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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 85

Wednesday, May 3, 2006

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

8009.....26183
8010.....26185
8011.....26187

12 CFR

611.....25919
612.....25919
614.....25919
615.....25919
620.....25919

14 CFR

39 (6 documents) 25919, 25921, 25924, 25926, 25928, 25930
97.....25932

Proposed Rules:

39 (2 documents) 25984, 24987

22 CFR

1100.....25934

30 CFR

Proposed Rules:

917.....25989
942.....25992

40 CFR

180 (6 documents) 25935, 25942, 25946, 25952, 25956, 25962

Proposed Rules:

180 (3 documents) 25993, 26000, 26001

47 CFR

64.....25967
73 (4 documents) 25980, 25981
97.....25981

Proposed Rules:

15.....26004
73 (2 documents) 26006

50 CFR

Proposed Rules:

17.....26007

Rules and Regulations

Federal Register
Vol. 71, No. 85
Wednesday, May 3, 2006

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, and 620

RIN 3052–AC21

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Preferred Stock; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Announcement of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611, 612, 614, 615, and 620 on September 13, 2005 (70 FR 53901). This final rule amended our regulations governing preferred stock issued by Farm Credit System (System) banks, associations, and service corporations and became effective on November 3, 2005 (70 FR 67901). However, we delayed the effective date of §§ 612.2165(b)(12)–(15), 615.5245(a), and 615.5270(d) for 6 months from the effective date of the final rule in order to allow System institutions with existing preferred stock programs to adopt the policies and procedures necessary to comply with the rule. This document announces the effective date of those portions of the rule.

DATES: *Effective Date:* The effective date for §§ 612.2165(b)(12)–(15), 615.5245(a), and 615.5270(d) is May 3, 2006.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: April 27, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–4175 Filed 5–2–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22973; Directorate Identifier 2004–NM–67–AD; Amendment 39–14577; AD 2006–09–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes; and A340–541 and A340–642 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and A340–541 and A340–642 airplanes. This AD requires operators to revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new information. This information includes, for all affected airplanes, decreased life limit values for certain components; and for Model A330–200 and –300 series airplanes, new inspections, compliance times, and new repetitive intervals to detect fatigue cracking, accidental damage, or corrosion in certain structures. This AD results from a revision to subsection 9–1 of the Airbus A330 and A340 Maintenance Planning Documents (MPD) for Life limits/Monitored parts, and subsection 9–2 of the Airbus A330 MPD for Airworthiness Limitations Items. We are issuing this AD to prevent fatigue cracking, damage, or corrosion, which could result in reduced structural integrity of these airplanes.

DATES: This AD becomes effective June 7, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 7, 2006.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer International Branch, ANM–116, FAA, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and A340–541 and A340–642 airplanes. That NPRM was published in the **Federal Register** on November 15, 2005 (70 FR 69288). That NPRM proposed to require operators to revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new information.

Comments

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

Request To Allow Single Inspection for Compliance With Tasks of Multiple Origins

Air Transportation Association (ATA), on behalf of Northwest Airlines, supports the intent of the NPRM, but has questions about implementing the AD. ATA's concern centers on the Airworthiness Limitations items (ALI) that require general visual inspections (GVI). ATA supports listing these inspections separately in an appropriate document so that they remain visible and will not be "lost" in the commenter's zonal inspection program. However, ATA would like the FAA to acknowledge that GVI tasks with multiple origins (ALI and maintenance review board (MRB)) that have identical accessibility only require a single GVI. ATA states that this single GVI constitutes full compliance with all applicable originating documents; separate GVIs are not required in order to show compliance with each originating document. ATA believes that accomplishing these GVIs in conjunction with each other will enhance safety, provided each GVI requirement is tracked separately. In other words, the ATA explains, an ALI requirement should be accomplished in conjunction with the zonal inspection program when appropriate so that the effectiveness of each inspection requirement will be maintained.

We acknowledge ATA's request. The zonal inspection program is a program that is unique to the commenter's airline. A single GVI can satisfy both the MRB zonal inspection and the ALI inspection as long as the inspection is done in the same area. However, the commenter must work with its Principal Maintenance Inspector for approval of that method of compliance. We have not changed the AD in this regard.

Explanation of Change in Applicability

We have added Airbus Model A330–302 and A330–303 airplanes to the applicability of the AD to more closely match the effectivity of the parallel French airworthiness directives. Neither of these models are on the U.S. Register. However, we have added them to the applicability to ensure that the unsafe condition is addressed if any Airbus Model A330–302 and A330–303 airplane is imported and placed on the U.S. Register in the future.

Clarification of Unsafe Condition

We have changed the AD to further clarify the end-level effect unsafe condition could have on the affected airplanes.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revise the ALS	1	$65	None ...	$65	20	$1,300

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–09–07 Airbus: Amendment 39–14577. Docket No. FAA–2005–22973; Directorate Identifier 2004–NM–67–AD.

Effective Date

(a) This AD becomes effective June 7, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, and –243 airplanes; A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; A340–211, –212, and –213 airplanes; A340–311, –312, and –313 airplanes; A340–541 airplanes; and A340–642 airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular 25–1529.

Unsafe Condition

(d) This AD results from a revision to subsection 9–1 of the Airbus A330 and A340 Maintenance Planning Documents (MPD) for Life limits/Monitored parts, and subsection 9–2 of the Airbus A330 MPD for Airworthiness Limitations Items. We are issuing this AD to prevent fatigue cracking, damage, or corrosion, which could result in reduced structural integrity of these airplanes.

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.

Airworthiness Limitations Revision

(f) Within 3 months after the effective date of this AD, revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating into the ALS the documents in paragraph (f)(1) and (f)(2) of this AD, as applicable.

(1) Airbus Document AI/SE–M4/95A.0089/97, "A330 Airworthiness Limitations Items," Issue 12, dated November 1, 2003, as specified in Section 9–2 of the Airbus A330 MPD.

(2) Section 9–1, "Life limits/Monitored parts," Revision 05, dated April 7, 2005, of the Airbus A330 and A340 MPDs.

(g) Except as provided by paragraph (h) of this AD: After the actions in paragraph (f) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directives F–2004–024, dated February 18, 2004; F–2005–069, dated April 27, 2005; and F–2005–070, dated April 27, 2005; also address the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Document AI/SE–M4/95A.0089/97, "A330 Airworthiness Limitations Items," Issue 12, dated November 1, 2003; Section 9–1, "Life limits/Monitored parts," Revision 05, dated April 7, 2005, of the Airbus A330 Maintenance Planning Document; and Section 9–1, "Life limits/Monitored parts," Revision 05, dated April 7, 2005, of the Airbus A340 Maintenance Planning Document; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. (The document and issue number of Airbus Document AI/SE–M4/95A.0089/97 are contained only on the Title. Record of Revision, Summary of Changes, List of Effective Pages, Table of Contents, and Section 1 pages; no other page of this document contains this information. The revision number of Section 9–1 of the Airbus A330 Maintenance Planning Document and Section 9–1 of the Airbus A340 Maintenance Planning Document is contained only in the Record of Revisions page; no other page of these documents contains this information. The issue date on the title page of section 9–1 of the Airbus A340 Maintenance Planning Document should be "April 7, 2005.") The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 20, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4051 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23870; Directorate Identifier 2005–NM–022–AD; Amendment 39–14575; AD 2006–09–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A310–200 and –300 series airplanes. This AD requires doing repetitive rotating probe inspections for any crack of the rear spar internal angle and the left and right sides of the tee fitting, and doing related investigative/corrective actions if necessary. This AD also requires modifying the holes in the internal angle and tee fitting by cold expansion. This AD results from full-scale fatigue tests, which revealed cracks in the lower rear spar internal angle, and tee fitting. We are issuing this AD to detect and correct fatigue cracks of the rear spar internal angle and tee fitting, which could lead to the rupture of the internal angle, tee fitting, and rear spar, and consequent reduced structural integrity of the wings.

DATES: This AD becomes effective June 7, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 7, 2006.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A310–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on February 13, 2006 (71 FR 7449). That NPRM proposed to require doing repetitive rotating probe inspections for any crack of the rear spar internal angle and the left and right sides of the tee fitting, and doing related investigative/corrective actions if necessary. That NPRM also proposed to require modifying the holes in the internal angle and tee fitting by cold expansion.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. This AD will affect about 56 airplanes of U.S. registry. Work hours and parts costs vary according to the configuration of the airplane.

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection	16–306	$65	$618–$18,489	$1,658–$38,379, per inspection cycle.	$92,848–$2,149,224, per inspection cycle.
Modification	146–381	65	4,350–15,501	$13,840–$40,266	$775,040–$2,254,896.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–09–05 Airbus: Amendment 39–14575. Docket No. FAA–2006–23870; Directorate Identifier 2005–NM–022–AD.

Effective Date

(a) This AD becomes effective June 7, 2006.

Affected ADs

(b) Certain requirements of this AD terminate certain requirements of AD 98–26–01, amendment 39–10942.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from full-scale fatigue tests, which revealed cracks in the lower rear spar internal angle and tee fitting. We are issuing this AD to detect and correct fatigue cracks of the rear spar internal angle and tee fitting, which could lead to the rupture of the internal angle, tee fitting, and rear spar, and consequent reduced structural integrity of the wings.

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 and Repetitive Inspections

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, do a rotating probe inspection for any crack of the rear spar internal angle located in the center wing box and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, except as required by paragraphs (k), (l), and (m) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) Within 1,000 flight cycles or 1,600 flight hours after the effective date of this AD, whichever is first.

(2) At the applicable time specified in Table 1 of this AD.

TABLE 1.—INITIAL COMPLIANCE TIMES FOR THE REAR SPAR INTERNAL ANGLE

Airplane model and configuration	Threshold
Model A310–203, –204, –221, and –222 airplanes that are not modified by Airbus Modifications 06672S6812 and 07387S7974.	Before the accumulation of 10,300 total flight cycles or 16,600 total flight hours, whichever is first.
Model A310–203, –204, –221, and –222 airplanes that are modified by Airbus Modifications 06672S6812 and 07387S7974 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 23,400 total flight cycles or 37,700 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are not modified by Airbus Modifications 06672S6812 and 07387S7974.	Before the accumulation of 9,500 total flight cycles or 15,000 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are modified by Airbus Modifications 06672S6812 and 07387S7974 (modified either in production or according to Airbus Service Bulletin A310–57–2035).	Before the accumulation of 21,500 total flight cycles or 34,000 total flight hours, whichever is first.

(g) Repeat the inspection specified in paragraph (f) of this AD thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For Model A310–203, –204, –221, and –222 airplanes: Repeat thereafter at intervals not to exceed 9,100 flight cycles or 14,650 flight hours, whichever is first.

(2) For Model A310–304, –322, –324, and –325 airplanes: Repeat thereafter at intervals not to exceed 9,500 flight cycles or 15,000 flight hours, whichever is first.

(h) At the applicable time specified in Table 2 of this AD or within 6 months after the effective date of this AD, whichever occurs later: Do a rotating probe inspection for any crack of the left and right sides of the tee fitting, and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, except as required by paragraphs (k), (l), and (m) of this AD. Do all applicable related investigative and corrective actions before further flight.

TABLE 2.—INITIAL COMPLIANCE TIMES FOR THE TEE FITTING

Airplane model and configuration	Threshold
Model A310–203, –204, –221, and –222 airplanes that are not modified by Airbus Modification 06673S6813.	Before the accumulation of 21,600 total flight cycles or 34,800 total flight hours, whichever is first.
Model A310–203, –204, –221, and –222 airplanes that are modified by Airbus Modification 06673S6813 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 41,300 total flight cycles or 66,500 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are not modified by Airbus Modification 06673S6813.	Before the accumulation of 17,100 total flight cycles or 27,000 total flight hours, whichever is first.
Model A310–304, –322, –324, and –325 airplanes that are modified by Airbus Modification 06673S6813 (modified either in production or in accordance with Airbus Service Bulletin A310–57–2035).	Before the accumulation of 32,300 total flight cycles or 51,000 total flight hours, whichever is first.

(i) Repeat the inspection specified in paragraph (h) of this AD thereafter at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For Model A310–203, –204, –221, and –222 airplanes: Repeat thereafter at intervals not to exceed 10,800 flight cycles or 17,400 flight hours, whichever is first.

(2) For Model A310–304, –322, –324, and –325 airplanes: Repeat thereafter at intervals not to exceed 8,800 flight cycles or 13,900 flight hours, whichever is first.

Modification

(j) For all airplanes except those that are modified by Airbus Modifications 06672S6812, 06673S6813, and 07387S7974 in production: Within 60 months after the effective date of this AD, modify the holes in the internal angle and tee fitting and do all applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005, except as required by paragraph (k) of this AD. Do all applicable related investigative and corrective actions before further flight.

Contact the FAA

(k) Where Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005; and Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004; specify to contact the manufacturer if certain cracks are found, before further flight, repair those conditions according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Touch-and-Go Flights

(l) All touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

No Reporting Required

(m) Although Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished According to Previous Issues of Service Bulletins

(n) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2047, Revision 03, dated November 26, 1997; Revision 04, dated March 5, 1999; or Revision 05, dated August 3, 2000; are considered acceptable for compliance with the corresponding actions specified in paragraphs (f) through (i) of this AD.

(o) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2035, Revision 1, dated October 13, 1989; Revision 2, dated February 26, 1990; Revision 3, dated May 23, 1990; Revision 4, dated April 15, 1991; Revision 5, dated May 27, 1992; Revision 6, dated March 8, 1994; or Revision 7, dated April 17, 1996; are considered acceptable for compliance with the corresponding actions specified in paragraph (j) of this AD.

Related AD

(p) Accomplishing the initial inspections specified in paragraphs (f) and (g) of this AD terminates the requirements specified in paragraph (o) of AD 98–26–01.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 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.

Related Information

(r) French airworthiness directive F–2005–001, dated January 5, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(s) You must use Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004; and Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. Airbus Service Bulletin A310–57–2047, Revision 06, dated July 13, 2004, includes the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1–8, 10–15, 17, 18, 22–25, 33, 37	06	July 13, 2004.
9, 16, 21, 30, 45, 46, 75–80, 95, 96	05	August 3, 2000.
19, 20, 27–29, 35, 36, 47–56, 61–74	Original	February 26, 1991.
26, 31, 32, 34, 39–44, 59, 60, 81–94	04	March 5, 1999.
38	1	January 4, 1996.
57, 58	2	January 22, 1997.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 20, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4052 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23886; Directorate Identifier 2005–NM–255–AD; Amendment 39–14574; AD 2006–09–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Model Falcon 900EX airplanes. This AD requires inspecting the number 2 engine left- and right-hand forward mounts for missing rivets, and installing rivets if necessary. This AD results from reports of two missing rivets in the front section of the central engine mast discovered on airplanes in service and in production. We are issuing this AD to detect and correct missing rivets in the front section of the central engine mast, which could result in reduced structural integrity of the central engine mast, possible separation of the engine from the airplane during flight, and consequent loss of control of the airplane.

DATES: This AD becomes effective June 7, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 7, 2006.

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

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Dassault Model Falcon 900EX airplanes. That NPRM was published in the **Federal Register** on February 15, 2006 (71 FR 7874). That NPRM proposed to require inspecting the number 2 engine left- and right-hand forward mounts for missing rivets, and installing rivets if necessary.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection for missing rivets	2	$65	$130	81	$10,530

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–09–04 Dassault Aviation: Amendment 39–14574. Docket No. FAA–2006–23886; Directorate Identifier 2005–NM–255–AD.

Effective Date

(a) This AD becomes effective June 7, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 900EX airplanes, certificated in any category, having serial numbers 1 through 137 inclusive.

Unsafe Condition

(d) This AD results from reports of two missing rivets in the front section of the central engine mast discovered on airplanes in service and in production. We are issuing this AD to detect and correct missing rivets in the front section of the central engine mast, which could result in reduced structural integrity of the central engine mast, possible separation of the engine from the airplane during flight, and consequent loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Dassault Service Bulletin F900EX–220, Revision 1, dated July 29, 2005. Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Inspection for and Installation of Missing Rivets

(g) Prior to accumulating 7,500 total flight hours, or within 6 months after the effective date of this AD, whichever is later: Do a general visual inspection of the number 2 engine left- and right-hand forward mounts for missing rivets, in accordance with the service bulletin. If any rivet is missing, before further flight, install the new rivet, in accordance with the service bulletin.

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

Inspections and Installations According to Previous Issue of Service Bulletin

(h) Inspecting for and installing rivets is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900EX–220, dated April 14, 2004.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2005–066, dated April 27, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Dassault Service Bulletin F900EX–220, Revision 1, dated July 29, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a)

and 1 CFR part 51. Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 20, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4053 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23358; Directorate Identifier 2005–NM–206–AD; Amendment 39–14576; AD 2006–09–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747–100, –200, and –300 series airplanes. That AD currently requires repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary. This new AD retains all the requirements of the existing AD, and adds airplanes to the applicability. This AD results from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We are issuing this AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

DATES: This AD becomes effective June 7, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 7, 2006.

On May 5, 1999 (64 FR 15298, March 31, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996.

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

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 99–07–12, amendment 39–11097 (64 FR 15298, March 31, 1999). The existing AD applies to certain Boeing Model 747–100, –200, and –300 series airplanes. That NPRM was published in the **Federal Register** on December 20, 2005 (70 FR 75426). That NPRM proposed to retain all the requirements of AD 99–07–12, and add airplanes to the applicability.

Comments

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

Request To Include Structural Repair Manual as Optional Terminating Action for Group 2 Airplanes

Boeing requests that we revise paragraph (h)(1)(ii) of the NPRM to include the following sentence: "The Boeing 747–400 Structural Repair Manual, Subject 53–60–07, Repair 1 or 2 is one approved method." Boeing states that these repairs are applicable to Group 2 airplanes, and are equivalent to the repairs in the Boeing 747 Structural Repair Manual (SRM), Subject 53–10–04, Figure 67 or 90. Doing the actions in one of those figures is one approved method of repair as specified in paragraph (h)(1)(i) of the NPRM for Group 1 airplanes.

We agree. Repair 1 or 2 of Subject 53–60–07 of the Boeing 747–400 SRM constitutes equivalent repairs to those called out in paragraph (h)(1)(ii) of the AD. We have revised paragraph (h)(1)(ii) to refer to Boeing 747–400 SRM, Subject 53–60–07, Repair 1 or 2.

Request To Revise Paragraph (i) of the NPRM to Include Terminating Action for Group 2 Airplanes

Boeing requests that we revise paragraph (i) of the NPRM to include the action in NPRM Directorate Identifier 2005–NM–008–AD, Docket No. FAA–2005–22526 (70 FR 56860, September 29, 2005), as a terminating action for Group 2 airplanes. Boeing points out that this action is equivalent to the terminating action that AD 2005–20–30, amendment 39–14327 (70 FR 59252, October 12, 2005), provides for Group 1 airplanes in the same paragraph. (**Note:** AD 99–07–12, which is superseded by this new AD, refers to AD 93–08–12, amendment 39–8559 (58 FR 27927, May 12, 1993). We superseded AD 93–08–12, with AD 2002–10–10, amendment 39–12756 (67 FR 36081, May 23, 2002), which we subsequently superseded with AD 2005–20–30—the reference that Boeing requests).

