rule 1.1.

[25] Archipelago Certificate of Incorporation, Article Fourth D(2).

[26] Archipelago Certificate of Incorporation, Article Fourth C(1).

Nonvoting Agreement Prohibition, at least 45 days (or such shorter period as the Archipelago Board may expressly consent) prior to the intended vote and (2) such person, either alone or with its related persons, receives prior approval from the Archipelago Board and the Commission to exceed the Voting Limitation or enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition.[27] Specifically, (1) The Archipelago Board must adopt a resolution approving such person and its related persons to exceed the Voting Limitation or to enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition, (2) the resolution must be filed with the Commission under Section 19(b) of the Act,[28] and (3) such proposed rule change must be approved by the Commission and become effective thereunder.[29]

Pursuant to the Archipelago Certificate of Incorporation, subject to its fiduciary obligations under the DGCL, before adopting any such resolution, the Archipelago Board must first determine that: (1) The exercise of such voting rights or the entering into of such agreement, plan, or arrangement, as applicable, by such person, either alone or with its related persons, would not impair Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) the exercise of such voting rights or the entering into of such agreement, plan, or arrangement would not impair the Commission's ability to enforce the Act; (3) such person and its related persons are not subject to any statutory disqualification; [30] and (4) in the case of a resolution to approve the exercise of voting rights in excess of the Voting Limitation, for so long as ArcaEx remains a facility of PCX and PCXE and the Facility Services Agreement is in full force and effect, neither such person nor its related persons are ETP Holders.[31]

[27] Archipelago Certificate of Incorporation, Article Fourth C(2).

[28] 15 U.S.C. 78s(b).

[29] Archipelago Certificate of Incorporation, Article Fourth C(2).

[30] *See supra* note 23.

[31] Archipelago Certificate of Incorporation, Article Fourth C(3). In making such determinations, the Archipelago Board may impose any conditions and restrictions on such person and its related persons owning any shares of Archipelago stock entitled to vote on any matter as the Archipelago Board in its sole discretion deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago. *Id.*

[32] "OTP Holder" is defined in PCX Rule 1.1.

[33] "OTP Firm" is defined in PCX Rule 1.1.

[34] Archipelago Bylaws, Section 6.8(d). This provision of the Archipelago Bylaws may not be amended, modified, or repealed unless such amendment, modification, or repeal is filed with and approved by the Commission or approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification, or repeal. Archipelago Bylaws, Section 6.8(g). 35 See PCX Rules 3.4(a) and (b).

[35] *See* PCX Rules 3.4(a) and (b).

c. Additional Matters Relating to OTP Holders and OTP Firms of PCX

Archipelago's amended and restated bylaws ("Archipelago Bylaws") provide that the Archipelago Board will not adopt any resolution waiving the Voting Limitation, the Nonvoting Agreement Prohibition, and the Ownership Limitation with respect to any Options Trading Permit Holder ("OTP Holder") [32] or Options Trading Permit Firm ("OTP Firm") [33] or its related persons.[34] PCX rules provide that for as long as Archipelago controls, directly or indirectly, PCX, no OTP Holder or OTP Firm, either alone or together with its related persons, shall: (i) Own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; (ii) have the right to vote, vote, or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; or (iii) enter into any agreement, plan, or arrangement not to vote shares of Archipelago stock, the effect of which would enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares what would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[35]

2. Resolution of the Archipelago Board

Under the terms of the Merger Agreement, NYSE Group will wholly own and vote all of the outstanding capital stock of Archipelago upon consummation of the Merger. Absent a waiver, the Merger would cause NYSE Group to violate the Ownership Limitation and the Voting Limitation. Accordingly, as required by the Archipelago Certificate of Incorporation, on October 19, 2005, NYSE Group delivered a written notice to the Archipelago Board requesting approval of its ownership and voting of Archipelago stock in excess of the Ownership Limitation and the Voting Limitation. On October 20, 2005, the Archipelago Board adopted a resolution approving the request.[36] The Exchange then filed the resolution with the Commission under Section 19(b) of the Act [37] and requested that, upon consummation of the Merger, NYSE Group be allowed to wholly own and vote all the outstanding common stock of Archipelago, either alone or with its related persons, except for any related person of NYSE Group that is an ETP Holder, an OTP Holder, or an OTP Firm.

The Commission notes that the NYSE Group Certificate of Incorporation imposes certain restrictions on NYSE Group stockholders' ability to own and vote shares of stock of NYSE Group similar to those contained in the Archipelago Certificate of Incorporation and PCX rules.[38] These ownership and voting limitations are designed to prevent a shareholder or group of shareholders acting together from exercising undue influence or control over the operations of NYSE Group's regulated subsidiaries, including PCX and NYSE Regulation, Inc. ("NYSE Regulation"), which will carry out certain regulatory services on behalf of PCX.[39]

Specifically, the NYSE Group Certificate of Incorporation provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Group stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[40] The

[36] In adopting the resolution approving NYSE Group's request, the Archipelago Board determined that (1) the acquisition of beneficial ownership of, and the exercise of voting rights with respect to, 100% of the outstanding shares of Archipelago common stock by NYSE Group, either alone or with its related persons, would not impair any of Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and are otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition would not impair the Commission's ability to enforce the Act; (3) neither NYSE Group nor any of its related persons is subject to any statutory disqualification; and (4) neither NYSE Group nor any of its related persons is an ETP Holder, OTP Holder, or OTP Firm.

[37] 15 U.S.C. 78s(b).

[38] The Commission is today approving proposed rule changes filed by the NYSE in connection with the Merger, *See* NYSE Order, *supra* note 17.

[39] PCX and NYSE Regulation intend to enter into a Regulatory Services Agreement specifying the regulatory functions that NYSE Regulation will perform.

[40] In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of NYSE Group in excess of the 20% threshold, such person and its related persons will be obligated to sell promptly, and NYSE Group will be obligated to purchase promptly, at a price equal to the par value of such shares of stock and to the extent that funds are legally available for such purchase, that number of shares necessary to reduce the ownership level of such person and its related

NYSE Group Certificate of Incorporation also provides that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of shares of NYSE Group stock representing in the aggregate more than 10% of the total number of votes entitled to be cast on any matter, and no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the aggregate number of votes being cast on any matter by virtue of agreements entered into with other persons not to vote shares of NYSE Group's outstanding capital stock.[41] Moreover, the NYSE Group Certificate of Incorporation includes a provision restricting the NYSE Group board of directors ("NYSE Group Board") from waiving these ownership and voting limitations for ETP Holders, OTP Holders, and OTP Firms that is analogous to provisions in the current Archipelago Certificate of Incorporation and Archipelago Bylaws. Specifically, like Archipelago, the NYSE Group Board will be prohibited from waiving the applicable ownership and voting limitations in excess of 20% for ETP Holders, OTP Holders, and OTP Firms.[42]

The Commission also notes that the NYSE Group Certificate of Incorporation contains certain other provisions designed to facilitate the ability of the regulated subsidiaries of NYSE Group and the Commission to fulfill their regulatory and oversight obligations under the Act. These provisions are analogous to provisions contained in the Archipelago Certificate of Incorporation and the Archipelago Bylaws and relate, in part, to the Commission's access to NYSE Group's books and records, the Commission's jurisdiction over NYSE Group and its officers, directors, and employees, the protection of confidential information, and the filing with the Commission of amendments to NYSE Group's governing documents. The Commission therefore finds that it is consistent with the Act, in particular Section 6(b)(1) of the Act,[43] to allow NYSE Group and its related persons, other than any related person of NYSE Group that is an ETP Holder, OTP Holder, or OTP Firm, to wholly own and vote all of the outstanding capital stock of Archipelago.

B. Certain Relationships Between NYSE Group and OTP Holders, OTP Firms, and ETP Holders

Upon consummation of the Merger, NYSE Group will become the parent company of Archipelago and the successor to the NYSE, New York Stock Exchange LLC. To protect the integrity and independence of the regulatory responsibilities of PCX and PCXE after the consummation of the Merger, PCX and PCXE propose certain new rules designed to minimize any potential conflicts of interest that may result from ownership relationships or affiliations between OTP Holders, OTP Firms, and ETP Holders, *i.e.*, PCX members, on the one hand and NYSE Group and its subsidiaries, including PCX and PCXE, on the other hand.

Specifically, proposed PCX Rule 3.10 and proposed PCXE Rule 3.10 provide that, unless approved by the Commission, (a) no OTP Holder, OTP Firm, or ETP Holder shall be affiliated[44] with NYSE Group or any of its affiliated entities, and (b) neither NYSE Group nor any of its affiliates shall hold, directly or indirectly, an ownership interest in any OTP Firm or ETP Holder. The proposed PCX and PCXE rules further provide that any person who fails to meet the requirements described in the preceding sentence shall not be eligible to become an OTP Holder, OTP Firm, or ETP Holder, as the case may be.[45] In addition, in the event of any failure by any OTP Holder, OTP Firm, or ETP Holder to comply with the applicable provisions of the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, PCX or PCXE shall suspend all trading rights and privileges of such OTP Holder, OTP Firm, or ETP Holder, as the case may be, in accordance with the proposed PCX and PCXE rules, subject to the procedures provided therein.[46]

The Commission finds that proposed PCX Rule 3.10 and proposed PCXE Rule 3.10 are consistent with the Act, in particular Section 6(b)(1) of the Act.[47] These proposed rules are designed to minimize any potential conflicts of interest that may result from ownership relationships or affiliations between PCX members on the one hand and NYSE Group and its affiliates, including PCX and PCXE, on the other hand. By proscribing ownership and affiliation between these groups, the Commission believes that proposed PCX Rule 3.10 and proposed PCXE 3.10 will help protect the integrity and independence of the regulatory responsibilities of the Exchange after the consummation of the Merger.

C. Rights of OTP Holders and ETP Holders With Respect to the Nomination and Election of Their Representatives to the PCX Board and PCXE Board

The bylaws of PCX and PCXE ("PCX Bylaws" and "PCXE Bylaws," respectively) contain certain compositional requirements with respect to the boards of directors of PCX and PCXE ("PCX Board" and "PCXE Board," respectively). Specifically, the PCX Bylaws provide that at least 20% of the directors of PCX shall consist of individuals nominated by trading permit holders, with at least one director nominated by ETP Holders and at least one director nominated by OTP Holders.[48] The PCXE Bylaws provide that at least 20% of the directors (but no fewer than two directors) of PCXE shall be nominees of the ETP/Equity ASAP Nominating Committee, as provided under PCXE Rule 3.[49] The procedures for the nomination, appointment, and election of the directors of PCX and PCXE are governed by PCX and PCXE rules.[50] To ensure that the director nomination and election processes of each of PCX and PCXE are not subject to any undue influence from the concentration of rights in any one OTP Holder[51] or ETP Holder, either alone or together with certain affiliates, PCX proposes to amend its rules and PCXE's

persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. *See* NYSE Order, *supra* note 17.

[41] NYSE Group will disregard any such votes purported to be cast in excess of this limitation. *See id.*

[42] *See id.*

[43] 15 U.S.C. 78f(b)(1).

[44] A person "affiliated" with a specified person is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. 17 CFR 240.12b–2.

[45] Proposed PCX Rule 3.10(c) and proposed PCXE Rule 3.10(c).

[46] The proposed PCX and PCXE rules provide that in the event of any such failure to comply with proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, respectively, PCX or PCXE shall: (1) Provide notice to the applicable OTP Holder, OTP Firm, or ETP Holder, as the case may be, within five business days of learning of the failure to comply; (2) allow the applicable OTP Holder, OTP Firm, or ETP Holder fifteen calendar days to cure any such failure to comply; (3) in the event that the applicable OTP Holder, OTP Firm, or ETP Holder does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the suspension of all trading rights and privileges of the applicable OTP Holder, OTP Firm, or ETP Holder no later than ten calendar days following the date of such hearing. Proposed PCX Rule 13.2(a)(2)(F) and proposed PCXE Rule 11.2(a)(2)(v).

[47] 15 U.S.C. 78f(b)(1).

[48] PCX Bylaws, Section 3.02(a).

[49] PCXE Bylaws, Section 3.02(a).