We agree. We have revised paragraph (i) of the final rule to refer to AD 2006–05–02, amendment 39–14499 (71 FR 10605, March 2, 2006), as an optional terminating action for Group 2 airplanes. AD 2006–05–02 is the final rule for NPRM Directorate Identifier 2005–NM–008–AD, Docket No. FAA–2005–22526.

Conclusion

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

Costs of Compliance

There are about 681 airplanes of the affected design in the worldwide fleet.

This AD affects about 99 airplanes of U.S. registry.

The actions that are required by AD 99–07–12 and retained in this AD take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of both the retained and new actions for U.S. operators is $12,870, or $130 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11097 (64 FR 15298, March 31, 1999) and by adding the following new airworthiness directive (AD):

2006–09–06 Boeing: Amendment 39–14576. Docket No. FAA–2005–23358; Directorate Identifier 2005–NM–206–AD.

Effective Date

(a) This AD becomes effective June 7, 2006.

Affected ADs

(b) This AD supersedes AD 99–07–12.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002.

Unsafe Condition

(d) This AD results from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We are issuing this AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

Compliance

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

Restatement of the Requirements of AD 99–07–12, With Additional Information for Group 2 Airplanes

Initial Inspections

(f) For airplanes on which the initial detailed internal inspection of the Section 46 lower lobe frames required by paragraph (f)(2) or (i)(2) of AD 2005–20–30, amendment 39–14327, has not been accomplished: Perform a detailed visual inspection to detect cracking of the lower lobe fuselage frames from Body Station 1820 to Body Station 2100, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996; or Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002; as applicable; at the later of the applicable times specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) For all airplanes: Prior to the accumulation of 15,000 total flight cycles; or

(2) For Group 1 airplanes identified in Revision 1 of the service bulletin: Within 1,500 flight cycles or 18 months after May 5, 1999 (the effective date of AD 99–07–12), whichever occurs first.

(3) For Group 2 airplanes identified in Revision 1 of the service bulletin: Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

Note 1: Paragraphs (f)(2) and (i)(2) of AD 2005–20–30 require a detailed inspection to detect cracks in the Section 46 lower lobe frames, in accordance with Boeing Service Bulletin 747–53A2349, Revision 2, dated April 3, 2003. The initial inspection is required prior to the accumulation of 22,000 total flight cycles; or within 1,000 flight cycles after June 11, 1993 (the effective date of AD 93–08–12, amendment 39–8559), or November 16, 2005 (the effective date of AD 2005–20–30), depending on previous inspections accomplished; whichever occurs later.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Repetitive Inspections

(g) If no cracking is detected during the inspection required by paragraph (f) of this AD, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Actions

(h) If any cracking is detected during any inspection required by paragraph (f) of this AD, prior to further flight, accomplish paragraphs (h)(1) and (h)(2) of this AD:

(1) Within 20 inches of the crack location on the frame, perform a detailed inspection of the adjacent structure to detect cracking in accordance with Boeing Service Bulletin 747–53A2349, Revision 2, dated April 3, 2003. If any cracking is detected during any detailed inspection done in accordance with paragraph (f) or (h)(1) of this AD, prior to further flight, repair in accordance with paragraph (h)(1)(i) or (h)(1)(ii) of this AD, as applicable.

(i) For Group 1 airplanes: Using a method approved in accordance with the procedures specified in paragraph (j) of this AD. The Boeing 747–400 Structural Repair Manual, Subject 53–10–04, Figure 67 or 90, is one approved method.

(ii) For Group 2 airplanes: Using a method approved in accordance with the procedures specified in paragraph (j) of this AD. The Boeing 747–400 Structural Repair Manual, Subject 53–60–07, Repair 1 or 2, is one approved method.

(2) Repeat the inspection required by paragraph (f) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

Optional Terminating Inspection

(i) Accomplishment of the initial detailed inspection of the Section 46 lower lobe frames required by paragraph (f)(2) or (i)(2) of AD 2005–20–30 constitutes terminating action for the requirements of this AD only for airplanes identified in Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002, as Group 1 airplanes. Accomplishment of the initial detailed inspection of the Section 46 lower lobe frames required by paragraph (f) of AD 2006–05–02 constitutes terminating action for the requirements of this AD only for airplanes identified in Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002, as Group 2 airplanes.

Alternative Methods of Compliance (AMOCs)

(j)(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 § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 99–07–12, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996; or Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 5, 1999 (64 FR 15298, March 31, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996.

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

Issued in Renton, Washington, on April 20, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4054 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23762; Directorate Identifier 2005–NM–226–AD; Amendment 39–14580; AD 2006–09–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires repetitive inspections for cracking in the skin, the bulkhead outer chord, and the strap of the bulkhead outer chord at station (STA) 1725.5; and repair if necessary. This AD also provides for repairs, which are optional for airplanes on which no cracking is found, that terminate certain inspections. This AD results from reports of cracking in the skin panel common to stringer 7R and aft of the STA 1725.5 butt splice, and in the strap of the bulkhead outer chord at STA 1725.5. We are issuing this AD to detect and correct cracking in the skin, the bulkhead outer chord, or the strap of the bulkhead outer chord in this area, which could progress into surrounding areas and result in reduced structural integrity of the support structure for the vertical or horizontal stabilizer and subsequent loss of control of the airplane.

DATES: This AD becomes effective June 7, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 7, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 767 airplanes. That NPRM was published in the **Federal Register** on February 2, 2006 (71 FR 5623). That NPRM proposed to require repetitive inspections for cracking in the skin, the bulkhead outer chord, and the strap of the bulkhead outer chord at station (STA) 1725.5; and repair if necessary. That NPRM also proposed to provide for repairs, which are optional for airplanes on which no cracking is found, that terminate certain inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, Boeing, supports the NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 905 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1 Inspection, per inspection cycle.	5	$65	$325, per inspection cycle	387	$125,775 per inspection cycle.
Part 2 Inspections, per inspection cycle.	9	65	$585, per inspection cycle	387	$226,395 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–09–09 Boeing: Amendment 39–14580. Docket No. FAA–2006–23762; Directorate Identifier 2005–NM–226–AD.

Effective Date

(a) This AD becomes effective June 7, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracking in the skin panel common to stringer 7R and aft of the station (STA) 1725.5 butt splice, and in the strap of the bulkhead outer chord at STA 1725.5. We are issuing this AD to detect and correct cracking in the skin, the bulkhead outer chord, or the strap of the bulkhead outer chord in this area, which could progress into surrounding areas and result in reduced structural integrity of the support structure for the vertical or horizontal stabilizer and subsequent loss of control of the airplane.

Compliance

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

Repetitive Inspections

(f) Perform repetitive detailed and high frequency eddy current inspections for cracking in the skin, the bulkhead outer chord, and the strap of the bulkhead outer chord at STA 1725.5, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–53–0118, dated September 8, 2005. Do the initial and repetitive Part 1 and Part 2 inspections at the times specified in paragraph 1.E., Compliance, of the service bulletin; except, where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Repair

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, perform applicable repairs in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–53–0118, dated September 8, 2005; except, where the service bulletin specifies to contact Boeing for repair instructions, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Optional Terminating Action

(h) Completing repairs specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–53–0118, dated September 8, 2005, terminates the repetitive inspections required by paragraph (f) of this AD, as specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Completing repairs specified in paragraph 3.B.3.a. of the service bulletin terminates both the Part 1 and Part 2 inspections required by paragraph (f) of this AD.

(2) Completing repairs specified in paragraph 3.B.4.a. of the service bulletin terminates the Part 1 inspections required by paragraph (f) of this AD. Part 2 inspections must continue as required by paragraph (f) of this AD until the repairs specified in paragraph 3.B.3.a. of the service bulletin are completed.

Alternative Methods of Compliance (AMOCs)

(i)(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 § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an

Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 767–53–0118, dated September 8, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 21, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4055 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24588; Directorate Identifier 2006–SW–07–AD; Amendment 39–14581; AD 2006–09–10]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365 N1, AS–365 N2, N3, SA 366 G1, and EC–155B and B1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) Model SA–365 N1, AS–365 N2, N3, SA 366 G1, and EC–155B and B1 helicopters. This action requires a one-time inspection for end play in the pitch control rod assembly double bearing (bearing) using the tail rotor (T/R) hub control plate, and before further flight, replacing the bearing if end play is present. This amendment is prompted by one incident in which a pilot lost T/R pitch control of a helicopter while landing. The actions specified in this AD are intended to detect damage to the bearing, resulting in end play and prevent loss of T/R pitch control and subsequent loss of control of the helicopter.

DATES: Effective May 18, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 18, 2006.

Comments for inclusion in the Rules Docket must be received on or before July 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments 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;
- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or in person at the Docket Management System (DMS) Docket Offices 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 the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Eurocopter Model SA–365 N1, AS–365 N2, N3, SA 366 G1, and EC–155B and B1 helicopters. This action requires, within 50 hours time-in-service (TIS), a one-time inspection of the T/R hub control plate for end play in the bearing, and if end play is present, replacing the bearing before further flight. This amendment is prompted by one incident in which a pilot lost T/R pitch control of a helicopter while landing. The loss of the T/R pitch control was due to significant damage to the bearing of the control rod in the tail gearbox. This condition, if not detected, could result in loss of T/R pitch control and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on Eurocopter France Model AS 365 N, SA 366, and EC 155 helicopters. EASA advises that the loss of pitch control is due to significant damage to the bearing of the control rod in the tail gearbox.

Eurocopter has issued Alert Service Bulletin (ASB) No. 05.00.52, applicable to the Model 365 N1, N2, and N3 helicopters; ASB No. 05.36, applicable to Model 366 G1 helicopters; and ASB No. 05A013, applicable to Model EC–155B and B1 helicopters, all dated February 15, 2006, and all of which specify a check at regular intervals to ensure there is no end play in the bearing of the T/R pitch control rod. EASA classified this ASB as mandatory and issued AD No. 2006–0051–E, dated February 20, 2006, to ensure the continued airworthiness of these helicopters in France. This AD does not require repetitive inspections because helicopters in this fleet do not normally accrue enough flight hours in a short period of time to justify issuing an immediately adopted final rule requiring repetitive inspections without allowing the public time to first comment on such a proposal. We may issue further AD action at a later date to propose repetitive 110-hours TIS inspections.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of Sec. 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral agreement. Under this agreement, EASA has kept the FAA informed of the situation described above. We have examined EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, this AD is being issued to detect damage to the bearing, resulting in end play and prevent loss of T/R pitch control and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, a one-time inspection of the T/R hub control plate for end play in the bearing, and if end play is present, replacing the bearing before further flight. Accomplish the actions by following the specified portions of the ASB described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting for end play in the bearing is required within 50 hours TIS and replacing the bearing, if necessary, is required before further flight and this AD must be issued immediately. This AD is an interim action until Eurocopter completes bench tests to analyze the effect of the oil level, associated with pitch control loads, on the behavior of the bearing.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 137 helicopters. The one-time inspection will take approximately 1 work hour, and replacing the bearing, if needed, will take approximately 8 work hours to accomplish at an average labor rate of $80 per work hour. Required parts will cost approximately $2,026 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is $365,242, assuming the bearing is replaced on the entire fleet.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2006–24588; Directorate Identifier 2006–SW–07–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. 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*.

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive to read as follows:

2006–09–10 Eurocopter France: Amendment 39–14581. Docket No. FAA–2006–24588; Directorate Identifier 2006–SW–07–AD.

Applicability: Model SA–365 N1, AS–365 N2, N3, SA 366 G1, and EC–155B and B1 helicopters, with a tail rotor (T/R) pitch control rod assembly double bearing (bearing) installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect damage to the bearing resulting in end play and to prevent loss of T/R pitch control and subsequent loss of control of the helicopter:

(a) Within 50 hours time-in-service, inspect the T/R hub control plate for end play in the bearing in accordance with paragraph 2.B., Operational Procedure, in Eurocopter Alert Service Bulletin No. 05.00.52, applicable to Model SA–365 N1 and AS–365 N2 and N3 helicopters; No. 05.36, applicable to Model SA 366 G1 helicopters; and No. 05A013, applicable to Model EC–155B and B1 helicopters, dated February 15, 2006 (ASBs).

(b) If end play is present, before further flight, replace the bearing with an airworthy bearing. You are not required to contact the manufacturer to meet the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Regulations Group, Rotorcraft Directorate, FAA, ATTN: Uday Garadi, 2601 Meacham Blvd., Fort Worth, Texas, 76193, telephone (817) 222–5123, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) The inspection and replacement, if necessary, shall be done in accordance with the specified portions of Eurocopter Alert Service Bulletin No. 05.00.52, applicable to

Model SA–365 N1 and SA–365 N2 and N3 helicopters; No. 05.36, applicable to Model SA 366 G1 helicopters; and No. 05A013, applicable to Model EC–155B and B1 helicopters, dated February 15, 2006. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on May 18, 2006.

Note: The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2006–0051–E, dated February 20, 2006.

Issued in Fort Worth, Texas, on April 17, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–4108 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30492; Amdt. No. 3165]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 3, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 3, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA, Headquarters Building, 800 Independence Ave, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or, 4.

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modifiedby the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore-(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 21, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
04/06/06	AZ	TUCSON	MARANA REGIONAL	6/4697	RNAV (GPS) RWY 3, ORIG.
04/06/06	AZ	TUCSON	MARANA REGIONAL	6/4698	RNAV (GPS) RWY 21, ORIG.
04/06/06	AZ	TUCSON	MARANA REGIONAL	6/4699	NDB RWY 12, ORIG.
04/06/06	AZ	TUCSON	MARANA REGIONAL	6/4700	RNAV (GPS)–E, ORIG.
04/06/06	AZ	TUCSON	MARANA REGIONAL	6/4701	RNAV (GPS) RWY 12,ORIG.
04/06/06	CA	ARCATA/EUREKA	ARCATA	6/4889	VOR/DME RWY 2,AMDT 7A.
04/06/06	CA	ARCATA/EUREKA	ARCATA	6/4890	ILS RWY 32, AMDT 29A.
04/06/06	CA	ARCATA/EUREKA	ARCATA	6/4891	ILS/DME RWY 32,AMDT 1A.
04/06/06	CA	ARCATA/EUREKA	ARCATA	6/4892	VOR RWY 14, AMDT 7A.
04/07/06	CA	WATSONVILLE	WATSONVILLE	6/4937	LOC RWY 2, AMDT 2E MUNI.
04/10/06	LA	PATTERSON	HARRY P WILLIAMS MEMORIAL	6/5121	VOR/DME–A, AMDT 10. THIS REPLACES FDC 6/3343 PUBLISHED IN TL 06–09.
04/11/06	FL	FORT LAUDERDALE	FORT LAUDERDALE-HOLLYWOOD INTL.	6/5174	RNAV (GPS) RWY 31, ORIG–A.
04/11/06	NC	LOUISBURG	FRANKLIN COUNTY	6/5176	ILS OR LOC RWY 4, AMDT 3.
04/11/06	NC	LOUISBURG	FRANKLIN COUNTY	6/5177	RNAV (GPS) RWY 4, ORIG–A.
04/11/06	NC	LOUISBURG	FRANKLIN COUNTY	6/5178	RNAV (GPS) RWY 22, ORIG.
04/13/06	CA	SAN FRANCISCO	SAN FRANCISCO INTL	6/5340	ILS PRM RWY 28L (SIMULTANEOUS CLOSE PARALLEL), ORIG–B.
04/13/06	CA	SAN FRANCISCO	SAN FRANCISCO INTL	6/5341	LDA PRM RWY 28R (SIMULTANEOUS CLOSE PARALLEL), ORIG–B.
04/13/06	AR	ASH FLAT	SHARP COUNTY REGIONAL	6/5418	NDB RWY 3, AMDT 1C.
04/13/06	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	6/5419	RNAV RWY 31, AMDT 1.
04/13/06	OH	CLEVELAND	CLEVELAND-HOPKINS INTL	6/5452	ILS PRM RWY 6L (SIMULTANEOUS CLOSE PARALLEL, ORIG.
04/13/06	OH	CLEVELAND	CLEVELAND-HOPKINS INTL	6/5453	LDA PRM RWY 6R (SIMULTANEOUS CLOSE PARALLEL), ORIG–A.
04/13/06	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL/WOLD CHAMBERLAIN.	6/5459	ILS PRM RWY 12R (SIMULTANEOUS CLOSE PARALLEL), AMDT 3A.
04/13/06	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL/WOLD CHAMBERLAIN.	6/5460	ILS PRM RWY 12L (SIMULTANEOUS CLOSE PARALLEL), AMDT 4A.
04/13/06	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL/WOLD CHAMBERLAIN.	6/5461	ILS PRM RWY 30R (SIMULTANEOUS CLOSE PARALLEL), AMDT 6B.
04/13/06	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL/WOLD CHAMBERLAIN.	6/5462	ILS PRM RWY 30L (SIMULTANEOUS CLOSE PARALLEL), AMDT 5B.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5518	ILS PRM RWY 29 (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5519	ILS PRM RWY 12L (CAT II) (SIMULTANEOUS CLOSE PARALLEL), ORIG.

FDC date	State	City	Airport	FDC No.	Subject
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5520	ILS PRM RWY 11 (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5521	ILS PRM RWY 11 (CAT II) (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTI	6/5522	ILS PRM RWY 12L (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5523	ILS PRM RWY 12L (CAT III) (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5525	ILS PRM RWY 30R (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/14/06	MO	ST LOUIS	LAMBERT-ST LOUIS INTL	6/5526	ILS PRM RWY 11 (CAT III) (SIMULTANEOUS CLOSE PARALLEL), ORIG.
04/18/06	NY	OGDENSBURG	OGDENSBURG INTL	6/5687	LOC RWY 27, AMDT 2.
04/18/06	LA	LAFAYETTE	LAFAYETTE REGIONAL	6/5701	ILS OR LOC/DME RWY 4R, ORIG–.
04/18/06	AR	CARLISLE	CARLISLE MUNI	6/5706	VOR/DME RWY 9, AMDT 2B.
04/18/06	IA	WATERLOO	WATERLOO REGIONAL	6/5723	ILS RWY 12, AMDT 8B.
04/18/06	IA	WATERLOO	WATERLOO REGIONAL	6/5724	LOC BC RWY 30, AMDT 10.
04/18/06	IA	LAMONI	LAMONI MUNI	6/5725	RNAV (GPS) RWY 18, ORIG.
04/18/06	IA	SIOUX CITY	SIOUX GATEWAY/COL BUD DAY FIELD.	6/5728	ILS RWY 31, AMDT 24C.
04/18/06	IA	SIOUX CITY	SIOUX GATEWAY/COL BUD DAY FIELD.	6/5729	ILS RWY 13, AMDT 1D.
04/18/06	AR	BRINKLEY	FRANK FEDERER MEMORIAL	6/5790	RNAV (GPS) RWY 20, ORIG.
04/19/06	SC	CHERAW	CHERAW MUNI/LYNCH BELLINGER FIELD.	6/5792	NDB RWY 25, AMDT 1.