[50] PCX Rule 3.2(b)(2) and PCXE Rule 3.2(b)(2).

[51] Even though OTP Firms also hold options trading permits, they do not have any voting rights with respect to the nomination and election of the OTP Holder representative on the PCX Board.

rules to limit the participation of affiliated OTP Holders and ETP Holders in the director nomination and election processes.

Specifically, PCX rules currently provide that the PCX nominating committee ("PCX Nominating Committee") shall have seven members, consisting of six OTP Holders and one person from the public. The PCX Nominating Committee must nominate any candidate for these OTP Holders' positions on the PCX Nominating Committee endorsed by the written petition of the lesser of 35 OTP Holders or 10% of OTP Holders. PCX proposes that no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with [52] and (y) OTP Holders associated with OTP Firms that are affiliated [53] with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an OTP Holders' position on the PCX Nominating Committee.

PCX rules also currently provide that, in the event that there are more than six nominees to fill the OTP Holders' positions on the PCX Nominating Committee as a result of petition by OTP Holders, the PCX Nominating Committee must submit the nominees to OTP Holders for election.[54] PCX proposes that no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for an OTP Holders' position on the PCX Nominating Committee.

With respect to the nomination and election of the OTP Holder representative on the PCX Board, PCX rules currently provide that, in addition to the candidate nominated by the PCX Nominating Committee for the OTP Holders' position on the PCX Board, the PCX Nominating Committee must nominate any eligible candidate endorsed by the written petition of the lesser of 35 OTP Holders or 10% of OTP Holders in good standing on or before the tenth business day after the PCX Nominating Committee publishes its nominee for the PCX Board.[55] PCX proposes that no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the OTP Holders' position on the PCX Board.

In addition, PCX rules currently provide that if there are two or more nominees for the PCX Holder's position on the PCX Board as a result of petition by OTP Holders, the PCX Nominating Committee must submit the contested nomination(s) to OTP Holders for election.[56] PCX proposes that no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for the OTP Holders' position on the PCX Board.

Similarly, PCXE rules currently provide that the PCXE nominating committee ("PCXE Nominating Committee") shall have seven members, consisting of six ETP Holders and one person from the public. The PCXE Nominating Committee must nominate any candidate for these ETP Holders' positions on the PCXE Nominating Committee endorsed by the written petition of at least 10% of ETP Holders. PCX proposes that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates,[57] may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an ETP Holders' position on the PCXE Nominating Committee.

PCXE rules also currently provide that in the event that there are more than six nominees to fill the ETP Holders' positions on the PCXE Nominating Committee as a result of petition by ETP Holders, the PCXE Nominating Committee must submit the nominees to ETP Holders for election.[58] PCX proposes that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCXE Nominating Committee.

With respect to the nomination and election of the ETP Holder representatives on the PCX Board and PCXE Board, PCXE rules currently provide that in addition to the candidates nominated by the PCXE Nominating Committee for the ETP Holders' positions on the PCX Board and PCXE Board, the PCXE Nominating Committee must nominate any eligible candidate endorsed by the written petition of at least 10% of ETP Holders in good standing to the PCX Board or PCXE Board, as the case may be, within the time period set forth in PCXE rules.[59] PCX proposes that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 50% of the signatories to a petition endorsing a particular petition nominee for an ETP Holders' position on the PCX Board or PCXE Board.

In addition, PCXE rules also currently provide that if there are three or more nominees for the ETP Holders' positions on the PCXE Board or two or more nominees for the ETP Holder's position on the PCX Board, the PCXE Nominating Committee shall submit the contested nomination(s) to the ETP Holders for election.[60] PCX proposes that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCX Board or PCXE Board.[61]

The Commission finds that these proposed PCX and PCXE rules related to the director nomination and election process are consistent with the Act, in particular Section 6(b)(3) of the Act.[62] These proposed rule changes, which will limit the ability of affiliated OTP Holders or ETP Holders to control such process, should serve to strengthen and improve fair representation of all members. The Commission therefore believes that the proposal will help to protect PCX and PCXE Boards from any

[52] The term "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that such term does not include any person associated with a broker or dealer whose functions are solely clerical or ministerial. 15 U.S.C. 78c(a)(18).

[53] *See supra* note 43.

[54] PCX Rules 3.2(b)(2)(B).

[55] PCX Rule 3.2(b)(2)(C)(ii).

[56] PCX Rule 3.2(b)(2)(C)(iii).

[57] *See supra* note 43.

[58] PCXE Rules 3.2(b)(2)(B)(iii).

[59] PCXE Rule 3.2(b)(2)(C)(i).

[60] PCXE Rule 3.2(b)(2)(C)(ii).

[61] Aside from trading rights that such permit holders are entitled to and rights described in this section, the Exchange represents that permit holders have no other voting, nomination, petition, or other rights under the organizational documents and rules of PCX and PCXE, as applicable.

[62] 15 U.S.C. 78f(b)(3).

inappropriate influences of a group of related OTP Holders or ETP Holders.

D. SIP Registration

Section 11A(b)(1) of the Act[63] provides for the registration with the Commission of a securities information processor ("SIP")[64] that is acting as an exclusive processor.[65] Because ArcaEx engages on an exclusive basis on behalf of the Exchange in collecting, processing, or preparing for distribution or publication information with respect to transactions or quotations on or effected or made by means of a facility of the Exchange, it is an exclusive processor that is required to register pursuant to Section 11A(b) of the Act.[66]

Section 11A(b)(1) of the Act[67] provides that the Commission may, by rule or order, upon its own motion or upon application by a SIP, conditionally or unconditionally exempt any SIP from any provision of Section 11A of the Act or the rules or regulation thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 11A of the Act, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system.[68]

The Commission has determined to grant ArcaEx a temporary exemption from registration under Section 11A(b)(1) of the Act and Rule 609 thereunder for a period of thirty (30) days from the date of closing of the Merger, while an application for registration or an application for an exemption pursuant to Section 11A(b)(1) of the Act and Rule 609 thereunder is prepared.[69] The Commission also has determined to grant a conditional continuation of the 30-day temporary exemption from registration of ArcaEx, conditioned upon its filing of an application for registration or application for an exemption from registration within the 30-day time period. Such continuation shall continue for a period of 90 days following the end of the 30-day period and will afford interested persons an opportunity to submit written comments concerning the application filed with the Commission.[70]

ArcaEx currently operates the equities trading facility of PCX and is regulated as a facility of PCX.[71] The Commission therefore finds that such temporary exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 11A of the Act. The exemptions are for a limited period of time during which the Commission will have regulatory authority over ArcaEx.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[72] that the proposed rule change (SR–PCX–2005–134), as amended, is approved and Amendment No. 2 is approved on an accelerated basis.

It is therefore further ordered, pursuant to Section 11A(b)(1) of the Act,[73] that ArcaEx shall be exempt from registration as a securities information processor for a period of thirty (30) days following the date of closing of the Merger.

It is therefore further ordered, pursuant to Section 11A(b)(1) of the Act,[74] that upon the filing by ArcaEx of an application for registration or an exemption from registration as a securities information processor within the 30-day period prescribed above, ArcaEx shall be exempt from registration as a securities information processor for an additional period of ninety (90) days following the end of the original 30-day period.

By the Commission (Chairman Cox and Commissioners Glassman, Atkins, Campos, and Nazareth).

Nancy M. Morris,

Secretary.

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BILLING CODE 8010–01–P

[63] 15 U.S.C. 78k–1(b)(1).

[64] *See* Section 3(a)(22)(A) of the Act, 15 U.S.C. 78c(a)(22)(A), for the definition of a SIP. A SRO is explicitly excluded from the definition of a SIP.

[65] Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), defines an exclusive processor. Rule 609 under the Act, 17 CFR 242.609, requires that the registration of a SIP be on Form SIP, 17 CFR 249.1001.

[66] 15 U.S.C. 78k–1(b)(1). A SRO that is an exclusive processor is exempt from registration under Section 11A(b)(1) of the Act because it is excluded from designation as a SIP.

[67] 15 U.S.C. 78k–1(b)(1).

[68] 15 U.S.C. 78k–1(b)(1). *See also* Rule 609(c), 17 CFR 242.609(c).

[69] *See* Securities Exchange Act Release No. 12079 (February 6, 1976) (order granting temporary exemption from SIP registration for Nasdaq for (1) a period of 30 days following the consummation of the sale of the Nasdaq system to the NASD and the assignment of the NASD's rights in such purchase to Nasdaq, a subsidiary of the NASD and (2) an additional period of ninety (90) days following the day of publication of notice of filing of an application for registration or exemption from registration, if such application is received within the original 30 days). *See also* Securities Exchange Act Release Nos. 13278 (February 17, 1977) (granting Bradford National Clearing Corporation, which was to perform SIP functions for the Pacific Exchange, a 90-day temporary exemption from registration as a SIP pending Commission determination of Bradford's application for a permanent exemption, such 90-day period to begin from the consummation of the agreement calling for Bradford's assumption of the SIP services) and 27957 (April 27, 1990), 55 FR 19140 (May 8, 1990) (granting the NASD a 90-day temporary exemption from registration of its subsidiary, Market Services, Inc., which was to operate the NASD's PORTAL market, as a SIP pending Commission review of its application for registration filed with the Commission).

[70] Publication of notice of the filing of an application for registration is required by Section 11A(b)(3) of the Act, 15 U.S.C. 78k–1(b)(3).

[71] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001).

[72] 15 U.S.C. 78s(b)(2).

[73] 15 U.S.C. 78k–1(b)(1).

[74] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53370; File No. SR–PCX–2006–11]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Requiring Archipelago Securities, L.L.C. To Enter Two-Sided Quotes

February 24, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange"). through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The Exchange proposes to amend PCXE Rule 7.58 to specify that its broker-dealer facility, Archipelago Securities, L.L.C. ("Arca Securities"), would be responsible for entering two-sided orders in all stocks eligible for trading on ArcaEx for purposes of fulfilling the two-sided quote requirement found in section 6(a)(i)(B) of the Intermarket Trading System Plan ("ITS Plan"). Further, the Exchange proposes to expand certain exceptions recently

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

granted by the Commission to the ownership and voting restrictions in the PCX Holdings, Inc. ("PCXH") Certificate of Incorporation to encompass the proposed new functionality.

The text of the proposed rule change appears below. Additions are in *italics*. Deleted items are in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7

Rule 7.58 [Reserved.] *Compliance with Two-Sided Quote Requirement in ITS Plan. Archipelago Securities, L.L.C. will enter two-sided orders in all stocks eligible for trading on the Archipelago Exchange for purposes of fulfilling the two-sided quote requirement found in section 6(a)(i)(B) of the ITS Plan. The quote parameters for these purposes will be buy orders priced at $0.01 and sell orders priced at two times the previous day's close for the particular security, or, if required due to technology considerations, orders would be priced as near as possible to the parameters above.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new language to PCXE Rule 7.58 to specify that the broker-dealer facility of ArcaEx, Arca Securities, would be responsible for entering two-sided orders in all stocks eligible for trading on ArcaEx for purposes of fulfilling the quoting requirements found in section 6(a)(i)(B) of the ITS Plan. Section 6(a) of the ITS Plan states that "a member in any Exchange Market may trade any System security provided that continuous two-sided quotations in such security are required to be, and are, furnished under section 6(a)(i)(B) by or on behalf of such Exchange Participant to other Participants."