[FR Doc. 06–4066 Filed 5–2–06; 8:45 am]
BILLING CODE 4910–13–P

UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION

22 CFR Part 1100

Employee Responsibilities and Conduct; Removal of Superseded Regulations and Addition of Residual Cross-References

AGENCY: United States Section of the International Boundary and Water Commission (USIBWC).

ACTION: Final rule.

SUMMARY: The United States Section of the International Boundary and Water Commission is repealing its superseded old employee conduct regulations, which have been replaced by the executive branch Standards of Ethical Conduct, financial disclosure and financial interests regulations issued by the Office of Government Ethics (OGE). In place of its old conduct regulations, the USIBWC is adding a section of residual cross-references to those new provisions as well as to certain executive branch conduct rules promulgated by the Office of Personnel Management (OPM).

DATES: *Effective Date:* June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Tony R. Chavez, Designated Agency Ethics Official, United States International Boundary and Water Commission, 4171 N. Mesa, Suite C–100, El Paso, Texas, Telephone, 915–832–4111, Fax 915–832–4196.

SUPPLEMENTARY INFORMATION: In 1992, OGE issued a final rule setting forth uniform Standards of Ethical Conduct and an interim final rule on financial disclosure, and in 1996 issued a final rule on financial interests, all for executive branch departments and agencies of the Federal Government and their employees. Those three executive branch-wide regulations, as corrected and amended, are codified at 5 CFR parts 2634, 2635 and 2640. Together those regulations have superseded the old USIBWC regulations on employee responsibilities and conduct, which have been codified at 22 CFR part 1100 (and were based on prior OPM standards). Accordingly, the USIBWC is removing its superseded regulations and adding in place thereof a new section containing residual cross-references to the new provisions at 5 CFR parts 2634, 2635 and 2640. In addition, the USIBWC is including in that section a reference to the separate, specific executive branch provisions regarding gambling, safeguarding the examination process and conduct prejudicial to the Government which are set forth in 5 CFR part 735, as amended and reissued by OPM in 1992. Those specific branch-wide restrictions are not covered in OGE's Standards of Ethical Conduct regulation; furthermore, they are self-executing and do not require any department or agency republication.

Matters of Regulatory Procedure

Administrative Procedure Act

As Designated Agency Ethics Official of the USIBWC, I have found, under 5 U.S.C. 553(a)(2) and (b), that the general requirements for proposed rule making and opportunity for public comment are not applicable as to this final rule since it relates solely to agency management and personnel as well as agency organization, practice and procedure.

List of Subjects in 22 CFR Part 1100

Conflict of interests.

■ For the reasons set forth in the preamble, the United States Section of the International Boundary and Water Commission is revising 22 CFR part 1100 to read as follows:

PART 1100—EMPLOYEE RESPONSIBILITIES AND CONDUCT.

Authority: 5 U.S.C. 7301.

§ 1100.1 Cross-references to employee ethical conduct standards, financial disclosure and financial interests regulations and other conduct rules.

Employees of the United States Section of the International Boundary and Water Commission are subject to the executive branch standards of ethical conduct contained in 5 CFR part 2635, the executive branch financial disclosure regulations contained in 5 CFR part 2634, and the executive branch financial interests regulations contained in 5 CFR part 2640, as well as the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735.

Dated: April 26, 2006.

Tony R. Chavez,

Designated Agency Ethics Official, United States Section of the Internal Boundary and Water Commission.

[FR Doc. 06–4105 Filed 5–2–06; 8:45 am]

BILLING CODE 7010–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0216; FRL–7770–8]

Dimethenamid-p; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of dimethenamid-p in or on squash, winter. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on squash, winter. This regulation establishes a maximum permissible level for residues of squash, winter. The tolerance will expire and is revoked on June 30, 2009.

DATES: This regulation is effective May 3, 2006. Objections and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0216. All documents in the docket are listed on the www.regulations.gov web site. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enchanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address:*brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a time-limited tolerance for residues of the herbicide dimethenamid-p, 1-(*RS*)-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on squash, winter at 0.01 parts per million (ppm). Dimethenamid-p is a 90:10, S:R mixture of dimethenamid isomers, and is already included in the existing tolerances codified at 40 CFR 180.464. This tolerance will expire and is revoked on June 30, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption

from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Dimethenamid-p on Squash, Winter and FFDCA Tolerances

Amiben (chlorambem) was the primary herbicide used in squash and other cucurbits until 1991, when production of this herbicide ceased. EPA did not revoke tolerances until 1999 to allow use of remaining stocks. Growers began applying Amiben in banded strips over the crop row, as the product was no longer available. By 2000, weed control had become a major difficulty in squash.

Winter squash grown in western Oregon is processed for both puree and seeds. Confectionary seed production constitutes 70% to 90% of the market, depending on the year. Seed yield has been dropping precipitously during the last 5 years (2000–2004). Fruit yield for puree has not changed dramatically, but is far short of the production goals expected before amiben was removed from the market. Growers typically expected 25 to 30 tons per acre, and in some cases yields were as high as 35 tons per acre during the 1980's. In contrast, fruit/puree yield during the 5–year period of 2000–2004 averaged only about 18 tons per acre. The production cost have risen over the last 5 years, while the price paid per product has remained nearly constant. Consequently, growers had cut back their acreage of winter squash during 2000–2004 to well below 4,500 acres, solely due to the lack of weed control and resulting yield/economic losses.

EPA has authorized under FIFRA section 18 the use of dimethenamid-p on squash, winter for control of nightshade and other summer weeds in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dimethenamid-p in or on squash, winter. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this tolerance will expire and is revoked on June 30, 2009, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on squash, winter after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether dimethenamid-p meets EPA's registration requirements for use on squash, winter or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of dimethenamid-p by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethenamid-p, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of dimethenamid-p and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a time-limited tolerance for residues of dimethenamid-p in or on squash, winter at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for inter-species differences and 10X for intra-species differences. A 3X UF was added for short-term dermal and inhalation exposure for *S*-dimethenamid-p due to the absence of a maternal NOAEL, and a lower LOAEL in comparison to *S*-dimethenamid-*RS* shown in the developmental toxicity study in rats.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is

equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure margin of exposure (MOE) $_{cancer}$ = point of departure/exposures) is calculated.

Much of the existing toxicological and residue chemistry data base for dimethenamid is based on studies conducted with the racemic (50:50) mixture of *S* and *R* isomers. EPA has previously concluded that the data base is adequate for the risk assessment of both the racemic dimethenamid and the 90:10, *S*:*R* dimethenamid-p in the **Federal Register** of September 24, 2004 (69 FR 57197) (FRL–7680–1). A summary of the toxicological endpoints for dimethenamid-p used for human risk assessment is shown in the following Table 1:

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

Exposure/Scenario*	Dose Used in Risk Assessment, Interspecies, Intraspecies, and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–49 years of age) based on *RS* data	NOAEL = 75 milligram/kilogram/day (mg/kg/day) UF = 100 Acute RfD = 0.75 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.75 mg/kg/day	Developmental toxicity in rabbits Maternal LOAEL = 150 mg/kg/day based on abortions and decreased body weight gain and food consumption Developmental LOAEL = 150 mg/kg/day based on post-implantation loss
Acute dietary (general population including infants and children)	Not applicable. No studies identify an acute hazard (dose and endpoint) based on a single-oral exposure (dose)		
Chronic dietary (all populations) based on *RS* data	NOAEL= 5 mg/kg/day UF = 100 Chronic RfD = 0.05 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.05 mg/kg/day	Chronic/carcinogenicity rats LOAEL = Male/Female (M/F); 36/49 mg/kg/day based on decreased body weight and body weight gain in both sexes, increased food conversion ratios in females, and increased microscopic hepatic lesions in both sexes
Dermal absorption based on *RS* data	30%	No studies are available. Value estimated from the ratio of the LOAEL for maternal weight decrement in developmental study to LOAEL for male weight decrement in the 21–day dermal study.Ratio of (developmental rabbit maternal LOAEL, body weight) / (21–day dermal rabbit LOAEL for systemic toxicity, body weight) x 100 = (150/500) x 100 = 30%	
Dermal short-term (1–30 days)	NOAEL = 25/3(UF) = 8 mg/kg/day Dermal absorption = 30% UF = 3^2; MOE = 300^5	Developmental toxicity study in rats (MRID 44332243). LOAEL = 25 mg/kg/day was based on maternal body weight decrement, body weight gain decrement and decreased food consumption.	
Dermal Intermediate-term, (1–6 months)	NOAEL = 6.8 mg/kg/day (F) Dermal absorption = 30% UF = 1 MOE = 100	Chronic feeding study in rats (MRID 41706808 and 42030102). LOAEL = 36/49 mg/kg/day (M/F) based on decreased body weight and body weight gain and at termination increased microscopic hepatic lesions. NOAEL = 5.1/6.8 mg/kg/day for (M/F)	
Inhalation, short-term (1–30 days)	NOAEL = 8 mg/kg/day (F) Inhalation absorption = 100% UF = 3^2 MOE = 300	Same as dermal, short-term	

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHENAMID-P FOR USE IN HUMAN RISK ASSESSMENT—CONTINUED

Exposure/Scenario*	Dose Used in Risk Assessment, Interspecies, Intraspecies, and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Inhalation intermediate-term (1–6 months)	NOAEL = 6.8 mg/kg/day (F) Inhalation absorption = 100% UF = 1 MOE = 100	Same as dermal intermediate-term	
Cancer	Classified as "C" a possible human carcinogen; however, no Q1* was has been established for an assessment of cancer risk.		

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.464(a)) for the residues of dimethenamid-p, in or on bean, dry, seed; beet, garden, roots; beet, garden, tops; beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, roots; beet, sugar, tops; corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, forage; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernal plus cob with husk removed; corn, sweet, stover; garlic; horseradish; onion, dry bulb; peanut, hay; peanut, nutmeat; shallot, bulb; sorghum, grain; sorghum, grain, forage; sorghum, grain, stover; soybean, seed; and tuberous and corm vegetables. The tolerance expression includes both the *R* and *S* isomers, these tolerances also cover the registered uses of dimethenamid-p. The current tolerances for all plant commodities are set at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures from dimethenamid-p in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996, and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute dietary analysis is conservative, based on tolerance-level residues and 100% crop treated assumptions for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994, 1996, and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary analysis is conservative, based on tolerance-level residues and 100% crop treated assumptions for all commodities.

iii. *Cancer.* Dimethenamid-p has been classified as a Category "C" (possible human carcinogen). Based on increased tumor incidence only in rats (not mice). The Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore, the chronic (non-cancer) risk assessment is an adequate estimate of cancer risk as well as other chronic effects.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethenamid-p in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dimethenamid-p.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in Groundwater (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of dimethenamid-p for acute exposures are estimated to be 49 parts per billion (ppb) for surface water and 0.42 ppb for ground water. The EECs for chronic exposures are estimated to be 7.9 ppb for surface water and 0.42 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethenamid-p is not registered for use on any sites that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach

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

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study in rats, maternal toxicity was evidenced by excessive salivation, increased liver weight and reduced body weight gain and food consumption at 215 and 425 milligrams per kilogram per day (mg/kg/day). Developmental toxicity was evidenced by an increased incidence of resorption in the 425 mg/kg/day rats. The maternal NOAEL is 50 mg/kg/day and the maternal LOAEL is 215 mg/kg/day. The developmental NOAEL is 215 mg/kg/day and the developmental LOAEL is 425 mg/kg/day.

In a developmental toxicity study in rabbits, maternal toxicity was evidenced by decreased body weight, food consumption and increased abortion/premature delivery at 75 and 150 mg/kg/day. Developmental toxicity was evidenced by increased abortion/premature delivery and hyoid alae angulated changes in the 150 mg/kg group. The maternal NOAEL is 37.5 mg/kg/day and the maternal LOAEL is 75 mg/kg/day. The developmental NOAEL is 75 mg/kg/day and the developmental LOAEL is 150 mg/kg/day.

3. *Reproductive toxicity study.* In a 2–generation reproductive study in rats, parental toxicity was evidenced by significant reductions in body weight and food consumption in males and significant increases in absolute and relative liver weights in both sexes. Significant reductions in pup weight during lactation occurred at 150 mg/kg/day. The parental NOAEL is 36 mg/kg/day and the parental LOAEL is 150 mg/kg/day. The reproduction NOAEL is 36 mg/kg/day and the reproduction LOAEL is 150 mg/kg/day.

4. *Prenatal and postnatal sensitivity.* No offspring prenatal or postnatal susceptibility to either *RS*-dimethenamid or *S*-dimethenamid-p was seen in a rabbit or two rat developmental studies and reproduction study. There is low concern for prenatal or postnatal toxicity since the developmental effects from the *S* and *RS* mixture are similar and occur at similar doses.

5. *Conclusion.* There is a complete toxicity data base for dimethenamid-p and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined the 10X safety factor to protect infants and children should be reduced to 1X because there are low concerns, and no residual uncertainties with regard to prenatal and/or postnatal toxicity. Additionally, developmental, reproductive, and prenatal-postnatal effects were seen only at levels above those that caused effects in adults.

D. Aggregate Risks and Determination of Safety

Aggregate dietary risk for dimethenamid-p is assessed by comparing acute and chronic dietary (food and drinking water) exposure estimates to their respective aPAD and cPAD, with risk expressed as a percent of the PAD. Acute and chronic water residues were incorporated into the dietary exposure analyses. There are no residential uses of dimethenamid-p. Therefore, the reported acute and chronic dietary exposures are aggregate food and water risks associated with the proposed section 18 use (squash, winter), and the existing registered uses.

The acute and chronic aggregate (food and drinking water) exposure assessment was conducted using the DEEM software with the Food Commodity Intake Database (DEEM™/FCID), Version 1.3) which incorporates consumption data from the USDA CSFII, 1994–1996 and 1998. The 1994–1996 and 1998 data are based on the reported consumption of more than 20,000 individuals over 2 non-consecutive survey days. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption "events" for acute exposure assessment. Exposure estimates are expressed in mg/kg body weight/day and risk as a percent of the aPAD/cPAD.

An upper-bound (Tier 1) acute and chronic aggregate risk assessment was conducted for dimethenamid-p food commodities and drinking water combined. The residue estimate for each food commodity is based on the tolerance for that crop (0.01 ppm) and each crop is assessed as if 100% of the crop has been treated with dimethenamid-p. The EEC inputs (acute/chronic) for drinking water are described as "Tier 2," but are considered upper-bound estimates for finished drinking water. It should also be noted that, like the tolerance level inputs for foods, the residue inputs for drinking water are point estimates rather than a residue distribution (as seen in probabilistic assessments).

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure to dimethenamid-p from food will occupy 0.32% of the aPAD for females 13–49 years and older. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHENAMID-P

Population Subgroup	PAD, mg/kg/day	DEEM™-FCID	
		Exposure, mg/kg/day	%PAD
Acute dietary estimates (95th percentile of exposure)			
Females 13–49 years	0.75	0.002416	<1

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethenamid-p from food will utilize 0.4% of the cPAD for the U.S. population, 1.2% of the cPAD for all infants <1 year old and0.7% of the cPAD for children 1–2 years old. There are no residential uses for dimethenamid-p that result in chronic residential exposure to dimethenamid-p. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHENAMID-P

Population Subgroups	PAD, mg/kg/day	DEEM™-FCID	
		Exposure, mg/kg/day	%PAD
Chronic PAD Dietary Estimates			
U.S. Population	0.05	0.000205	<1
All infants (<1 year)	0.05	0.000605	1.2
Children (1–2 years)	0.05	0.000329	<1
Children (3–5 years)	0.05	0.000315	<1
Children (6–12 years)	0.05	0.000221	<1
Youth (13–19 years)	0.05	0.000163	<1
Adults (20–49 years)	0.05	0.000187	<1
Adults (50+ years)	0.05	0.000189	<1

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

Dimethenamid-p is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid-p is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Dimethenamid-p has been classified as a Category "C" (possible human carcinogen). Based on increased tumor incidence only in rats (not mice), the Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore the chronic (non-cancer) risk assessment is an adequate estimate of cancer risk as well as other chronic effects.

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

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method is available for determining dimethenamid residues in plants and soil. The Gas Chromatography/Nitrogen Phosphorus Detection (GC/NPD) method (AM–0884–0193–1) has been validated by the Agency and submitted for publication in FDA's Pesticide Analytical Manual, Volume II. The method does not separate the *R* and *S* isomers of dimethenamid and the limit of quantitation (LOQ) is 0.01 ppm. Thus, adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no CODEX or Canadian maximum residue limits established for dimethenamid or dimethenamid-p. Therefore, tolerance harmonization is not germane to the current section 18 proposed use.

VI. Conclusion

Therefore, the time-limited tolerance is established for residues of dimethenamid-p, 1-*RS*-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on squash, winter at 0.01 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA

procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0216 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number EPA–HQ–OPP–2006–0216, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal

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

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.464 is amended by adding text to paragraph (b) after the paragraph heading to read as follows:

§ 180.464 Dimethenamid; tolerances for residues.

* * * * *

(b) * * * A time-limited tolerance is established for residues of dimethenamid-p, 1-(*RS*)-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on the following commodity:

Commodity	Parts per million	Expiration/revocation date
Squash, winter	0.01	06/30/09

* * * * *

[FR Doc. 06–4161 Filed 5–2–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0301; FRL–8060–3]

Glufosinate Ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for indirect or inadvertent residues of glufosinate ammonium and its metabolite in or on raw agricultural commodities. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 3, 2006. Objections and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0301. All documents in the docket are listed on the www.regulations.gov Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr*.

II. Background and Statutory Findings

In the **Federal Register** of December 21, 2005 (70 FR 75808) (FRL–7751–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6954) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.473(d) be amended by establishing tolerances for indirect or inadvertent residues of the herbicide glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinicopropionic acid expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on forage, hay, and straw of small grains (Crop Group 16) at 0.2 parts per million (ppm). That notice included a summary of the petition prepared by Bayer CropScience, the registrant. Based on available data the tolerances are being established at 0.40 ppm for glufosinate ammonium and its metabolite for specific small grain crops. One comment was received on the notices of filing. EPA's response to this comment is discussed in Unit IV.C.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for indirect or inadvertent residues of the herbicide glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinicopropionic acid in or on barley hay, barley straw, buckwheat fodder, buckwheat forage, oat forage, oat hay, oat straw, rye forage, rye straw, teosinte, triticale, wheat forage, wheat hay and wheat straw at 0.40 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by glufosinate ammonium as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies are discussed in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9).