In the past, another broker-dealer affiliate of ArcaEx, Wave Securities, L.L.C. ("Wave"), performed this function.[3] The Exchange has determined that transferring this responsibility to the broker-dealer Arca Securities, a facility of the Exchange, is appropriate at this time, given that Wave will no longer be owned by Archipelago Holdings, Inc. ("Archipelago"). To accommodate the two-sided quote requirement, Arca Securities would enter buy and sell orders in every listed symbol eligible for trading at the start of core trading on ArcaEx.[4] All buy orders would be priced at $0.01, and all sell orders would be priced at two times the previous day's close for the particular security, or, if required due to technology considerations, orders would be priced as near as possible to the parameters above. The orders would be entered with a time in force during the core trading session on ArcaEx and, by their terms, would expire at the close of the core trading session. Should an execution result from these two-sided orders, Arca Securities, an ETP Holder on ArcaEx, would honor trades at the price of the orders entered.[5]

Arca Securities is a wholly-owned subsidiary of Archipelago, which recently acquired PCXH.[6] In the rule filings relating to this acquisition, the Exchange requested that the Commission provide certain exceptions to the ownership and voting limitations contained in the Certificate of Incorporation of PCXH to allow any "Related Person" of Archipelago who is a prohibited person not covered by the definition of permitted person (as such terms are defined by the PCXH Certificate of Incorporation) to exceed certain voting and ownership restrictions in PCXH's Certificate of Incorporation for certain time periods, as approved by the Commission. The Commission granted Arca Securities one such exception to the PCXH ownership and voting restrictions with respect to its Outbound Router[7] functionality, on the condition that it would not undertake any activities other than those set forth in the Arca-PCX Approval order, unless such activity was first approved by the Commission.[8]

Because this filing requests approval for new Arca Securities functionality, *i.e.*, permission to enter two-sided orders in all stocks eligible for trading on ArcaEx for purposes of section 6(a)(i)(B) of the ITS Plan, the Exchange has requested that the Commission also approve an expansion of the exception to the PCXH ownership and voting restrictions to incorporate the proposed functionality and extend the exception from the PCXH ownership and voting restrictions to this new function of Arca Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objectives of section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Further, the Exchange believes the proposed functionality will not create a condition of unfair competition with respect to its affiliate, Arca Securities, and other equity trading permit holders because the proposed quoting parameters are designed to avoid order interaction. The orders entered by Arca Securities under the proposed functionality will not be intended to result in transactions but rather will be entered for the sole purpose of satisfying ITS Plan requirements to provide continuous two-sided quotations. The Exchange

[3] *See* letter from David E. Rosedahl, Pacific Exchange, Inc., to John Polise, Division of Market Regulation ("Division"), Commission, regarding ArcaEx's compliance with the two-sided quote requirements of the ITS Plan, dated July 31, 2002.

[4] *See* PCXE Rule 7.34.

[5] Any trade occurring on the Exchange with an obvious error in terms, including price, is subject to the Clearly Erroneous Policy set forth in PCXE Rule 7.10. The Exchange represents that it would apply the procedures set forth in Rule 7.10 in an even-handed and fair manner in the event a transaction involving Arca Securities comes before it under the procedures set forth in the rule.

[6] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90) (order granting approval of proposed rule changes in relation to the acquisition of PCXH by Archipelago) ("Arca-PCX Approval Order").

[7] In the Arca-PCX Approval Order, the Commission defined the Outbound Router function of Arca Securities as follows: "an optional routing service for ArcaEx to route orders to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers from ArcaEx in compliance with PCXE Rules." *See* Arca-PCX Approval Order at 56952.

[8] The Commission initially granted the exception with respect to Arca Securities' Outbound Router functionality. *See* Arca-PCX Approval Order, at 56952–56953 and 56958–56959.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

anticipates that the non-competitively priced orders placed by Arca Securities for these purposes would be filled only in exceptional circumstances and therefore the Exchange believes there would be a very remote potential for a conflict of interest between the Exchange's self-regulatory obligations and its commercial interests. For these reasons, the Exchange believes it is appropriate and consistent with the Act to permit Arca Securities to undertake the proposed new functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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–PCX–2006–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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–PCX–2006–11 and should be submitted on or before March 27, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[12] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the proposal, Arca Securities, an affiliated broker-dealer of the Exchange, would maintain two-sided quotes in all stocks eligible for trading on ArcaEx for purposes of fulfilling the two-sided quote requirement found in section 6(a)(i)(B) of the ITS Plan. The performance of this functionality by Arca Securities, without Commission approval, would, however, cause Arca Securities to violate ownership and voting restrictions set forth in the PCXH Certificate of Incorporation.[13]

Arca Securities, as a wholly-owned subsidiary of Archipelago, is a "Related Person" [14] of Archipelago and an ETP Holder. Consequently, Archipelago's ownership of Arca Securities would cause Arca Securities to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation, absent an exception. The Commission approved such an exception in the Arca-PCX Approval Order. The exception is, however, limited in scope to allow Arca Securities to provide an optional outbound routing service for ArcaEx and does not include the functionality contained in this proposal.[15] PCX has requested that the Commission approve an expansion of the exception to the PCXH ownership and voting restrictions to allow Arca Securities to enter two-sided quotes on ArcaEx for the purpose of complying with section 6(a)(i)(B) of the ITS Plan.

The Commission believes that extending the exception from the PCXH voting and ownership restrictions to this new function of Arca Securities is consistent with section 6(b)(5) of the Act. Accordingly, Arca Securities may provide continuous two-sided quotes on ArcaEx for the purpose of complying with the ITS Plan. This exception is subject to the same conditions described in the Arca-PCX Approval Order.[16] Specifically, Arca Securities is, and will continue to be, operated and regulated as a facility of PCX and another self-regulatory organization (NASD) has, and will continue to have, primary regulatory responsibility for Arca Securities pursuant to Rules 17d–1 and 17d–2 under the Act.

Pursuant to section 19(b)(2) of the Act,[17] the Commission may not approve a proposed rule change prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so finding. The Commission hereby finds good cause for approving this proposed rule change prior to the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that the Exchange has represented that Archipelago entered into a definitive agreement to sell its wholly-owned subsidiary, Wave, the entity which currently performs the functionality which is the subject of this proposal on behalf of the Exchange.[18] Further, the Commission notes that Archipelago may, among other things, continue to own Wave until the earlier of (i) the closing date of the merger of Archipelago and the New York Stock

[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* PCXH Certificate of Incorporation, Article Nine. *See also* Arca-PCX Approval Order.

[14] The term "Related Person," as defined in the PCXH Certificate of Incorporation, means (i) with respect to any person, all "affiliates" of such person (as such terms are defined in Rule 12b–2 under the Act); (ii) with respect to any person constituting a trading permit holder of PCX or an equities trading permit holder of PCXE, any broker dealer with which such holder is assoicated; and (iii) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of PCXH. PCXH Certificate of Incorporation, Article Nine, Section 1(b).

[15] *See* Arca-PCX Order at 56958–56959. *See also supra* notes 7 and 8 and accompanying text.