B. Toxicological Endpoints

A summary of the toxicological endpoints for glufosinate ammonium used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 29, 2003.

C. Exposure Assessment

The proposed inadvertent tolerances will result in the establishment of tolerances in or on feed commodities only. These tolerances do not impact the livestock residue assumptions made in the previous dietary exposure analysis. EPA concludes that establishment of tolerances for indirect or inadvertent residues of glufosinate ammonium does not alter the residue assumptions discussed in the final rule published in the **Federal Register** of September 29, 2003. The Exposure Assessment remains identical.

D. Safety Factor for Infants and Children

A summary of the safety factor for infants and children for glufosinate ammonium is discussed in Unit III.D. of the final rule published in the **Federal Register** of September 29, 2003.

E. Aggregate Risks and Determination of Safety

Establishing these new tolerances will not increase exposure to glufosinate ammonium above the exposure levels previously assessed. EPA is relying on the aggregate risk assessment and determination of the safety for glufosinate ammonium in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2003.

The risk assessment employed a 1,000x uncertainty factor for dietary and residential dermal assessment (10x database uncertainty factor; 1x FQPA factor) and 3,000x uncertainty factor for inhalation. EPA has received a developmental neurotoxicity (DNT) study but has not received a comparative glutamate synthetase study in young and adult animals. The DNT study does not effect the endpoints chosen and the previous risk assessment

and EPA concludes that the endpoints and uncertainty factors used in the previous remain appropriate.

EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glufosinate ammonium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for residues of glufosinate ammonium in or on small grain crops.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to glufosinate ammonium, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. (70 FR 1349, January 7, 2005); (69 FR 63083, October 29, 2004).

V. Conclusion

Therefore, tolerances are established for indirect or inadvertent residues of the herbicide glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinicopropionic acid in or on barley hay, barley straw, buckwheat fodder, buckwheat forage, oat forage, oat hay, oat straw, rye forage, rye straw, teosinte, triticale, wheat forage, wheat hay and wheat straw at 0.40 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of tolerances issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0301 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0301, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 24, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED.

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

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

■ 2. Section 180.473 is amended by adding text to paragraph (d) after the paragraph heading to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

* * * * *

(d) * * * Tolerances are established for indirect or inadvertent residues of the herbicide glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinicopropionic acid in or on the following raw agricultural commodities when present therein as a result of the application of glufosinate ammonium to crops listed in paragraph (a) of this section:

Commodity	Parts per million
Barley, hay	0.40
Barley, straw	0.40
Buckwheat, fodder	0.40
Buckwheat, forage	0.40
Oat, forage	0.40
Oat, hay	0.40
Oat, straw	0.40
Rye, forage	0.40
Rye, straw	0.40
Teosinte	0.40
Triticale	0.40
Wheat, forage	0.40
Wheat, hay	0.40
Wheat, straw	0.40

[FR Doc. 06–4162 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0073; FRL–8062–6]

Fomesafen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fomesafen in or on dry bean, snap bean and cotton. Interregional Research Project No. 4 (IR-4), and Syngenta Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 3, 2006. Objections and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–

OPP–2006–0073. All documents in the docket are listed on the *regulations.gov* Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions). Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at*http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

II. Background and Statutory Findings

In the **Federal Register** of March 1, 2006 (71 FR 10508) (FRL–7763–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1E6228, 6E4653, and 1F5068) by Interregional Research Project No. 4 (IR-4), 681 U. S. Highway No. 1 South, North Brunswick, NJ 08902–3390; and Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27410. The petitions requested that 40 CFR 180.433 be amended by establishing tolerances for residues of the herbicide sodium salt of fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on the food commodities dry beans (PP 1E6228), snap beans (PP 6E4653), cotton seed and cotton gin byproducts (1F5068) at 0.025 parts per million (ppm). That notice included a summary of the petition prepared by IR4 and Syngenta Crop Protection, Inc, the registrant. There were no comments received in response to the notice of filing. EPA has determined that the residue of concern is fomesafen, *per se*. The tolerance expression is revised by removing the phrase "sodium salt of".

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of fomesafen on bean, dry; bean, snap, succulent; cotton, undelinted seed and cotton, gin byproducts at 0.025 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the

studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fomesafen are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3050	28–Day oral toxicity -- rodents (mouse)	NOAEL = 209 milligrams/kilogram/day (mg/kg/day) for males (M) and 247 mg/kg/day for females (F) LOAEL = 917 mg/kg/day (M) and 1247 mg/kg/day (F) based on decreased body weights and body weight gains, decreased food efficiency, hematology (decreased erythrocyte count, hemoglobin, mean corpuscular volume, and mean corpuscular hemoglobin), bile duct hyperplasia, decreased uterine size in females, and decreased size of the seminal vesicles in males
870.3100	90–Day oral toxicity -- rodents (rat)	NOAEL = 0.5 mg/kg/day LOAEL = 10 mg/kg/day based on hyalinization of hepatocytes, increased eosinophilia, reduced granulation, increased liver weights in males and females, and increases in plasma alkaline phosphatase, alanine transaminase and aspartate transaminase in males
870.3150	26–Week oral toxicity -- nonrodents (dog)	NOAEL = 1 mg/kg/day LOAEL = 25 mg/kg/day based on hematology (decreased hemoglobin and hematocrit concentrations and erythrocyte count and increased platelet count and prothrombin time
870.3200	21–Day dermal toxicity (rabbit)	NOAEL = 1,000 mg/kg/day, Highest Dose Tested (HDT)
870.3700	Prenatal developmental -- rodents (rat)	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = 200 mg/kg/day based on staining of the ventral fur and significantly decreased body weight gain (≤10%) . Developmental NOAEL = 100 mg/kg/day Developmental LOAEL = 200 mg/kg/day based on postimplantation loss
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 12.5 mg/kg/day Parental/Systemic LOAEL = 50 mg/kg/day based on liver histopathology in males and females of both generations. Reproductive NOAEL = 50 mg/kg/day, HDTReproductive LOAEL = Not established Offspring NOAEL = 12.5 mg/kg/day Offspring LOAEL = 50 mg/kg/day based on increased incidence of liver hyalinization in males
870.4200	Carcinogenicity-mice	NOAEL = 1.5 mg/kg/day LOAEL = 15 mg/kg/day based on the presence of liver tumors and liver weight increases in male and female mice
870.4300	Chronic toxicity/Carcinogenicity-rat	NOAEL = 0.25 mg/kg/day LOAEL = 5 mg/kg/day based on hyalinization of the liver in males
870.5100	Gene mutation - bacterial	Negative
870.5300	Gene mutation - mammalian	Negative
870.5375	Structural chromosomal abberations	Negative
870.5395	Other genotoxic effects	Negative

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: "Traditional uncertainty factors;" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional uncertainty factor," EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for fomesafen used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FOMESAFEN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	An endpoint of concern for females 13–50 years of age attributable to a single dose was not identified in the hazard database.		
Acute Dietary (General population including infants and children)	An endpoint of concern for the general population attributable to a single dose was not identified in the hazard database.		
Chronic Dietary (All populations)	NOAEL= 0.25 mg/kg/day UF = 100 Chronic RfD = 0.0025 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD +Special FQPA SF = 0.0025 mg/kg/day	Chronic toxicity - rat LOAEL = 5 mg/kg/day based on hyalinization of the liver in males
Cancer (oral, dermal, inhalation)	In accordance with the EPA Final Guidelines for Carcinogen Risk Assessment (March 29, 2005), EPA classified fomesafen as "Not likely to be carcinogenic to humans". This decision was based on the weight-of-evidence which supports activation of peroxisome proliferator-activated receptor alpha (PPAR) as the mode of action for fomesafen-induced hepatocarcinogenesis in mice. The data did not support either mutagenesis or cytotoxicity followed by regenerative proliferation as alternative modes of action. While the proposed mode of action for liver tumors in mice is theoretically plausible in humans, it is quantitatively implausible and unlikely to take place in humans based on quantitative species differences in PPAR activation and toxicokinetics.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.433) for the residues of sodium salt of fomesafen, in or on soybeans. Risk assessments were conducted by EPA to assess dietary exposures from fomesafen in food as follows:

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

occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for fomesafen; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed fomesafen tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the chronic risk assessment.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fomesafen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fomesafen.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporates an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health LOC.

Since the models used are considered to be screening tools in the risk assessment process, the Agency uses estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a pecent Reference dose (%RfD) or percent population adjusted dose (%PAD).

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of fomesafen for chronic exposures are estimated to be 10.535 parts per billion (ppb) for surface water and 1.0 ppb for ground water.

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

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

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no concern and/or residual uncertainty with regard to prenatal and/or postnatal increased susceptibility. The requirement for an acceptable "guideline" developmental toxicity study in a second species has not been satisfied. The study in rabbits is deficient. Individual animal data were not reported and all fetuses were not examined for both soft tissue and skeletal alterations; and historical control data were not provided. Additionally, animals had an intercurrent infection that confounded interpretation of the results of the study. Therefore, the developmental toxicity study in the rabbit was classified "Unacceptable/Guideline". However, a new developmental toxicity study in rabbits is not required at this time because sufficient numbers of fetuses were available for examination in the rabbit developmental toxicity study. There was no increase in fetal deaths at the highest dose tested even though the dams suffered with an intercurrent infection. There were no external or internal malformation/abnormalities, soft tissue or skeletal that could be related to treatment with the test material at any of the three dosage levels tested including the highest dose level of 40 mg/kg/day. The study does not meet current guideline standards, but it does provide sufficient information on the possible effects the test material

might have on the developing rabbit fetus, especially since the maternal animals were additionally under considerable stress from infection.

3. *Conclusion.* The fomesafen toxicity database is adequate for the risk assessment since we are not asking for a repeat developmental toxicity study in rabbits at this time. In addition, there is no evidence of increased susceptibility, no residual uncertainty in the database, and exposure data are complete or are estimated based on that, reasonably account for potential exposures. Accordingly, the additional 10X factor for the protection of infants and children is removed.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* An endpoint of concern attributable to a single dose exposure to fomesafen was not identified in the hazard database. Therefore there are no acute toxicological concerns for fomesafen.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fomesafen from food and drinking water will utilize 9.5% of the cPAD for the U.S. population, 31% of the cPAD for all infants (< 1 year old), and 15% of the cPAD for children 1–2 years old. Fomesafen is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (chemical derivatization followed by gas chromatography with Nitrogen-Phosphorus detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

No Codex Maximum residue levels (MRLs) have been established for residues of fomesafen. Canadian MRLs have been established for residues of fomesafen in or on dry beans; lima beans; snap beans; and soybeans at 0.05 ppm, and a Mexican MRL of 0.05 mg/kg has been established for residues of fomesafen in or on soybeans. Syngenta Canada will be submitting a request to lower the fomesafen MRLs in Canada to match those being proposed for the USA. Therefore the MRLs will eventually be harmonized.

V. Conclusion

Therefore, the tolerance is established for residues of fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on bean, dry; bean, snap, succulent; cotton, undelinted seed and cotton, gin byproducts at 0.025 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0073 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2006–0073, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.433 is revised to read as follows:

§ 180.433 Fomesafen; tolerances for residues.

(a) *General.* Tolerances are established for the residues of fomesafen 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide from the application of its sodium salt in or on the following commodities:

Commodity	Parts per million
Bean, dry	0.025
Bean, snap, succulent	0.025
Cotton, gin byproducts	0.025
Cotton, undelinted seed	0.025
Soybean	0.05

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

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

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

[FR Doc. 06–4160 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2004–0398; FRL–8057–5]

Flumioxazin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione in or on pome fruit crop group 11, stone fruit crop group 12 and strawberry. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 3, 2006. Actions and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2004–0398. All documents in the docket are listed on the regulations.gov Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

II. Background and Statutory Findings

In the **Federal Register** of December 8, 2004 (69 FR 71045) (FRL–7689–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6829) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, California 94596–8025. The petition requested that 40 CFR 180.568 be amended by establishing tolerances for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on fruit, pome group 11 at 0.02 parts per million (ppm) and fruit, stone, group 12 at 0.02 ppm.

In the **Federal Register** of April 8, 2005 (70 FR 18004) (FRL–7689–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6845) by Interregional Research Project Number 4 (IR–4), Rutgers, State University of New Jersey, 681 U.S. Highway #1 S., North New Brunswick, NJ 08902. The petition requested that 40 CFR 180.568 be amended by establishing tolerances for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on strawberry at 0.10 ppm.

These notices included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant and Interregional Research Project Number 4 (IR-4). Based on residue chemistry strawberry field trials the strawberry tolerance is being lowered to 0.07 ppm. One comment was received on the notices of filing. EPA's response to this comment is discussed in Unit IV.C.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://*

www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of flumioxazin on fruit, pome, group 11 at 0.02 ppm, fruit, stone, group 12 at 0.02 ppm, and strawberry at 0.07 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flumioxazin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the **Federal Register** of August 25, 2004 (69 FR 52192) (FRL–7369–9).

B. Toxicological Endpoints

A summary of the toxicological endpoints for flumioxazin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of August 25, 2004 (69 FR 52192) (FRL–7369–9).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.568) for the residues of flumioxazin, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from flumioxazin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For the acute analyses, tolerance-level residues were assumed for all food commodities with current or proposed flumioxazin tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the acute risk assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed flumioxazin tolerances, and it was assumed that all of the crops included in the analysis were treated. PCT and/or anticipated residues were not used in the chronic risk assessment.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flumioxazin and its degradates (482-HA and APF) in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flumioxazin and its degradates (482-HA and APF).

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency uses the estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD).

Based on the FIRST and SCI-GROW models, the EECs of flumioxazin and its degradates (482-HA and APF) for acute exposures are estimated to be a total of 34 parts per billion (ppb) for surface water and 48 ppb for ground water. The EECs for chronic exposures are estimated to be a total of 18 ppb for surface water and 48 ppb for ground water.

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

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flumioxazin and any other substances and flumioxazin does not appear to produce a toxic metabolite produced by other substances. For the purposes of

this tolerance action, therefore, EPA has not assumed that flumioxazin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Although increased prenatal and postnatal quantitative susceptibility was seen in rats, it was concluded that there is low concern and no residual uncertainties for prenatal and/or postnatal toxicity because:

i. Developmental toxicity NOAELs/LOAELs are well characterized after oral and dermal exposure.

ii. Offspring toxicity NOAEL/LOAEL are well characterized.

iii. There is a well-defined dose-response curve for the cardiovascular effects seen following oral exposure (i.e., critical period).

iv. The endpoints of concern are used for overall risk assessments for appropriate route and population subgroups.

3. *Conclusion.* There is a complete toxicity database for flumioxazin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The developmental toxicity and offspring toxicity NOAELs/LOAELs are well characterized. There is a well-defined dose-response curve for the cardiovascular effects and the endpoints of concern are used for overall risk assessments and are appropriate for the route of exposure and population subgroups. The dietary food exposure assessment utilizes tolerance level residues and 100% crop treated (CT) information for all commodities. By using these screening-level assumptions, chronic exposures/risks will not be underestimated. The dietary drinking water assessment utilizes values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. Accordingly, the additional 10X factor for the protection of infants and children is removed.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this Unit for acute exposure, the acute dietary exposure from food and drinking water to flumioxazin will occupy 8% of the acute population adjusted dose (aPAD) for females 13 to 49 years old (the only subgroup for which an acute endpoint was selected).

2. *Chronic risk.* Using the exposure assumptions described in this Unit for chronic exposure, EPA has concluded that exposure to flumioxazin from food and drinking water will utilize 6% of the chronic population adjusted dose (cPAD) for the U.S. population, 18% of the cPAD for all infants less than 1–year old, and 11% of the cPAD for children 1–2 years old. There are no residential uses for flumioxazin that result in chronic residential exposure to flumioxazin.

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

Flumioxazin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-nitrogen phosphorus detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for flumioxazin on fruit, pome, fruit, stone or strawberry.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to flumioxazin, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. (70 FR 1349, January 7, 2005); 69 FR 63083, October 29, 2004.

V. Conclusion

Therefore, the tolerance is established for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on fruit, pome, group 11 at 0.02 ppm, fruit, stone, group 12 at 0.02 ppm, and strawberry at 0.07 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new

section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this Unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2004–0398 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2004–0398, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 26, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.568 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Fruit, pome, group 11	0.02
Fruit, stone, group 12	0.02
* * *	* * *
Strawberry	0.07
* * *	* *

* * * * *

[FR Doc. 06–4159 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2003–0246; FRL–8064–4]

Boscalid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation increases the tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro [1,1'-biphenyl]-2-yl) in or on strawberry; and decreases indirect or inadvertant tolerances on beet, garden, roots; beet, sugar, roots; radish, roots; turnip, roots; and vegetable, root and tuber, leaves, Group 2. BASF requested these revised tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective May 3, 2006. Objections and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2003–0246. All documents in the docket are listed on the www.regulations.gov web site. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enchanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr.*

II. Background and Statutory Findings

In the **Federal Register** of February 15, 2006 (71 FR 7951) (FRL–7759–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6986) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition (EPA–HQ–OPP–2005–0145) requested that 40 CFR 180.589 be amended by increasing the tolerance for residues of the fungicide boscalid, in or on the raw agricultural commodity, strawberry, from 1.2 parts per million (ppm) to 4.5 ppm. That notice included a summary of the pesticide petition prepared by BASF, the registrant. The original boscalid strawberry 1.2 ppm tolerance was published July 30, 2003 (68 FR 44640). Due to concerns about tolerance overages in California, BASF submitted additional field data which resulted in the increased tolerances herein. No comments were received on the notice of filing.

In the **Federal Register** of March 17, 2006 (71 FR 13841) (FRL–7767–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a revised notice of filing for pesticide petition (PP 1F6313) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The revised petition (EPA–HQ–OPP–2003–0246) requested that 40 CFR 180.589 be amended by decreasing the tolerance for indirect or inadvertant residues of the fungicide boscalid, in or on the raw agricultural commodities beet, garden, roots from 1.0 ppm to 0.1 ppm; beet, sugar, roots from 1.0 ppm to 0.1 ppm; radish, roots from 1.0 ppm to 0.1 ppm; turnip, roots from 1.0 ppm to 0.1 ppm; and vegetable, root and tuber, leaves, Group 2 from 1.0 ppm to 0.1 ppm. That notice included a summary of the pesticide petition prepared by BASF, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV below.

The original notice of filing for petition 1F6313 was published in the **Federal Register** of February 14, 2003 (68 FR 7542), and the resultant final rule was published July 30, 2003 (68 FR 44640) (FRL–7319–6). As per that final rule and associated notice of pesticide registration, the registrant was conditionally required to submit more extensive field data on the vegetable, root, subgroup 1B. The submitted conditional data resulted in lowering the current 1.0 ppm tolerances established in the final rule to 0.1 ppm herein.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of boscalid on strawberry at 4.5 ppm; beet, garden, roots at 0.1 ppm; beet, sugar, roots at 0.1 ppm; radish, roots at 0.1 ppm; turnip, roots at 0.1 ppm; and vegetable, root and tuber, leaves, group 2 at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by boscalid as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at (68 FR 44640) (FRL–7319–6).