[16] *See* Arca-PCXA Order at 56958–56959.

[17] 15 U.S.C. 78s(b)(2).

[18] *See* Securities Exchange Act Release No. 53202 (January 31, 2006), 71 FR 6530 (February 8, 2006) (SR–PCX–2006–04),at 6535.

Exchange, Inc., or (ii) March 31, 2006.[19] Because of the timing of these transactions, the Commission believes there is good cause for granting accelerated approval, in order to ensure that the Exchange is able to comply with the ITS Plan, without interruption, after Wave is sold.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–2006–11), is hereby approved on an accelerated basis.[20]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3094 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53384; File No. SR–PCX–2005–135]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exposure of Orders in the PCX Plus Crossing Mechanism

February 27, 2006.

On December 22, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to reduce the exposure period in the Crossing Mechanism of the PCX Plus System ("PCX Plus" or "System") from 10 seconds to 3 seconds. The proposed rule change was published for comment in the **Federal Register** on January 23, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

PCX rules provide that a PCX Broker may not facilitate orders or cross two orders, using the System's Crossing Mechanism, unless it enters into the System the terms of each order that is to be included as part of a Cross Order,[4] pursuant to PCX Rule 6.76(c)(2)(A). Both facilitation crosses and non-facilitation crosses are executed in the same manner in PCX Plus. Upon entry into PCX Plus, the System will evaluate the terms of the Cross Order and, after accepting the Cross Order, will execute the cross in accordance with PCX Rule 6.76(c)(2)(B). Among other conditions, Rule 6.76(c)(2)(B) currently requires a 10-second exposure period in which OTP Holders and OTP Firms may enter orders to trade against the side of the Cross Order that has been designated as the Exposed Order.[5] The Exchange proposes to shorten the duration of this exposure period, as set forth in PCX Rule 6.76(c)(2)(B)(i)(a) and PCX Rule 6.76(c)(2)(B)(ii)(b),[6] from 10 seconds to 3 seconds. The Exchange represents that all market participants on the PCX utilize electronic trading systems that monitor all updates to the PCX market, including changes resulting from orders being entered into the Crossing Mechanism, and can automatically respond based upon pre-set parameters.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder applicable to a national securities exchange,[8] and in particular with Section 6(b)(5) of the Act.[9] The Commission believes that, in the electronic environment of PCX Plus, reducing the exposure period to 3 seconds could facilitate the prompt execution of orders, while providing participants in PCX Plus with an adequate opportunity to compete for those orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–2005–135) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3113 Filed 3–3–06; 8:45 am]

BILLING CODE 8010–01–P

[19] *See id.*, at 6365.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53133 (January 17, 2006), 71 FR 3598.

[4] *See* PCX Rule 6.76(c)(1)(A), which defines "Cross Order" for the purposes of PCX Rule 6.76(c) as "two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the "Cross Price")."

[5] *See* PCX Rule 6.76(c)(1)(D), which defines "Exposed Order" as follows: "the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order."

[6] PCX Rules 6.76(c)(2)(B)(i) and 6.76(c)(2)(B)(ii) govern the execution of Cross Orders when the Cross Price is between the Best Bid and Offer ("BBO") and when it is at the BBO, respectively.

[7] 15 U.S.C. 78f(b).

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10368 and #10369]

California Disaster Number CA–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–1628–DR) , dated 02/03/2006.

Incident: Severe storms, flooding, mudslides, and landslides.

Incident Period: 12/17/2005 through 01/03/2006.

Effective Date: 02/23/2006.

Physical Loan Application Deadline Date: 04/04/2006.

EIDL Loan Application Deadline Date: 11/03/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of California, dated 02/03/2006, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

El Dorado, Nevada, and Shasta.

Contiguous Counties:

California: Apline, Lassen, Plumas, Sierra, and Yuga.

Nevada: Douglas and Washore.

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. E6–3107 Filed 3–3–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC) Committee Meeting

The U.S. Small Business Administration Audit and Financial Management Advisory Committee (AFMAC) will host a public meeting on Thursday, March 16, 2006. The meeting will take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416. The AFMAC was established by the Administrator of the SBA to provide recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

Anyone wishing to attend must contact Jennifer Main in writing or by fax. Jennifer Main, Chief Financial Officer, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205–6449; fax (202) 205–6969; *Jennifer.Main@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–3108 Filed 3–3–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Maine District Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting on Wednesday, March 22, 2006, starting at 10 a.m. The meeting will be held at the Care & Comfort, 180 Main Street, Waterville, Maine to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (207)–622–8386 phone, (207)–622–8277 fax.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–3106 Filed 3–3–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5335]

Bureau of Political-Military Affairs: Suspension of Defense Export Licenses to Eritrea

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 38 of the Arms Export Control Act and effective as of September 12, 2005 all new applications for licenses and approvals of defense articles and services for the export or transfer to Eritrea under the Arms Export Control Act (AECA) are suspended. An exception is made for such items that support U.S. anti-terrorism and de-mining programs, are necessary to meet U.S. commitments under international conventions, and are necessary for United Nations and other appropriate peacekeeping personnel and operation. Licenses and approvals authorized prior to September 12, 2005 continue to be valid.

DATES: *Effective Date:* September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. James Juraska, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–22860 or FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: It is the policy of the U.S. Government, effective as of September 12, 2005 to suspend all licenses and approvals for the export or transfer to Eritrea of defense articles and services. An exception is made allowing for the export or transfer to Eritrea of defense articles and defense services which support U.S. anti-terrorism, counter-terrorism, and de-mining programs, are necessary for United Nations and other appropriate peacekeeping operations, are necessary to meet U.S. commitments under international conventions, or that are temporary exports of protective clothing, to include flak jackets and military helmets, for individual use by United Nations personnel, media representatives, and humanitarian and development workers.

These actions are taken in accordance with Section 405(a)(13)(B) of the International Religious Freedom (IRF) Act. Eritrea, designated a Country of Particular Concern by Secretary Powell in September 2004 for severe violations of religious freedom, continues to act egregiously to deny the rights of worshippers. Current practices include closing all churches but those officially sanctioned by the Government of the State of Eritrea (GSE), imprisonment of hundreds of worshippers without trial, detention of prisoners in metal shipping containers in the desert (punishment cells), and an ongoing denial from the GSE of any significant religious freedom problem. Despite the attempts of several U.S. officials, talks with senior GSE representatives have proved futile.

Per Section 409 of the IRF Act, this ban will last for two years, unless expressly reauthorized, or unless the Secretary determines at an earlier date that the GSE "has ceased or taken substantial and verifiable steps to cease the particularly severe violations of religious freedom."

The licenses and approvals for Eritrea subject to this policy include manufacturing licenses, technical assistance agreements, technical data, and all commercial exports of defense articles and services subject to the Arms Export Control Act, with the exclusion of those types of defense articles and services cited above. The foregoing includes any agreement that proposes Eritrea as a sales territory.

Notwithstanding this new policy, authorizations granted prior to September 12, 2005 for the export or transfer to Eritrea of defense articles and services subject to the ITAR remain valid. The range of prior licenses and approvals for Eritrea that remain valid include manufacturing licenses, technical assistance agreements, technical data, and all commercial exports of defense articles and services subject to the Arms Export Control Act.

This action is taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

John Hillen,

Assistant Secretary, Bureau of Political Military Affairs, Department of State.

[FR Doc. E6–3133 Filed 3–3–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5337]

Determination With Respect to Countries and Entities Failing To Take Measures To Apprehend and Transfer All Indicted War Criminals

Pursuant to the authority vested in me by Section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102), I hereby determine that Serbia and the Republika Srpska have failed to take necessary and significant steps to implement their international legal obligations to

apprehend and transfer to the International Criminal Tribunal for the Former Yugoslavia all persons in their territory who have been indicted by the Tribunal.

This determination will be published in the **Federal Register**.

Dated: February 9, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E6–3131 Filed 3–3–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 5336]

Determination on U.S. Bilateral Assistance and International Financial Institution Voting for Projects in Serbia and the Entity of the Republika Srpska in Bosnia and Herzegovina

Pursuant to the authority vested in me by Section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FOAA), I hereby waive the application of Section 561 of the FOAA with regard to certain U.S. bilateral assistance programs in Serbia and the Republika Srpska and determine that such assistance directly supports the implementation of the Dayton Accords. I also hereby waive the application of section 561 of the FOAA with regard to U.S. support for International Financial Institution projects in Serbia and the Republika Srpska that directly support the implementation of the Dayton Accords as decided by the Assistant Secretary for European and Eurasian Affairs and in accordance with 561(c) and (d).

Programs directed towards the municipalities of Bijeljina, Han Pijesak, Pale, and Sokolac in the Republika Srpska are excluded from this waiver because competent authorities there have helped to provide protection and support to war crimes indictees. Were the U.S. Government to determine at a future date that assistance projects that could benefit these municipalities merited consideration, these activities would be subject to a separate waiver determination.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: February 9, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E6–3132 Filed 3–3–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Delegation of Authority 289]

Delegation by the Secretary of State to the Assistant Secretary for European and Eurasian Affairs of Authority To Make Certain Determinations Regarding Assistance Related to the Dayton Accords

By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651(a)), I hereby delegate to the Assistant Secretary for European and Eurasian Affairs all authorities and functions vested in the Secretary of State under section 561(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2006 (Pub. L. 109–102) to make determinations that international financial institution projects involving the extension of any financial or technical assistance to Serbia or the Republik Srpska directly support the implementation of the Dayton Accords.

Notwithstanding this delegation of authority, the Secretary of State and Deputy Secretary of State may exercise any authority or function delegated by this delegation.

This delegation of authority shall be published in the **Federal Register**.

Dated: February 9, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E6–3135 Filed 3–3–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 28, 2006.

The Department of 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 April 5, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0132.

Type of Review: Extension.

Title: Amended U.S. Corporation Income Tax Return.

Form: IRS Form 1120X.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or 1120–A. The data is used to determine if the correct tax liability has been reported.

Respondents: Business or other for-profit; Farms.

Estimated Total Burden Hours: 300,582 hours.

OMB Number: 1545–0260.

Type of Review: Extension.

Title: Certificate of Payment of Foreign Death Tax.

Form: IRS Form 706–CE.

Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by IRS section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.

Respondents: Individuals or households.

Estimated Total Burden Hours: 3,870 hours.

OMB Number: 1545–1499.

Type of Review: Revision.

Title: Revenue Procedure 2006–10 Acceptance Agents.

Description: Revenue Procedure 2006–10 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with IRS.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Estimated Total Burden Hours: 24,960 hours.

OMB Number: 1545–1536.

Type of Review: Extension.

Title: Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts REG–209823–96 (Final).

Description: The recordkeeping requirement in the regulation provides taxpayers with an alternative method for complying with Congressional intent regarding charitable remainder trusts. The recordkeeping alternative may be less burdensome for taxpayers.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 75 hours.

OMB Number: 1545–1806.

Type of Review: Extension.

Title: Asset Allocation Statement Under 338.

Form: IRS Form 8883.

Description: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 4,929 hours.

OMB Number: 1545–1831.

Type of Review: Extension.

Title: REG–106486–98 (Final) Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

Description: The IRS needs the information from the holder of certain debt instruments in order to alert the agency that the computation of interest income/expense by the holder and issuer will not be consistent. The respondents will be holders of contingent payment debt instruments which require payments to be made in or by reference to foreign currency. The respondents will probably be investment banks, however, may also include others who hold these debt instruments for investments.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 100 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–3117 Filed 3–3–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 6, 2006

Part II

Department of Housing and Urban Development

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2006; Revised; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4995–N–05]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2006; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fair Market Rents (FMRs) for Fiscal Year 2006, update.

SUMMARY: This notice updates the FMRs for Burlington, VT, St. Mary's County, MD and San Jose, CA based on Random Digit Dialing (RDD) surveys conducted in November 2005. It also revised FMRs for Baton Rouge and New Orleans based on January 2006 data.