B. Toxicological Endpoints

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for boscalid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.589) for the residues of boscalid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

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

occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for boscalid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

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

iii. *Cancer.* A quantitative cancer exposure assessment is not necessary because EPA concluded that boscalid is unlikely to pose a carcinogenic risk to humans. This conclusion was based on the following weight of evidence considerations. First, in male wistar rats, there was a significant trend (but not pairwise comparison) for the combined thyroid adenomas and carcinomas. This trend was driven by the increase in adenomas. Second, in the female rats, there was only a borderline significant trend for thyroid adenomas (there were no carcinomas). Third, the mouse study was negative as were all of the mutagenic tests. Based on this weak evidence of carcinogenic effects, the Agency concluded that boscalid is not expected to pose a carcinogenic risk.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for boscalid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid.

The Agency used the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin. None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern. Estimated Drinking Water Concentrations (EDWC's) derived from these models are used to quantify drinking water exposure and risk as a percent Reference Dose (%RFD) or percent Adjusted Dose (%PAD).

Based on the FIRST and SCI-GROW models, the EDWC's of boscalid for acute exposures are estimated to be 87.53 parts per billion (ppb) for surface water and 0.63 ppb for ground water. The EECs for chronic exposures are estimated to be 25.77 ppb for surface water and 0.63 ppb for ground water.

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

Residential exposure to boscalid is possible on golf courses and at "U-pick" farms and orchards. A non-occupational dermal post-application exposure/risk assessment for these exposures was conducted in the previous occupational and residential exposure assessment and is described in the final rule in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6).

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* A complete discussion of the prenatal/postnatal sensitivity study was recently discussed in the final rule dated July 30, 2003 (68 FR 44640) (FRL–7319–6). No new information has been received to change this information. The Agency concluded that there are no residual uncertainties for prenatal and postnatal toxicity as the degree of concern is low for susceptibility, as evidenced by the data in the studies for the rodent and non-rodent prenatal developmental, reproduction and fertility effects, and the acute, subchronic and developmental neurotoxicity studies.

3. *Conclusion.* There is a complete toxicity data base for boscalid and exposure data are complete or are estimated based on data that reasonably account for potential exposures. There

is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental neurotoxicity study after establishing toxicity endpoints and traditional UFs for intraspecies variability and interspecies extrapolation of 100X used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA safety factor to 1X.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13-50 years old. No acute risk is expected from exposure to boscalid.

2. *Chronic risk.* The chronic dietary exposure analysis is based on tolerance-level residues and assumes 100% crop treated. Even with these highly conservative assumptions, the risk estimates are well below the Agency's level of concern. The most highly exposed population subgroup from DEEM is children 1-2 years old, which has an exposure estimate of 0.067 milligrams/kilogram/day (mg/kg/day), and utilizes 31% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). In this case, the non-occupational use to be aggregated with dietary exposure is the turf use on golf courses. Post-application exposures from these uses is considered short-term, and applies to adults and youth. Therefore, a short-term aggregate risk assessment was conducted. As all endpoints are from the same study, exposures from different routes can be aggregated. The exposure to residues in drinking water were included in the dietary exposure analysis. As a result, the aggregate exposure is the sum of two exposure values: Dietary (food + water) and residential. The target maximum daily exposure to boscalid residues is 0.22 mg/kg/day. The sum of the food, water, and residential exposures is 0.021 mg/kg/day. As a result, the short-term aggregate risk of exposure to boscalid residues produces a MOE of 1,038, which does not exceed the Agency's level of concern (ie., MOE's less than 100 are of concern). The exposure estimate was calculated using the general U.S. population, but is considered to be representative of youth because youth and adults possess similar body surface area to weight ratios and because the dietary exposure for youth (13-19 years old) is less than that of the general U.S. population.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate term, non-occupational exposures are anticipated from the use of boscalid, boscalid is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the weight of the evidence evaluation described previously herein, EPA concluded that boscalid is not expected to pose a carcinogenic risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography, mass spectrometry and electron capture detection) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Codex Maximun Residue Limits for boscalid.

C. Response to Comments

Two comments were received March 17, 2006 regarding petition 1F6313 from B. Sachau. The first comment mentioned that EPA should not just accept information from sponsoring companies as correct and accurate, and in so doing, should not just rubber stamp this information, but rather conduct its own studies. In response to this comment, as per sections 3, 5, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, section 408 of the FFDCA, and in 40 CFR part 158, EPA requires that extensive data be submitted to support pesticide registrations and tolerances. Further guidance for conducting acceptable tests are specified in the Pesticide Assessment Guidelines (PAGs). Submitted data are subject to the Good Laboratory Practice Standards in 40 CFR part 160. EPA thoroughly reviews submitted data and makes an independent determination as to whether they are scientifically acceptable. Thus, EPA does not simply accept information submitted from registrants as correct and accurate, without a comprehensive internal scientific review.

The second comment regarded general opposition to Agency approval of tolerances and exemptions other than zero, and general opposition to any residue left on a treated crop. The Agency finds that this comment contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to boscalid, including all anticipated dietary exposures and other exposures for which there is reliable information. This comment, as well as prior similar comments from B. Sachau have been responded to by the Agency on several occasions. For example, (October 29, 2004, 69 FR 63083), (January 7, 2005, 70 FR 1349), and (June 30, 2005, 70 FR 37683).

V. Conclusion

Therefore, tolerances are increased for residues of boscalid,3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro[1,1'-biphenyl]-2-yl), in or on strawberry from 1.2 ppm to 4.5 ppm; and decreased for indirect or inadvertant residues on the following crops: Beet, garden, roots from 1.0 ppm to 0.1 ppm; beet, sugar, roots from 1.0 ppm to 0.1 ppm; radish, roots from 1.0 ppm to 0.1 ppm; turnip, roots from 1.0 ppm to 0.1 ppm; and vegetable, root and tuber, leaves, group 2 from 1.0 ppm to 0.1 ppm

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for

filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2003–0246 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2003–0246, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 24, 2006.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.589 is amended in the table to paragraph (a)(1) by revising the entry for strawberry, and in the table to paragraph (d) by revising the entries for; beet, garden, roots; beet, sugar, roots; radish, roots; turnip, roots and vegetables, root and tuber, leaves, group 2 in the table in paragraph (d):

§ 180.589 Boscalid; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	*
Strawberry	4.5
* * * * *	*

* * * * * *

(d) * * *

Commodity	Parts per million
* * * *	*
Beet, garden, roots	0.1
Beet, sugar, roots	0.1
* * * *	*
Radish, roots	0.1
* * * *	*
Turnip, roots	0.1
* * * *	*
Vegetable, root and tuber, leaves, Group 2	0.1

[FR Doc. 06–4158 Filed 5–2–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0540; FRL–8063–2]

Azoxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of azoxystrobin, [methyl(E)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy) phenyl)-3-methoxyacrylate] and the Z-isomer of azoxystrobin, [methyl(Z)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate] in or on Herb Subgroup 19A, fresh leaves; Herb Subgroup 19A, dried leaves; Spice Subgroup 19B, except black pepper; Rapeseed, seed; Rapeseed, Indian; Mustard, Indian, seed; Mustard, field, seed; Mustard, seed; Flax, seed; Sunflower, seed; Safflower, seed; Crambe, seed. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 3, 2006. Objections and requests for hearings must be received on or before July 3, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0540. All documents in the docket are listed on the *regulations.gov* Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

II. Background and Statutory Findings

In the **Federal Register** of March 8, 2006 (71 FR 11624) (FRL–7765–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petitions (PP 3E6637, 3E6749, and 4E6823) by Interregional Research Project #4 (IR–4), 681 US Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.507 be amended by establishing a tolerance for combined residues of the fungicide azoxystrobin, (methyl (E)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate), in or on Herb Subgroup 19A, fresh leaves at 50 parts per million (ppm) (PP 4E6823); Herb Subgroup 19A, dried leaves at 260 ppm (PP 4E6823); Spice Subgroup 19B, except black pepper at 38 ppm (PP 3E6637); Rapeseed, seed at 0.5 ppm (PP 3E6749); Rapeseed, Indian at 0.5 ppm (PP 3E6749); Mustard, Indian, seed at 0.5 ppm (PP 3E6749); Mustard, field, seed at 0.5 ppm (PP 3E6749); Mustard, seed at 0.5 ppm (PP 3E6749); Flax, seed at 0.5 ppm (PP 3E6749); Sunflower, seed at 0.5 ppm (PP 3E6749); Safflower, seed at 0.5 ppm (PP 3E6749); and Crambe, seed at 0.5 ppm (PP 3E6749). That notice included a summary of the petition prepared by Syngenta, the registrant on behalf of the Interregional Research Project Number 4 (IR–4). One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

EPA is also deleting the tolerance established for coriander, leaves in § 180.507(a), since it is being replaced by establishing the Herb Subgroup 19A and Spice Subgroup 19B.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of azoxystrobin, [methyl(E)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy) phenyl)-3-methoxyacrylate] and the Z-isomer of azoxystrobin, [methyl(Z)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate] on Herb Subgroup 19A, fresh leaves at 50 ppm; Herb Subgroup 19A, dried leaves at 260 ppm; Spice Subgroup 19B, except black pepper at 38 ppm; rapeseed, seed at 0.5 ppm; Rapeseed, Indian at 0.5 ppm; Mustard, Indian, seed at 0.5 ppm; Mustard, field, seed at 0.5 ppm; Mustard, seed at 0.5 ppm; Flax, seed at 0.5 ppm; Sunflower, seed at 0.5 ppm; Safflower, seed at 0.5 ppm; and Crambe, seed at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by azoxystrobin as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2000/September/Day-29/p25051.htm*

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58404) (FRL–6749–1).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.507) for the combined residues of azoxystrobin, (methyl (E)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate), in or on a variety of raw agricultural commodities. In addition, tolerances for livestock commodities have been established for the residues of azoxystrobin (methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on milk; meat, fat, and meat byproducts (mbyp) of cattle, goat, hog, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, Version 2.03), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: One hundred percent of proposed and registered crops are treated with azoxystrobin (100% CT) and tolerance-level residues for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the DEEM-FCID™, Version 2.03, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: One hundred percent of proposed and registered crops are treated with azoxystrobin (100% CT) and tolerance-level residues for all commodities.

iii. *Cancer.* Azoxystrobin is classified as "not likely to be a human carcinogen." Therefore, a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for azoxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of azoxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and screening concentration in ground water (SCI-GROW) models, the estimated environmental concentrations (EECs) of azoxystrobin for acute exposures are estimated to be 170 parts per billion (ppb) for surface water and 3.1 ppb for ground water. The EECs for chronic exposures are estimated to be 33 ppb for surface water and 3.1 ppb for ground water.

The drinking water estimates are based upon the crop with the highest application rate (turf). The use of azoxystrobin on turf has the highest single and yearly application rate at 0.55 pound/active ingredient/Acre (lb ai/A) and 5 lb ai/A/year, respectively, this application rate was used in the FIRST and SCI-GROW models to estimate the concentrations of this chemical in surface water and ground water, respectively.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™). For acute dietary risk assessment, the peak water concentration value of 107 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the annual average concentration of 33 ppb was used to access the contribution to drinking water.

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

Azoxystrobin is currently registered for use on the following residential non-dietary sites: Residential turfgrass and ornamentals, as well as indoor surfaces. The risk assessment was conducted using the following residential exposure assumptions:

Residential handlers may receive short-term dermal and inhalation exposure to azoxystrobin when mixing, loading and applying the formulations. Adults and children may be exposed to azoxystrobin residues from dermal contact with foliage/surfaces during post-application activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during post-application activities.

Inhalation daily doses for residential handlers were calculated for the WDG formulation using data for mixing, loading and applying a liquid. Based on PHED, unit exposure values from other handler scenarios with these formulation types, the exposure from a WDG is expected to be less than that of handling a liquid. The open mixing, loading, and applying liquid using a low pressure handwand (PHED) handler scenario was evaluated. The residential exposure and risk assessment for turf and ornamentals was conducted using the application rate for turf because it is the highest use rate.

Exposures were estimated for residential handler activities including: Mix, load and spot application of liquid formulation (low-pressure hand sprayer), and mix, load and broadcast application of liquid formulation (garden hose-end sprayer). In addition, short-term exposures were estimated for infants and children for post-application exposure scenarios resulting from indoor surface treatment including: Toddlers' incidental ingestion of pesticide residues on hard indoor surfaces from hand-to-mouth transfer, and toddlers' incidental ingestion of pesticide residues on carpet/textile indoor surfaces from hand-to-mouth transfer. Intermediate-term exposures were also estimated for infants and children for residential post-application oral exposures.

The exposure estimates are based on some upper-percentile (i.e., maximum application rate, initial amount of transferrable residue and duration of exposure) and some central tendency (i.e., surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from turf, and assumptions regarding

transfer of chemical residues and hand-to mouth activity. The estimated exposures are believed to be reasonable high-end estimates.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The developmental and reproductive toxicity data, from a Prenatal Development Study in Rats, a Prenatal Development Study in Rabbits, and a 2–Generation Reproductive Toxicity Study in Rats, did not indicate increased susceptibility of young rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity database for azoxystrobin and exposure data are complete or are estimated based on data that reasonably account for potential exposures. The Agency has determined that the 10X FQPA safety factor to protect infants and children should be removed (that is, set to 1) because, in addition to the completeness of the toxicological database and the lack of increased susceptibility of young rats and rabbits to pre- and postnatal exposure to azoxystrobin, the unrefined acute and chronic dietary exposure estimates will overestimate dietary exposure from food, and ground water and surface water modeling data produce upper-bound concentration estimates. The residential post-application assessment is based upon the residential standard operational procedures (SOPs). The assessment is based upon surrogate study data. These data are reliable and are not expected to underestimate risk to adults or children. The residential SOPs are based upon reasonable "worst-case" assumptions and are not expected to underestimate risk.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf.*

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to azoxystrobin will occupy 27% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 23% of the aPAD for infants (<1 year old), and 74% of the aPAD for children 1–2 years old, the subpopulation at greatest exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to azoxystrobin from food and water will utilize 28% of the cPAD for the U.S. population, 19% of the cPAD for All infants (<1 year old), and 70% of the cPAD for children 1–2 years old, the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues of azoxystrobin is not expected. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Azoxystrobin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food, water and short-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 500 for the U.S. population, 550 for youth 13–19 years old, 200 for all infants less than 1 year old, 120 for children 1 to 2 years old and 580 for females 13–49 years old. These aggregate MOEs do not exceed the Agency's level of concern, a MOE of 100, for aggregate exposure to food, water and residential uses.

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

exposure level) of the risk from food and water, which do not exceed the Agency's level of concern. Azoxystrobin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food, water and intermediate-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 120 for children 1 to 2 years old. These aggregate MOEs do not exceed the Agency's level of concern, a MOE of 100, for aggregate exposure to food, water and residential uses.

5. *Aggregate cancer risk for U.S. population.* Azoxystrobin has been classified as not likely to be carcinogenic to humans. Therefore, azoxystrobin is expected to pose at most a negligible cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of these tolerances. The gas chromatography/nitrogen phosphorous detector (GC/NPD) method (RAM 243/04) has undergone a method validation by the EPA analytical laboratory. EPA comments have been incorporated and the revised method (designated RAM 243) will be submitted to FDA for inclusion in PAM, Volume II as an enforcement method. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs for azoxystrobin in or on the proposed commodities. Therefore, harmonization of tolerances is not an issue.

C. Response to Comments

One comment was received from a private citizen who opposed the manufacturing and selling of this product due to potential effects on the environment. This comment is considered irrelevant because the safety standard for approving tolerances under section 408 of the FFDCA focuses on potential harms to human health and does not permit consideration of effects on the environment.

V. Conclusion

Therefore, tolerances are established for combined residues of azoxystrobin, [methyl(E)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy) phenyl)-3-methoxyacrylate] and the Z-isomer of azoxystrobin, [methyl(Z)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate] on Herb Subgroup 19A, fresh leaves at 50 ppm; Herb Subgroup 19A, dried leaves at 260 ppm; Spice Subgroup 19B, except black pepper at 38 ppm; Rapeseed, seed at 0.5 ppm; Rapeseed, Indian at 0.5 ppm; Mustard, Indian, seed at 0.5 ppm; Mustard, field, seed at 0.5 ppm; Mustard, seed at 0.5 ppm; Flax, seed at 0.5 ppm; Sunflower, seed at 0.5 ppm; Safflower, seed at 0.5 ppm; and Crambe, seed at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0540 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 3, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objetion or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0540, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the

requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.507 is amended by deleting the entries for "Herb subgroup 19A, dried, except chive," and "Herb subgroup 19A, fresh, except chive," and by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.507 Azoxystrobin.

(a) * * *

Commodity	Parts per million
* * *	* *
Crambe, seed	0.5
* * *	* *
Flax, seed	0.5
* * *	* *
Herb Subgroup 19A, dried leaves	260
Herb Subgroup 19A, fresh leaves	50
* * *	* *
Mustard, field, seed	0.5
Mustard, Indian, seed	0.5
Mustard, seed	0.5
* * *	* *
Rapeseed, Indian	0.5
Rapeseed, seed	0.5
* * *	* *
Safflower, seed	0.5
* * *	* *
Spice Subgroup 19B, except black pepper	38
* * *	* *
Sunflower, seed	0.5
* * *	* *

* * * * *

[FR Doc. 06–4157 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02–278 and 05–338; FCC 06–42]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules on unsolicited facsimile advertisements as required by the Junk Fax Prevention Act of 2005 (the Junk Fax Prevention Act). In addition, the Commission addresses certain issues raised in petitions for reconsideration of the 2003 Report and Order concerning the Telephone Consumer Protection Act's (TCPA) facsimile advertising rules.

DATES: Effective August 1, 2006 except for 47 CFR 64.1200(a)(3)(i), (ii), (iii), (iv), and (vi) which contains information collection requirements that must be approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these paragraphs. Written comments on the new information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before June 2, 2006. The Commission also lifts the stay in 47 CFR 64.1200(f)(3) effective May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Erica McMahon or Richard Smith, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. These will be submitted to the Office of Management and Budget (OMB) for review under 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. This is a summary of the Commission's *Report and Order and Third Order on Reconsideration*, CG Docket Nos. 02–278 and 05–338, FCC 06–42, adopted April 5, 2006, and released April 6, 2006 (*Order*). The *Order* amends the Commission's rules on unsolicited facsimile advertisements as required by the Junk Fax Prevention Act. The *Order* also addresses issues raised in petitions for reconsideration arising from the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, (*2003 TCPA Order*), CG Docket No. 02–278, FCC 03–153, released July 3, 2003; published at 68 FR 44144, (July 25, 2003). This document also addresses issues raised in the Junk Fax Prevention Act *Notice of Proposed Rulemaking* (*JFPA NPRM*), CG Docket Nos. 02–278 and 05–338, FCC 05–206, released December 9, 2005; published at 70 FR 75070 (December 19, 2005), which proposed modifications to the Commission's rules on unsolicited facsimile advertisements, and sought comment on aspects of those rules. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20054. The complete text of this document may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site: *www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The document can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy*.

Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Order* as required by the PRA of 1995, Public Law 104–13. Public and agency comments are due June 2, 2006. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, the Commission has assessed the effect of rule changes and finds that there likely will be an increased administrative burden on businesses with fewer than 25 employees. The Commission has taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. The rules adopted in this *Order* do not to require the maintenance of specific records for the sending of facsimile advertisements. The Commission also declines to limit the duration of the Established Business Relationship (EBR), which might have resulted in an increase in recordkeeping burden for entities sending fax advertisements on the basis of an EBR. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

Synopsis

In compliance with the requirements of the Junk Fax Prevention Act, the Commission now amends § 64.1200(a)(3) of the Commission's rules to expressly recognize an EBR exemption from the prohibition on sending unsolicited facsimile advertisements. (The Commission correspondingly withdraws § 64.1200(a)(3)(i) of its rules from its existing rules, as facsimile senders will now be permitted to send facsimile advertisements to recipients with whom they have an EBR without first securing the recipient's written permission.)

To ensure that the EBR exemption is not exploited, the Commission concludes that an entity that sends a facsimile advertisement on the basis of an EBR should be responsible for demonstrating the existence of the EBR. The entity sending the fax is in the best position to have records kept in the ordinary course of business showing an EBR, such as purchase agreements, sales slips, applications and inquiry records. (Digitized documents would be acceptable if kept in the ordinary course of business and if they established the existence of the EBR.) The Commission does emphasize that it is not requiring any specific records be kept by facsimile senders. Should a question arise, however, as to the validity of an EBR, the burden will be on the sender to show that it has a valid EBR with the recipient.

Recipient's Facsimile Number

As set forth in the Junk Fax Prevention Act, an EBR alone does not entitle a sender to fax an advertisement to an individual consumer or business. The telephone facsimile number must also be provided voluntarily by the recipient. Specifically, under the new

rules, any person sending a fax advertisement under the EBR exemption must have obtained the facsimile number directly from the recipient within the context of the EBR, or ensure that the recipient voluntarily agreed to make the number available in a directory, advertisement, or site on the Internet which is accessible to the public. In accordance with the Junk Fax Prevention Act, an exception to this requirement will apply if the EBR was formed prior to July 9, 2005.

Facsimile Number Obtained Directly From Recipient

The provision of a telephone facsimile number to a business or other entity reflects a willingness to receive faxes from that entity. Accordingly, it would be permissible for the sender to fax an advertisement to a recipient that had provided a facsimile number to the sender, for example, on an application, information request, contact information form, or membership renewal form. Similarly, a business card containing a fax number that is provided by the recipient to the sender would permit the sending of a facsimile advertisement. It also would be permissible for the recipient to provide to the sender its facsimile number orally over the telephone or through a Web site maintained by the fax sender. In circumstances such as these, the Commission concludes that the consumer has provided the facsimile number in the context of an established business relationship with the fax sender. In the event a recipient complains that its facsimile number was not provided to the sender, the burden rests with the sender to demonstrate that the number was communicated in the context of the EBR.

Facsimile Number Obtained From Directory, Advertisement or Internet Site

The Junk Fax Prevention Act requires that, if the sender relies on an EBR and obtains the facsimile number from a directory, advertisement or site on the Internet, the sender must ensure that the recipient voluntarily agreed to make the number available for public distribution. Commenters contend that it would be unduly burdensome for senders of facsimile advertisements to verify that a consumer voluntarily agreed to make the facsimile number public in every instance. The Commission agrees. Therefore, the Commission determines that a facsimile number obtained from the recipient's own directory, advertisement, or internet site was voluntarily made available for public distribution, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the facsimile number in question. For instance, if the sender obtains the number from the recipient's own advertisement, that advertisement would serve as evidence of the recipient's agreement to make the number available for public distribution. (Another example might be a number obtained from the recipient's own letterhead or fax cover sheet.) On the other hand, if the sender obtains the number from sources of information compiled by third parties—*e.g.*, membership directories, commercial databases, or internet listings—the sender must take reasonable steps to verify that the recipient consented to have the number listed, such as calling or e-mailing the recipient. The Commission agrees that membership directories requiring a fee to use are limited in distribution and, as such, the information included within the directory is made available to subscribers and purchasers, not to the general public. The Commission also reiterates that senders of facsimile advertisements must have an EBR with the recipient in order to send the advertisement to the recipient's facsimile number. The fact that the facsimile number was made available in a directory, advertisement or Web site does not alone entitle a person to send a facsimile advertisement to that number.

Established Business Relationship Formed Prior to July 9, 2005

Finally, as the Commission noted in the *JPFA NPRM*, the Junk Fax Prevention Act provides a third avenue for the sender to obtain the facsimile number. Pursuant to the statute, the amended rules shall provide that if the EBR was in existence prior to July 9, 2005, and the sender also possessed the facsimile number before July 9, 2005, the sender may send facsimile advertisements to that recipient without demonstrating how the number was obtained or verifying it was provided voluntarily by the recipient.

The Commission emphasizes that, to fall within this exception, a valid EBR must have been formed between the sender and recipient before July 9, 2005. For example, a business that sold a product to a consumer in 2004 and secured that consumer's facsimile number in 2004, would be permitted to fax an advertisement to the consumer regardless of how the facsimile number was obtained. The Commission agrees with those commenters that contend it would be burdensome for senders to prove a facsimile number was in their possession prior to July 9, 2005. Therefore, the Commission adopts a presumption that, if a valid EBR existed prior to July 9, 2005, the sender had the facsimile number prior to that date as well. (This presumption could be rebutted, for example, with evidence that the recipient did not use the facsimile number before July 9, 2005.) In the event the recipient alleges a violation of these provisions, the sender will need to provide proof that the EBR existed prior to July 9, 2005.

Definition of Established Business Relationship

As noted in the *JFPA NPRM*, the Junk Fax Prevention Act includes a definition of an EBR to be used in the context of unsolicited facsimile advertisements. The statute provides that "[t]he term 'established business relationship,' * * * shall have the meaning given the term in § 64.1200 of Title 47 of the Commission's rules * * * as in effect on January 1, 2003, except that such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber. * * *" The January 1, 2003 definition did not include any time limitations on the EBR. The Junk Fax Prevention Act, however, authorizes the Commission to limit the duration of the EBR in the context of unsolicited facsimile advertisements after a 3-month period beginning from the date of enactment of the statute. Therefore, the Commission sought comment in the *JFPA NPRM* on whether to limit the EBR. The Commission specifically sought comment on whether it is appropriate to limit the EBR duration for unsolicited facsimile advertisements in the same manner as telephone solicitations.

EBR Definition

Based on the record, and in accordance with the Junk Fax Prevention Act, the Commission adopts as part of the Commission's rules the following definition of an EBR for purposes of sending unsolicited facsimile advertisements:

For purposes of paragraph (a)(3) of this section, the term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding

products or services offered by such person or entity, which relationship has not been previously terminated by either party.

This definition extends the EBR exemption to faxes sent to both business and residential subscribers. Once established, the EBR will permit an entity to send facsimile advertisements to a business or residential subscriber until the subscriber "terminates" it by making a request not to receive future faxes. (The Commission notes that the act of terminating the EBR exemption will only terminate the relationship for purposes of receiving communications constituting "unsolicited advertisements." A fax regarding collection of a debt that does not contain an advertisement will not be subject to the facsimile advertising rules.) This definition also clearly contemplates that the EBR could be formed by any of the following: An inquiry, application, purchase or transaction by the business or residential subscriber. Consistent with the legislative history of the TCPA, an inquiry by a consumer could form the basis of the EBR. However, the definition makes clear that the inquiry or application must be about products or services offered by the entity. Thus, the Commission concludes that an inquiry about store location or the identity of the fax sender, for instance, would not alone form an EBR for purposes of sending facsimile advertisements. Merely visiting a Web site, without taking additional steps to request information or provide contact information, also does not create an EBR.

In addition, the Commission concludes that the EBR exemption applies only to the entity with which the business or residential subscriber has had a "voluntary two-way communication." It would not extend to affiliates of that entity, including a fax broadcaster which is retained to send facsimile ads on behalf of that entity. While the fax broadcaster may transmit an advertisement on behalf of an entity that has an EBR with the recipient, it is not permitted to use that same EBR to send a fax advertisement on behalf of another client. The Commission finds that, unlike the national do-not-call registry, which allows consumers to avoid most unwanted telemarketing calls by registering a telephone number once every five years, the Junk Fax Prevention Act requires a consumer to opt-out of unwanted fax advertisements from each entity with which the consumer has an EBR. The Commission believes that to permit companies to transfer their EBRs to affiliates would place an enormous burden on consumers to prevent faxes from companies with which they have no direct business relationship.

Limits on Duration of Established Business Relationship

As required by the Junk Fax Prevention Act, the Commission intends to closely monitor implementation of the new EBR exemption and opt-out policies adopted herein. Within one year of the effective date of this Order, the Commission will evaluate the Commission's complaint data to determine whether the EBR exception has resulted in a significant number of complaints regarding facsimile advertisements, and whether such complaints involve facsimile advertisements sent based on an EBR of a duration that is inconsistent with the reasonable expectations of consumers.

Notice of Opt-Out Opportunity

Section 2(c) of the Junk Fax Prevention Act adds language to the TCPA that requires senders to include a notice on the first page of the unsolicited advertisement that instructs the recipient how to request that they not receive future unsolicited facsimile advertisements from the sender. In accordance with the Junk Fax Prevention Act, the Commission amends its rules to require that all unsolicited facsimile advertisements contain a notice on the first page of the advertisement stating that the recipient is entitled to request that the sender not send any future unsolicited advertisements. This notice must include a domestic contact telephone number and a facsimile machine number for the recipient to transmit such a request to the sender and, as discussed below, at least one cost-free mechanism for transmitting an opt-out request. The Commission emphasizes that including an opt-out notice on a facsimile advertisement alone is not sufficient to permit the transmission of the fax; an EBR with the recipient must also exist.

Clear and Conspicuous

In the *JFPA NPRM*, the Commission sought comment on whether it was necessary to set forth in our rules the circumstances under which the opt-out notice will be considered "clear and conspicuous." The Commission is persuaded that rules specifying the font type, size and wording of the notice might interfere with fax senders' ability to design notices that serve their customers. However, the Commission makes some additional determinations about the opt-out notice so that facsimile recipients have the information necessary to avoid future unwanted faxes.

Consistent with the definition in our truth-in-billing rules, "clear and conspicuous" for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer. The Commission also concludes that the notice must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. Many facsimile advertisements today contain text covering the entire sheet of paper, making it difficult to see an opt-out notice that is placed among the advertising material. Thus, the notice must be distinguishable from the advertising material through, for example, use of bolding, italics, different font, or the like. The Commission clarifies that, in accordance with the Junk Fax Prevention Act, if there are several pages to the fax, the first page of the advertisement must contain the opt-out notice. (If a cover page accompanies the advertisement, the Commission encourages senders to include the notice on the cover page as well.)

Cost-Free Opt-Out Mechanism

The Junk Fax Prevention Act requires that the notice identify "a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement[.]" In accordance with the statute, the Commission amends the rules to require senders to identify a cost-free mechanism in their notices.

In an effort to balance the needs of consumers who wish to opt-out of faxes with the interests of business, the Commission finds that a Web site address, e-mail address, toll-free telephone number, or toll-free facsimile machine number will constitute "cost-free mechanisms" for purposes of our rules. The Commission also concludes that a local telephone number may be considered a cost-free mechanism so long as the advertisements are sent to local consumers for whom a call to that number would not result in long distance or other separate charges. Senders of facsimile advertisements need make available only one of these mechanisms to comply with this requirement. A Web site or e-mail address will allow businesses, particularly small businesses, to avoid excessive costs associated with maintaining a toll-free telephone number. (Given that the Commission is not mandating that senders offer a toll-free telephone number for consumers to make opt-out requests, the Commission

finds no reason to exempt small business from the cost-free mechanism requirement. As discussed above, businesses can use a Web site address, local telephone number, or e-mail address for receiving such requests. The record contains little empirical evidence that the costs associated with setting up such processes would be unduly burdensome to a small business given their revenues. The Commission also notes that a third party could be retained to maintain any of these opt-out mechanisms, although the sender remains liable for ensuring that opt-out requests are honored timely.) If a sender uses a Web site for receiving opt-out requests, it must describe the opt-out mechanism and procedures clearly and conspicuously on the first page of the Web site.

As noted above, apart from the cost-free mechanism required by the statute, the opt-out notice must contain a domestic contact telephone number and facsimile machine number. If the cost-free mechanism offered by the sender is either a domestic toll-free telephone number or toll-free facsimile machine number, the sender will be in compliance with both sets of requirements. The facsimile number should be a number that is separate and distinct from the telephone number to ensure consumers are less likely to find a busy line and can make opt-out requests without delay. It is the responsibility of the sender to ensure that the number(s) are available to accept opt-out requests. In accordance with the statute, the new rules will require the sender to accept opt-out requests 24 hours, 7 days a week at the number(s), Web site or e-mail address identified in the opt-out notice.

Timeframe for Honoring Opt-Out Requests

In accordance with the Junk Fax Prevention Act, the Commission concludes that senders must comply with an opt-out request within the shortest reasonable time of such request. Taking into consideration both large databases of facsimile numbers and the limitations on certain small businesses to remove numbers for individuals that opt-out, the Commission concludes that a reasonable time to honor such requests must not exceed 30 days from the date such a request is made. The record demonstrates that 30 days will provide a reasonable opportunity for persons, including small businesses, to process requests and remove the facsimile numbers from their lists or databases. Consistent with our rules for company-specific do-not-call requests, facsimile senders with the capability to honor do-not-fax requests in less than 30 days must do so. The Commission believes that any period greater than 30 days will likely impose additional costs and burdens on consumers and businesses that have taken steps to avoid facsimile messages by making opt-out requests. The Commission also concludes that the sender must remove the facsimile number from its fax lists within the 30-day period, regardless of whether it believes the number may be used by more than one individual. The Commission believes it is reasonable to presume that persons making opt-out requests on behalf of a business's facsimile machine are authorized to do so. Senders must honor such opt-out requests made by the business, even if doing so restricts faxes sent to all employees of that business. This determination is consistent with the Commission's findings in the do-not-call context in which a do-not-call request applies to all persons at the residence associated with that telephone number.

The Commission declines to limit the time period during which an opt-out request remains in effect. The Commission recognizes that, like telephone numbers, facsimile numbers change hands over time. However, as noted above, the national do-not-call registry requires consumers to re-register just once every five years to avoid most telemarketing calls. In the absence of a similar do-not-fax list, a consumer would need to make numerous—perhaps hundreds—of opt-out requests every five years to avoid receiving unwanted faxes. Instead, the Commission concludes that a consumer who wishes to receive faxes at a new number or resume receiving faxes after previously opting out should notify the sender of such changes by giving prior express permission to the sender. The Commission also encourages facsimile senders to update their facsimile number databases, when consumers subsequently transact business, file applications or make inquiries.

Identification Requirements and Opt-Out Notice

As noted in the *JFPA NPRM*, the Commission's existing rules require senders of facsimile messages to identify themselves on the message, along with the telephone number of the sending machine or the business, other entity, or individual sending the message. (The Commission notes that the "sender" of the facsimile advertisement is the person on whose behalf the advertisement is sent. Under the Commission's rules, the fax broadcaster must also identify itself if it demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent.) The TCPA also requires facsimile messages to include the date and time they are sent. The Commission sought comment on the interplay between this identification requirement and the opt-out notice requirement under the Junk Fax Prevention Act. A few commenters identified additional burdens associated with complying separately with both requirements. The Commission concludes that senders that provide their telephone number and facsimile number as part of the opt-out notice will satisfy the Commission's identification rule so long as they also identify themselves by name on the facsimile advertisement.

Request To Opt-Out of Future Unsolicited Advertisements

The Junk Fax Prevention Act requires that a request not to send future unsolicited facsimile advertisements meet certain requirements. In accordance with the statutory provisions, the Commission adopts rules requiring that an opt-out request identify the telephone number or numbers of the facsimile machines or machines to which the request relates. In addition, the request must be made using the telephone number, facsimile number, Web site address or e-mail address provided by the sender in its opt-out notice. Most commenters argue that permitting opt-out requests to be made through other avenues not identified in the notice will impair an entity's ability to account for all requests and process them in a timely manner. (The Commission encourages senders that are on actual notice of a recipient's opt-out request to honor the request even if not sent by the methods identified in the sender's opt-out notice.) As discussed above, the sender is required to include a telephone number and facsimile number on the advertisement, and if neither numbers are cost-free (*i.e.*, they are not 800 toll-free numbers or local numbers for local recipients), then the sender must have a Web site or e-mail address to permit recipients to opt-out of future facsimile messages. Requiring recipients to use one of the methods identified on the facsimile should reasonably permit any consumer to avoid future facsimile messages from the sender. Under the new rules, the sender will be prohibited from sending facsimile advertisements to a person that has submitted a request that complies with these requirements.

Interplay Between Established Business Relationship Exemption and Opt-Out Request

The Commission agrees with the majority of commenters that an opt-out request should be honored irrespective of whether the recipient continues to do business with the sender. Therefore, its rules will reflect that a do-not-fax request will terminate the EBR exemption from the prohibition on sending facsimile advertisements. This determination is consistent with the Commission's rules on telephone solicitations, whereby a telephone subscriber's seller-specific do-not-call request terminates any EBR exemption with that company even if the subscriber continues to do business with the seller.

As set forth in the statute, a sender may resume sending facsimile advertisements to a consumer that has opted-out of such communications if that consumer subsequently provides his express invitation or permission to the sender. Of the comments received on this issue, most agree that when a consumer has made an opt-out request of the sender, it should be up to the sender to demonstrate that the consumer subsequently gave his express permission to receive faxes. The Commission's rules will permit such permission to be granted in writing or orally. Senders that claim their facsimile advertisements are delivered based on the recipient's prior express permission must be prepared to provide clear and convincing evidence of the existence of such permission.

Third Parties and Fax Broadcasters

The record reveals that fax broadcasters, which transmit other entities' advertisements to telephone facsimile machines for a fee, are responsible for a significant portion of the facsimile messages sent today. The Commission sought comment in the *JFPA NPRM* on whether to specify that if the entity transmitting the facsimile advertisement is a third party agent or fax broadcaster, that any do-not-fax request sent to that agent will extend to the underlying business on whose behalf the fax is transmitted. The Commission concludes that the sender—the business on whose behalf the fax advertisement is transmitted—is responsible for complying with the opt-out notice requirements and for honoring opt-out requests. Regardless of whether the sender includes its own contact information in the opt-out notice or the contact information of a third party retained to accept opt-out requests, the sender is liable for any violations of the rules. This determination is consistent with the Commission's telemarketing rules. Third parties, including fax broadcasters, need only accept and forward do-not-fax requests to the extent the underlying business contracts out such responsibilities to them.

The Commission takes this opportunity to emphasize that under the Commission's interpretation of the facsimile advertising rules, the sender is the person or entity on whose behalf the advertisement is sent. In most instances, this will be the entity whose product or service is advertised or promoted in the message. As discussed above, the sender is liable for violations of the facsimile advertising rules, including failure to honor opt-out requests. Accordingly, the Commission adopts a definition of sender for purposes of the facsimile advertising rules.

Under the current rules, a fax broadcaster also will be liable for an unsolicited fax if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile advertisements, and the Commission will continue to apply this standard under our revised rules. If the fax broadcaster supplies the fax numbers used to transmit the advertisement, for example, the fax broadcaster will be liable for any unsolicited advertisements faxed to consumers and businesses without their prior express invitation or permission. The Commission finds that a fax broadcaster that provides a source of fax numbers, makes representations about the legality of faxing to those numbers or advises a client about how to comply with the fax advertising rules, also demonstrates a high degree of involvement in the transmission of those facsimile advertisements. In addition, the Commission concludes that a highly involved fax broadcaster will be liable for an unsolicited fax that does not contain the required notice and contact information. In such circumstances, the sender and fax broadcaster may be held jointly and severally liable for violations of the opt-out notice requirements. Based on its own enforcement experience, and the fact that highly involved fax broadcasters will have firsthand knowledge of the inclusion of the opt-out notice, the Commission determines that such a fax broadcaster must, at a minimum, ensure that the faxes it transmits on behalf of each sender contain the necessary information to allow a consumer to opt out of a particular sender's faxes in the future. Otherwise, the consumer may have no means of stopping unwanted faxes transmitted by the fax broadcaster on behalf of various advertisers.

Professional or Trade Organizations

The Junk Fax Prevention Act authorizes the Commission to consider exempting nonprofit organizations from the opt-out notice requirements discussed above. Specifically, the statute provides that the Commission may, after receiving public comment, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the opt-out notice. The statute requires that the Commission first determine that such notice is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements.

Most commenters that are themselves trade associations or professional organizations argue that they exist to serve their members, and that members of an association know how to contact those associations should they no longer wish to receive fax messages. They contend that most trade associations have a membership or customer service department that can assist the member with an opt-out request. Other commenters oppose an exemption for nonprofits, arguing that such organizations should have no difficulty including an opt-out notice on their facsimile advertisements.

The Commission is not persuaded that consumers will have the necessary tools to easily opt-out of unwanted faxes from trade associations if the faxes received do not contain information on how to opt out. Moreover, the Commission believes the benefits to consumers of having opt-out information readily available outweigh any burden in including such notices. (The Commission notes that the opt-out notice requirement only applies to communications that constitute unsolicited advertisements.) Facsimile advertisements impose direct costs on consumers for paper, toner, and time spent sorting and discarding unwanted faxes. Should consumers not have access to opt-out contact information, they may be forced to incur unacceptable costs associated with faxes sent from nonprofit organizations. In addition, the record reveals that trade associations already have mechanisms in place through which members communicate with the organization. Therefore, inclusion of an opt-out notice on their fax messages should not be burdensome.

While neither the TCPA nor its amendments carve out an exemption for nonprofits from the facsimile advertising rules, the Commission agrees with those petitioners that argue that messages that are not commercial in nature—which many nonprofits send—do not constitute "unsolicited advertisements" and are therefore not covered by the facsimile advertising prohibition. (The Commission also emphasizes that it is not carving out an exemption for tax-exempt nonprofits. Rather, consistent with the language of the TCPA, the Commission does not intend for the clarifications in this Order to result in the regulation of noncommercial speech as commercial facsimile messages under the TCPA regulatory scheme.) The Commission clarifies that messages that do not promote a commercial product or service, including all messages involving political or religious discourse, such as a request for a donation to a political campaign, political action committee or charitable organization, are not unsolicited advertisements under the TCPA. (Under the Federal Election Commission's rules, when a person pays a political committee for a commercially available product or service, such as a dinner sponsored by a political campaign, the full purchase price of the item or service is considered a contribution to the campaign. Therefore, the fact that a political message contains an offer to attend a fundraising dinner or to purchase some other product or service in connection with a political campaign or committee fundraiser does not turn the message into an advertisement for purposes of the TCPA's facsimile advertising rules.) The Commission emphasizes that, under the Junk Fax Prevention Act, even unsolicited advertisements transmitted by tax-exempt nonprofit organizations may be sent to persons with whom the senders have an established business relationship, subject to the other statutory requirements.

Unsolicited Advertisement

Definition

The facsimile advertising rules apply to a fax communication that constitutes an "unsolicited advertisement" as defined in the TCPA. The Junk Fax Prevention Act amends the term "unsolicited advertisement" by adding "in writing or otherwise" before the period at the end of that section. The Commission proposed amending its rules to reflect the change in the statutory language. No commenter opposed the modification. Accordingly, the Commission amends § 64.1200(f)(10) of its rules so that the definition reads as follows:

The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without the person's prior express invitation or permission, in writing or otherwise.

Prior Express Invitation or Permission

The Commission clarifies that, as an initial matter, a sender that has an EBR with a consumer may send a facsimile advertisement to that consumer without obtaining separate permission from him. (A sender that has received an opt-out request from a consumer must cease sending facsimile advertisements regardless of whether there exists a business relationship between them.) In the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement. Prior express invitation or permission may be given by oral or written means, including electronic methods. The Commission expects that written permission will take many forms, including e-mail, facsimile, and internet form. Whether given orally or in writing, prior express invitation or permission must be express, must be given prior to the sending of any facsimile advertisements, and must include the facsimile number to which such advertisements may be sent. It cannot be in the form of a "negative option." (A facsimile advertisement containing a telephone number and an instruction to call if the recipient no longer wishes to receive such faxes, would constitute a "negative option" as the sender presumes consent unless advised otherwise. However, a company that requests a fax number on an application form could include a clear statement indicating that, by providing such fax number, the individual or business agrees to receive facsimile advertisements from that company or organization.) (Trade and membership organizations could do so on their membership renewal statements.)

The Commission is concerned that permission not provided in writing may result in some senders erroneously claiming they had the recipient's permission to send facsimile advertisements. Commenters that discussed this issue agree that a sender should have the obligation to demonstrate that it complied with the rules, including that it had the recipient's prior express invitation or permission. Senders who choose to obtain permission orally are expected to take reasonable steps to ensure that such permission can be verified. In the event a complaint is filed, the burden of proof rests on the sender to demonstrate that permission was given. The Commission strongly suggests that senders take steps to promptly document that they received such permission. (An example of such documentation could be the recording of the oral authorization. Other methods might include established business practices or contact forms used by the sender's personnel.) Express permission need only be secured once from the consumer in order to send facsimile advertisements to that recipient until the consumer revokes such permission by sending an opt-out request to the sender.

The Commission concludes that, in the absence of an EBR, facsimile requests for permission to transmit faxed advertisements would not be permissible, as they would impose costs on consumers who had not yet consented to receive such communications.

Senders who claim they obtained a consumer's prior express invitation or permission to send them facsimile advertisements prior to the effective date of these rules will not be in compliance unless they can demonstrate that such authorization met all the requirements adopted herein. In addition, entities that send facsimile advertisements to consumers from whom they obtained permission must include on the advertisements their opt-out notice and contact information to allow consumers to stop unwanted faxes in the future.

"Transactional" Communications

The Commission agrees with those petitioners who argue that messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender are not advertisements for purposes of the TCPA's facsimile advertising rules. For example, a receipt or invoice, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, is not an advertisement of the commercial availability of such items. Similarly, messages containing account balance information or other type of account statement which, for instance, notify the recipient of a change in terms or features regarding an account, subscription, membership, loan or comparable ongoing relationship, in which the recipient has already purchased or is currently using the facsimile sender's product or service, is not an advertisement. Communications

sent to facilitate a loan transaction, such as property appraisals, summary of closing costs, disclosures (such as the Good Faith Estimate) and other similar documents are not advertisements when their purpose is to complete the financial transaction. A travel itinerary for a trip a customer has agreed to take or is in the process of negotiating is not an unsolicited advertisement. Similarly, a contract to be signed and returned by the agent or traveler that is for the purpose of closing a travel deal is not an advertisement for purposes of the prohibition. (However, the Commission finds that messages regarding travel deals, bonus commission offers and other promotional information are advertisements and would require the recipient's express permission in the absence of an established business relationship.) A communication from a trade show organizer to an exhibitor regarding the show and her appearance will not be considered an unsolicited advertisement, provided the exhibitor has already agreed to appear. The Commission also concludes that a mortgage rate sheet sent to a broker or other intermediary or a price list sent from a wholesaler to a distributor (*e.g.*, food wholesaler to a grocery store) for the purpose of communicating the terms on which a transaction has already occurred are not advertisements. (Commercial facsimile messages that advertise the commercial availability or quality of property, goods, or services, but purport to be "price sheets" or "rate sheets" in order to evade the TCPA rules, are nevertheless unsolicited advertisements, if not sent for the purpose of facilitating, completing, or confirming an ongoing transaction.)

A subscription renewal notice would be considered "transactional" in nature, provided the recipient is a current subscriber and had affirmatively subscribed to the publication. Finally, a notice soliciting bid proposals on a construction project would not be subject to the facsimile advertising prohibition, provided the notice does not otherwise contain offers for products, goods, and services. Similarly, bids in response to specific solicitations would not be covered by the rules, as such communications are presumably to facilitate a commercial transaction that the recipient has agreed to enter into by soliciting the bids.

In order for such messages to fall outside the definition of "unsolicited advertisement," they must relate specifically to existing accounts and ongoing transactions. Messages regarding new or additional business would advertise "the commercial availability or quality of any property, goods, or services * * *" and therefore would be covered by the prohibition. Thus, applications and materials regarding educational opportunities and conferences sent to persons who are not yet participating or enrolled in such programs are unsolicited advertisements and require the recipient's permission or the existence of an established business relationship before faxing the recipient such information. Similarly, a rate sheet on financial products transmitted to a potential borrower or potential brokers would not be considered merely "transactional" in nature and would require the sender to either have an established business relationship with the recipient or first obtain express permission from the recipient.

In response to arguments that a *de minimis* amount of advertising information should not convert a communication into an "unsolicited advertisement," the Commission concludes that a reference to a commercial entity does not by itself make a message a commercial message. For example, a company logo or business slogan found on an account statement would not convert the communication into an advertisement, so long as the primary purpose of the communication is, for example, to relay account information to the fax recipient.

Offers for Free Goods and Services and Informational Messages

The Commission concludes that facsimile messages that promote goods or services even at no cost, such as free magazine subscriptions, catalogs, or free consultations or seminars, are unsolicited advertisements under the TCPA's definition. In many instances, "free" seminars serve as a pretext to advertise commercial products and services. Similarly, "free" publications are often part of an overall marketing campaign to sell property, goods, or services. For instance, while the publication itself may be offered at no cost to the fascimile recipient, the products promoted within the publication are often commercially available. Based on this, it is reasonable to presume that such messages describe the "quality of any property, goods, or services." Therefore, facsimile communications regarding such free goods and services, if not purely "transactional," would require the sender to obtain the recipient's permission beforehand, in the absence of an EBR.

By contrast, facsimile communications that contain only information, such as industry news articles, legislative updates, or employee benefit information, would not be prohibited by the TCPA rules. An incidental advertisement contained in such a newsletter does not convert the entire communication into an advertisement. (In determining whether an advertisement is incidental to an informational communication, the Commission will consider, among other factors, whether the advertisement is a bona fide "informational communication." In determining whether the advertisement is to a bona fide "informational communication," the Commission will consider whether the communication is issued on a regular schedule; whether the text of the communication changes from issue to issue; and whether the communication is directed to specific regular recipients, *i.e.*, to paid subscribers or to recipients who have initiated membership in the organization that sends the communication. The Commission may also consider the amount of space devoted to advertising versus the amount of space used for information or "transactional" messages and whether the advertising is on behalf of the sender of the communication, such as an announcement in a membership organization's monthly newsletter about an upcoming conference, or whether the advertising space is sold to and transmitted on behalf of entities other than the sender). Thus, a trade organization's newsletter sent via facsimile would not constitute an unsolicited advertisement, so long as the newsletter's primary purpose is informational, rather than to promote commercial products. The Commission emphasizes that a newsletter format used to advertise products or services will not protect a sender from liability for delivery of an unsolicited advertisement under the TCPA and the Commission's rules. The Commission will review such newsletters on a case-by-case basis.

Finally, the Commission concludes that any surveys that serve as a pretext to an advertisement are subject to the TCPA's facsimile advertising rules. The TCPA's definition of "unsolicited advertisement" applies to any communication that advertises the commercial availability or quality of property, goods or services, even if the message purports to be conducting a survey.

Petitions for Reconsideration on EBR Exemption

The Commission also takes this opportunity to dismiss as moot, any pending petitions, or parts thereof, that seek reconsideration of the Commission's determination that an

established business relationship will no longer be sufficient to show that an individual or business has given prior express permission to receive unsolicited facsimile advertisements and those that seek reconsideration of the written permission requirement in § 64.1200(a)(3)(i) of the Commission's rules. The Junk Fax Prevention Act codifies an established business relationship exception to the prohibition on sending unsolicited facsimile advertisements; therefore, such petitions are now moot.

Private Right of Action

The TCPA provides consumers with a private right of action in state court for any violation of the TCPA's prohibitions on the use of automatic dialing systems, artificial or prerecorded voice messages, and unsolicited facsimile advertisements. One commenter raises concerns about class action lawsuits brought under the TCPA, and asks the Commission to clarify the parameters of the private right of action. As the Commission has stated in previous orders, Congress provided consumers with a private right of action, "if otherwise permitted by the laws or rules of court of a State." This language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those state courts' rules. The Commission continues to believe that it is for Congress, not the Commission, either to clarify or limit this right of action. Therefore, the Commission declines to make any determinations about the specific contours of the private right of action.

Effective Date of Rules

The record reveals that facsimile senders may need additional time beyond 30 days to comply with the rules adopted herein. For example, senders will need to ensure that opt-out contact information is provided on all facsimile advertisements. They also will need to put in place mechanisms to allow recipients to opt-out of unwanted facsimile advertisements and establish procedures for removing facsimile numbers for individuals that have opted out of such advertisements. The Commission believes it is important to provide adequate time for senders to come into compliance with the rules adopted in this order. Therefore, the amended facsimile advertising rules will become effective August 1, 2006. (Those rules requiring OMB approval under the Paperwork Reduction Act are not effective until approved by OMB).

Filings in Response to This Order

The Commission recently opened a new docket—CG Docket No. 05–338—and asked that all filings addressing the facsimile advertising rules be filed in the new docket. Any filings in response to this Report and Order also should be filed in CG Docket No. 05–338.

Final Regulatory Flexibility Analysis. (FRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order (JFPA NPRM)*. The Commission sought written public comment on the proposals in the *JFPA NPRM*, including comment on the IRFA. The only comment received on the IRFA from the Office of Advocacy, U.S. Small Business Administration is discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order and Third Order on Reconsideration

This *Order* is necessary to comply with Congress' mandate for the Commission to issue regulations implementing the Junk Fax Prevention Act of 2005. In this *Order*, and as set forth in the statute, the Commission: (1) Codifies an established business relationship (EBR) exemption to the prohibition on sending unsolicited facsimile advertisements; (2) provides a definition of an EBR to be used in the context of unsolicited facsimile advertisements that is not limited in duration; (3) requires the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender; and (4) specifies the circumstances under which a request to "opt-out" complies with the Act.

Specifically, in accordance with the Junk Fax Prevention Act, the Order permits the sending of facsimile advertisements to recipients with whom the sender has an EBR, provided certain conditions are met regarding how the facsimile number was obtained. In addition, the definition of EBR for purposes of sending facsimile advertisements extends the EBR exemption to faxes sent to both businesses and residential subscribers and is not be limited in duration. Under the new rules, senders of facsimile advertisements must include a notice describing the procedures for opting out of future faxes. The notice must be clear and conspicuous and located on the first page of the advertisement. The rules require that an opt-out notice include a cost-free mechanism for the recipient to request not to receive future faxes. The cost-free mechanism must include a toll-free telephone number, toll-free facsimile number, Web site address, or e-mail address. If the recipient makes a request not to receive future fax advertisements, the sender must honor that request within the shortest reasonable time, not to exceed 30 days.

In addition, the *Order* declines to exempt small businesses from the cost-free mechanism requirement, in part because the Commission is not requiring senders to provide toll-free telephone numbers for recipients to make opt-out requests. Finally, the *Order* does not carve out an exemption for tax-exempt nonprofit professional or trade associations from the opt-out notice requirement, noting that the benefits to consumers of having opt-out information readily available outweigh the burden in including such notices. Finally, the *Order* addresses certain issues raised in petitions for reconsideration of the *2003 TCPA Order* concerning the TCPA's facsimile advertising rules. Specifically, the *Order* provides guidance to fax senders on what messages do not constitute unsolicited advertisements for purposes of the fax rules and therefore could be sent without the prior permission of the recipient. The *Order* clarifies that messages that do not promote a commercial product or service, including all messages involving political or religious discourse, such as request for a donation to a political campaign, political action committee or charitable organization, are not unsolicited advertisements under the TCPA. The *Order* also concludes that messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender are not advertisements. These might include a receipt or invoice, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, an account statement, or communications sent to facilitate a loan transaction already entered into by the recipient. In addition, the *Order* determines that facsimile communications that contain only information, such as industry news articles, legislative updates, or employee benefit information, would not be prohibited by the TCPA rules. An incidental advertisement contained in such a facsimile does not convert the

entire communication into an advertisement.

Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

The only comment filed directly in response to the IRFA was from the Office of Advocacy of the U.S. Small Business Administration (Advocacy).

In its comments, Advocacy identified five proposed rules that would impact small businesses. First, Advocacy noted the Commission's proposal to limit the duration of the EBR as it applies to unsolicited fax advertisements. Advocacy contends that, as required by the Junk Fax Prevention Act, the proposed rule does not include an analysis or determination that the EBR has resulted in a significant number of complaints. Advocacy does not believe that the Commission has gathered the necessary information about complaints to limit the EBR. In addition, Advocacy contends that for small businesses to keep track of inquiries by customers would require a considerable increase in the amount of recordkeeping and would impede the ability of small businesses to respond to such inquiries.

Second, the Commission asked whether it was necessary to set forth rules on what is to be considered "clear and conspicuous" for purposes of an opt-out notice on a fax advertisement. Advocacy believes that the clear and conspicuous requirement should be held to a reasonable standard and that "any further attempts by the Commission to define the notice requirement would likely become mired in minutia and would likely cause more confusion than guidance."