DATES: Effective March 6, 2006.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html*. FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, a table of 40th percentile recent mover rents for those areas currently at the 50th percentile FMRs will be provided on the same Web site noted above. Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or further methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone (202) 708–0590. Questions about disaster-related FMR exceptions should be referred to the respective local HUD office. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

Update

Random Digit Dialing (RDD) surveys were completed in November 2005 for the following FMR areas: Burlington-South Burlington, VT, MSA; Bloomington, IN CBSA; San Jose-Sunnyvale-Santa Clara, CA CBSA; St. Mary's County, MD; and Eastern Worcester County, MA HMFA. The RDD surveys for two areas, Bloomington, IN and Eastern Worcester County, MA, indicated no change. The survey results for San Jose-Sunnyvale-Santa Clara and St. Mary's County showed that rents had increased. The revised San Jose FMRs are less than the FMRs published in the **Federal Register** on October 3, 2005 (70 FR 57654), because this FMR was a 50th percentile FMR. San Jose became subject to 40th percentile FMRs in the **Federal Register** notice published on February 14, 2006 (71 FR 7832). The FMRs implemented in this notice are an increase over the February 14, 2006, FMRs notice. San Benito County is a separate HUD FMR Market Area (HMFA) within the San Jose CBSA, so both San Jose and San Benito were given increases.

Both the Baton Rouge and New Orleans rental housing markets experienced enormous impacts from Hurricanes Katrina and Rita. In New Orleans the impacts were a combination of damage that made over half of the inventory uninhabitable and a massive increase in demand for the remaining units. The Baton Rouge rental inventory also had some damage, but the influx of New Orleans evacuees had a far greater impact and virtually eliminated vacancies.

Surveys of both rental markets show effectively no vacancies. Operating and repair costs have increased and insurance costs, which were already very high, are expected to further increase this year.

Apartment complex survey data indicate that rents have increased 25–30 percent in New Orleans and 15–20 percent in Baton Rouge. These results are supported by extensive field work by HUD economists who have been researching local market conditions. In this notice, HUD is increasing Baton Rouge FMRs by 25 percent and New Orleans FMRs by 35 percent. The FMR increases provided are believed adequate to reflect current market circumstances and should cover at least part of the expected additional increases anticipated this year. The Department will continue to monitor this situation and modify FMRs if significant further rent increases occur. HUD is currently conducting rent surveys in Beaumont-Port Arthur, Dallas, Jackson, Houston, Little Rock, San Antonio and Shreveport, all of which are housing significant numbers of Katrina evacuees. The objective is to determine if disaster evacuees have reduced pre-Katrina vacancies enough to result in measurable rent increases. FMR increases will be issued if justified by the survey results for any of these areas.

The FMR for the affected areas are increased as follows:

2006 Fair market rent areas	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Baton Rouge, LA HMFA	$573	$624	$720	$918	$1009
Burlington, South Burlington, VT MSA	673	745	935	1197	1342
New Orleans-Metairie-Kenner, LA MSA	725	803	940	1206	1247
San Benito, CA HMFA	614	831	924	1309	1621
San Jose-Sunnyvale-Santa Clara, CA HMFA	914	1059	1273	1831	2015
St. Mary's County, MD	694	720	938	1233	1623

Dated: February 23, 2006.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. 06–2026 Filed 3–3–06; 8:45 am]

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S. 1989/P.L. 109–175

To desginate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the "Holly A. Charette Post Office". (Feb. 27, 2006; 120 Stat. 190)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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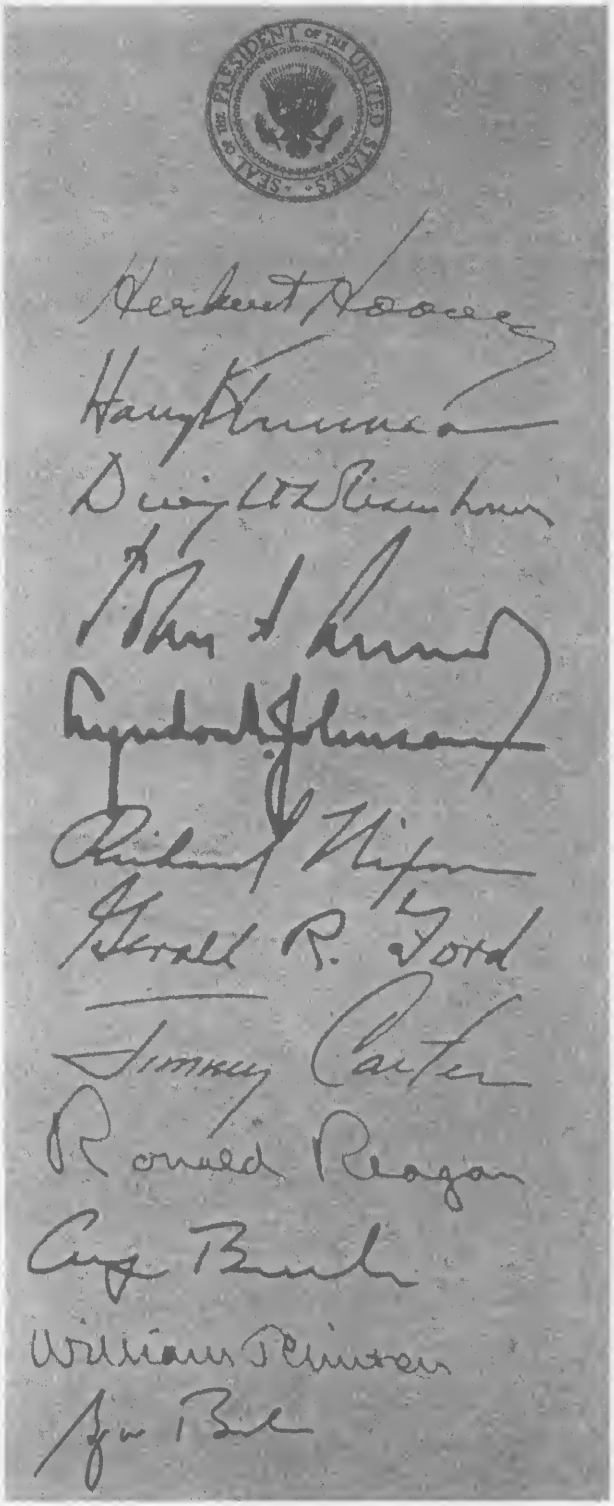

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