Third, Advocacy believes that 30 days to comply with a do-not-fax request is reasonable. Fourth, Advocacy recommends that the Commission exempt small businesses from the cost-free mechanism requirement in the Junk Fax Prevention Act. Advocacy contends that many small businesses (particularly very small businesses) do not have toll-free numbers. If the Commission determines not to exempt small businesses, Advocacy recommends that the Commission allow them to use alternatives to toll-free numbers because of the "great expense associated with maintaining toll-free numbers." They state that small businesses recommend e-mail, web-based systems, or the designation of a third party as viable alternatives. Advocacy also says that small businesses believe that once a small business has chosen a means of receiving do-not-fax requests, then opt-out requests should only be enforceable if they are received in that manner. Finally, Advocacy indicates that small businesses believe an exemption for tax-exempt nonprofit associations from the opt-out notice requirement would be appropriate.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

The IFRA stated that the Commission's rules on the sending of unsolicited facsimile advertisements would apply to any entity, including any telecommunications carrier, which uses the telephone facsimile machine to advertise. Advocacy agreed, stating that "since what can be considered a commercial fax is so broad, it is appropriate for the Commission to consider that its rule could potentially impact almost all small businesses." Advocacy also noted that the U.S. Census Bureau updated its estimates based upon census information from 2002, which places the total number of small businesses in the United States (which it defines as firms with fewer than 500 employees) at 5.68 million. Advocacy explains that ordinarily the SBA defines small business on an industry-by-industry basis. However, Advocacy contends that this is not practicable for the proposed rules because of its "broad applicability across industry lines which would create confusion on the part of small businesses' as to whether or not they are covered by the rules. Accordingly, Advocacy recommends the Commission consider adopting a new small business size standard for this rule. Drawing from the input from small business groups, Advocacy recommends that the Commission adopt a size standard of 100 employees for this rulemaking. Based on the U.S. Census 2002 numbers, Advocacy indicates that 5.6 million firms would then qualify as small businesses. Given that the Commission is not exempting small businesses from the requirement to identify a cost-free mechanism for fax recipients to opt-out of future unwanted faxes, the Commission concludes that it is not necessary at this time to adopt a new small business size standard for this rule. Therefore, the Commission estimates that, consistent with Advocacy's comments, the rules apply to 5.68 million small entities across all industries in the United States.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Order* will likely result in increases in projected reporting, recordkeeping, and other compliance requirements for senders of facsimile advertisements. The statutory and rule changes affect both small and large companies. First, in accordance with the Junk Fax Prevention Act, the *Order* adopts an EBR exemption for sending fax advertisements. Should a question arise as to the validity of an EBR, the burden will be on the sender to show that it has a valid EBR with the recipient. However, the Commission emphasized that there is no requirement that senders of fax advertisements maintain any specific records demonstrating that an EBR exists. The Commission believes the EBR can be demonstrated with records kept in the ordinary course of business, such as purchase agreements, sales slips, applications and inquiry records.

In accordance with the Junk Fax Prevention Act, the Commission concludes that an EBR alone does not entitle a sender to fax an advertisement to an individual consumer or business. The sender must also ensure that the telephone facsimile number was provided voluntarily by the recipient. The Commission finds that it would be permissible for the sender to fax an advertisement to a recipient that had provided a facsimile number directly to the sender, for example, on an application, information request, contact information form, or membership renewal form. In the event a recipient complains that its facsimile number was not provided to the sender, the burden rests with the sender to demonstrate, with such business records, that the number was communicated in the context of the EBR. Similarly, if the facsimile number was obtained from the recipient's own directory, advertisement, or internet site, the Commission determined that it was voluntarily made available for public distribution, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the facsimile number in question. In

such circumstances, the facsimile recipient's own advertisement would serve as evidence of the recipient's agreement to make the number available for public distribution. If the sender obtains the number from sources of information compiled by third parties, the sender must take reasonable steps to verify that the recipient consented to have the number listed, such as calling or emailing the recipient. While the Commission is not requiring that any specific records be kept, should a question arise about how the facsimile number was obtained, the sender would need to demonstrate that it was voluntarily provided. It is up to senders to determine the best way to do so if that becomes necessary.

The Junk Fax Prevention Act requires facsimile senders to include a notice on the first page of the unsolicited advertisement that instructs the recipient how to request that they not receive future unsolicited facsimile advertisements from the sender. In the *Order*, the Commission requires that all unsolicited facsimile advertisements contain a notice on the first page of the advertisement stating that the recipient is entitled to request that the sender not send any future unsolicited advertisements. The notice must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. The notice also must include a domestic contact telephone number and a facsimile machine number, and at least one cost-free mechanism for transmitting an opt-out request. In the Order, the Commission concludes that a Web site address, e-mail address, toll-free telephone number, or toll-free facsimile machine number will constitute "cost-free mechanisms" for purposes of the rules. For those facsimile senders that do not already have one of these mechanisms in place, they will need to implement one in order to give recipients a cost-free way of opting-out of faxes. In accordance with the statute, the mechanism must accept opt-out requests 24 hours, 7 days a week at the mechanisms identified in the notice. The rules also require that highly involved fax broadcasters must ensure that the faxes it transmits on behalf of each sender contain the necessary information to allow a consumer to opt-out of a particular sender's faxes in the future.

The new rules require that a facsimile sender that receives a request not to send future unsolicited advertisements that complies with the rules must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. Facsimile senders will need to take steps to remove such facsimile numbers from their faxing databases, or maintain do-not-fax lists to avoid sending advertisements to recipients that have opted out, within the shortest reasonable time, not to exceed 30 days. If a recipient subsequently provides the sender with his express permission to send advertisements, whether orally or in writing, the burden of proof rests with the sender to demonstrate that permission was given. Thus, the Commission suggests that senders take steps to promptly document that they received such permission by, for instance, recording the oral authorization, or using established business practices or contact forms.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In this *Order*, the Commission adopts rules in accordance with the provisions in the Junk Fax Prevention Act. In doing so, the Commission considers a number of alternatives to minimize the economic impact on small entities that must comply with the rules. In this *Order*, the Commission adopts an EBR exemption to the prohibition on sending unsolicited facsimile advertisements. The exemption will permit all entities, including small businesses, to send fax advertisements to their EBR customers without having to secure written permission from them first. In addition, the Commission was authorized by Congress to consider limiting the duration of the EBR. In the *Order*, the Commission determined not to limit the EBR and alternatively indicated it would closely monitor implementation of the new EBR exemption and opt-out policies adopted in the *Order*. Within one year of the effective date of the *Order*, the Commission will evaluate the Commission's complaint data to determine whether the EBR exception has resulted in a significant number of complaints regarding facsimile advertisements and whether such complaints involve fax advertisements sent based on an EBR of a duration that is inconsistent with the reasonable expectations of consumers.

In addition, the Junk Fax Prevention Act requires facsimile senders to include a clear and conspicuous notice on the first page of the unsolicited advertisement that instructs the recipient how to opt-out of future unwanted faxes. As discussed in the *Order*, the Commission considered defining clear and conspicuous to mean a notice that is on the first page of the advertisement and apparent to a reasonable consumer. Alternatively, the Commission considered providing additional guidance to ensure that consumers are aware of their opt-out rights and sending parties have standards by which they can comply with the law. In the *Order*, the Commission determined that "clear and conspicuous" for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer and located on the first page of the fax advertisement. The Commission further clarified that the notice must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. However, the Commission declined to adopt rules specifying the font type, size and wording of the notice. The statute also requires that senders identify in their notices a cost-free mechanism for recipients to transmit opt-out requests to the senders. Rather than require senders to provide a toll-free telephone number for consumers to request that no future faxes be sent, the Commission alternatively adopted rules that permit senders to use a Web site address, e-mail address, toll-free telephone number, or toll-free facsimile number. Allowing senders to use Web sites and e-mail addresses should minimize any burdens on them, particularly small businesses for whom setting up a toll-free number might be costly. The Commission also determined that recipients must use the opt-out mechanisms identified by the senders in their notices so that such businesses, including small businesses, can more easily account for all opt-out requests and process them in a timely manner.

In the *JFPA NPRM*, the Commission sought comment on whether to exempt small businesses from the requirement to provide a cost-free mechanism for a recipient to transmit an opt-out request. As noted above, the Commission

declined to require fax senders to offer a toll-free number for recipients to request that no future faxes be sent. Given that the Commission is not mandating the use of toll-free numbers, as well as the support in the record for using Web sites and e-mail addresses by small businesses, the Commission determined not to exempt small businesses from the cost-free mechanism requirement. The Commission found that the record contained little empirical evidence that the costs associated with setting up a Web site or e-mail address would be unduly burdensome to a small business given their revenues.

The Commission also considered the burdens to businesses of having to comply with opt-out requests in the "shortest reasonable time." The record revealed that some commenters support a period of 30 days within which senders must comply with opt-out requests. Other commenters support a shorter period of time for honoring do-not-fax requests, such as 10 or 15 days. In the *Order*, the Commission determined to require senders to honor requests within the shortest reasonable time from the date of such request, not to exceed 30 days from the date of such request. The Commission believes this will permit both senders with large databases of facsimile numbers, as well as small businesses with limited resources, to remove numbers for individuals that opt-out of faxes.

Finally, the *Order* withdraws § 64.1200(a)(3)(i) of the Commission's rules which requires the recipient to obtain a signed, written statement indicating the recipient's consent to receive facsimile advertisements from the sender. The Commission determined instead that prior express invitation or permission to send an advertisement may be given by oral or written means, including electronic methods. The Commission notes that written permission could take many forms, including e-mail, facsimile, and internet form. The Commission believes this determination will permit small entities to obtain permission more easily from consumers who make inquiries, file applications, or request information.

Congressional Review Act

The Commission will send a copy of the *Report and Order and Third Order on Reconsideration*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 201, 202, 217, 227, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 217, 227, 258, 303(r), and 332; and §§ 64.1200 and 64.318 of the Commission's rules, 47 CFR 64.1200 and 64.318, the report and order is adopted, and part 64 of the Commission's rules, 47 CFR 64.1200, is amended.

The rules and requirements contained in this Report and *Order and Third Order on Reconsideration* shall become effective August 1, 2006, except for 47 CFR 64.1200(a)(3)(i), (ii), (iii), (iv), and (vi) which contains information collection requirements under PRA are not effective until approved by OMB. Certain petitions for reconsideration and/or clarification of the facsimile advertising rules in CG Docket No. 02–278 are denied in part, granted in part, and dismissed in part. Specifically, those petitions filed by Air Conditioning Contractors of America, American Association of Advertising Agencies, *et al.*, American Business Media, American Dietetic Association, American Society of Association Executives, American Tire Distributors, Inc., America's Community Bankers, Association of Small Business Development Centers, California Association of Realtors, Chamber of Commerce of the U.S., *et al.*, Coalition for Healthcare Communication, Consumer Bankers Association, Consumer Electronics Association, Copia International, LTC, Faxts, Inc., Federal Election Commission, Financial Services Coalition, Independent Insurance Agents and Brokers of America, Independent Sector, Jobson Publishing, LLC, Maryland Association of Nonprofit Organizations, John Mayhill, National Association of Chain Drugstores, National Association of Realtors, National Retail Federation, Newsletter & Electronic Publishers Association, Newspaper Association of America, Presidential Classroom for Young Americans, Inc., Produce Marketing Association, Proximity Marketing, Reed Elsevier, Inc., Scholastic, Inc., State and Regional Newspaper Associations, Travel Industry Group, Wells Fargo & Co., and Yellow Pages Integrated Media Association are dismissed to the extent they seek reinstatement of the established business relationship exemption.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report and Order and Third Order on Reconsideration* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k) secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Revise the heading to part 64 subpart L to read as follows:

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

■ 3. Section 64.1200 is amended by revising paragraphs (a) and (f) to read as follows:

§ 64.1200 Delivery restrictions.

(a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made

within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call;

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation;

(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made; or

(v) Is made by or on behalf of a tax-exempt nonprofit organization.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—

(i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(5) of this section, with the recipient; and

(ii) The sender obtained the number of the telephone facsimile machine through—

(A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or

(B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(2)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(2)(v) of this section;

(D) The notice includes—

(*1*) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(*2*) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or e-mail address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(3)(iii) of this section.

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or e-mail address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(vi) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(3)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

* * * * *

(f) As used in this section: (1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term *clear and conspicuous* for purposes of paragraph (a)(3)(iii)(A) of this section means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures, and placed at either the top or bottom of the facsimile.

(3) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(4) The term *established business relationship* for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date

of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(5) The term *established business relationship* for purposes of paragraph (a)(3) of this section on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(6) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(7) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term *sender* for purposes of paragraph (a)(3) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(9) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(11) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(12) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(13) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(14) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

* * * * *

[FR Doc. 06–4169 Filed 5–2–06; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–794; MB Docket No. 05–100, RM–11181; MB Docket No. 05–153, RM–11223]

Radio Broadcasting Services; Encino, TX; and Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots two new allotments in Encino, Texas and Steamboat Springs, Colorado. The Audio Division, at the request of Linda Crawford, allots Channel 250A at Encino, Texas, as the community's second local aural transmission service. The reference coordinates for Channel 250A at Encino are 26–56–09 North Latitude and 98–08–06 West Longitude. The allotment requires no site restriction because the location is at city reference coordinates. **SUPPLEMENTARY INFORMATION,** *infra*.

DATES: Effective May 22, 2006. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 05–100 and 05–153, adopted April 5, 2006 and released April 7, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Dana J. Puopolo, allots Channel 289A at Steamboat Springs, Colorado, as the community's third FM commercial broadcast service. The reference coordinates for Channel 289A at Steamboat Springs are 40–30–00 North Latitude and 106–54–00 West Longitude. The allotment requires a site restriction of 6.1 kilometers (3.8 miles) west of the community to avoid a short-spacing to the licensed site of FM Station KJAC, Channel 288C1, Timnath, Colorado.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ The Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 289A at Steamboat Springs.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at Encino.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–4076 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–797; MB Docket No. 04–239; RM–10998]

Radio Broadcasting Services; Portage and Stoughton, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Magnum Communications, Inc., licensee of Station WBKY(FM), Portage, Wisconsin, requesting the reallotment of Channel 240A from Portage to Stoughton, Wisconsin, as its first local service and modification of the Station WBKY(FM) license accordingly. Channel 240A can be reallotted to Stoughton in conformity with the Commission's rules, provided there is a site restriction of 10.2 kilometers (6.3 miles) southwest of the community, using reference coordinates 42–50–21 NL and 89–16–59 WL.

DATES: Effective May 22, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04–239, adopted April 5, 2006, and released April 7, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ The Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 240A at Portage and by adding Stoughton, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–4077 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–843; MB Docket No. 05–133; RM–11206]

Radio Broadcasting Services; Abilene and Burlingame, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by MCC Radio, LLC, licensee of Station KSAJ(FM), Channel 253C1, Abilene, Kansas, requesting the reallotment of Channel 253C1 from Abilene to Burlingame, Kansas, as its first local service and modification of the Station KSAJ(FM) license accordingly. Channel 253C1 can be allotted to Burlingame in conformity with the Commission's rules, provided there is a site restriction of 17.7 kilometers (11 miles) northwest of the community, using reference coordinates 38–52–29 NL and 95–58–05 WL.

DATES: Effective May 30, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 05–133, adopted April 12, 2006, and released April 14, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Abilene, Channel 253C1 and by adding Burlingame, Channel 253C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–4170 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–845; MB Docket No. 04–377; RM–11077]

Radio Broadcasting Services; Dover and North Canton, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Clear Channel Broadcasting Licenses, Inc., reallots Channel 269A from Dover, Ohio to North Canton, Ohio, and modifies the license of Station WJER-FM, accordingly. The coordinates for Channel 269A at North Canton are 40–48–30 North Latitude and 81–23–31 West Longitude, with a site restriction of 7.5 kilometers (4.7 miles) south of the community.

DATES: Effective May 30, 2006.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–377, adopted April 12, 2006, and released April 14, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Dover, Channel 269A and by adding North Canton, Channel 269A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–4171 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 06–79]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service rules to conform with the international Radio Regulations adopted at the International Telecommunications Union *World Radiocommunication Conference Final Acts (Geneva, 2003) (WRC–03 Final Acts)*. The *WRC–03 Final Acts* revised the international regulations that apply to the amateur service and the amateur satellite service and became effective on July 5, 2003. These amendments ensure that the Commission's amateur service rules reflect the international regulations.

DATES: Effective May 3, 2006.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 06–79, adopted January 17, 2006, and released January 19, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC's Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC. Alternative formats (Braille, large print, electronic files, audio format) are available for people with disabilities by sending an e-mail to *FCC504@fcc.gov* or, calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The Order also may be downloaded from the Commission's Web site at *http://www.fcc.gov/*.

1. In the Order the Commission adopted changes to its part 97 rules to conform the amateur service rules with the international Radio Regulations. The overall effect of this action is to update the part 97 Amateur Radio Service rules in the Code of Federal Regulations to conform to now-effective international agreements. Specifically, the Commission amended §§ 97.111(a)(1), 97.115(a)(2), 97.113(a)(4), 97.117, and revised the definition of International Morse code and various digital codes in § 97.3 of the Amateur Radio Service rules.

2. Section 97.111(a)(1) of the Commission's rules implements Radio Regulations Article 25.1. Previously, Article 25.1 stated "Radiocommunications between amateur stations of different countries shall be forbidden if the administration of one of the countries concerned has notified that it objects to such radiocommunications." Article 25.1, as revised at WRC–03, now states "Radiocommunications between amateur stations of different countries shall be permitted unless the administration of one of the countries concerned has notified that it objects to such radiocommunications." To conform § 97.111(a)(1) to the amended Radio Regulation, the Commission amended this section to state that amateur stations are authorized to make transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has notified the ITU that it objects to such communications. The effect of this revision is to clarify that communications between FCC-licensed amateur stations and amateur stations of different countries shall be permitted unless the administration of one of the countries concerned has notified the ITU that it objects to such radiocommunications.

3. Section 97.115(a)(2) of the Commission's rules implements Radio Regulations Article 25.3. Previously, Article 25.3 stated "It is absolutely forbidden for amateur stations to be used for transmitting international communications on behalf of third parties." Article 25.4, however, stated "The proceeding provision [Article 25.3] may be modified by special arrangements between the administrations of the countries concerned." Article 25.3, as revised at WRC–03, now states "Amateur stations may be used for transmitting international communications on behalf of third parties only in case of emergencies or disaster relief. An administration may determine the applicability of this provision to amateur stations under its jurisdiction." To conform § 97.115(a)(2) to the amended Radio Regulation, the Commission amended this section to allow amateur stations to transmit international third party communications to any station within the jurisdiction of any foreign government when transmitting emergency or disaster relief communications and, as previously permitted, to any station within the jurisdiction of any foreign government

whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. The effect of this revision is to permit amateur stations to be used for transmitting international communications on behalf of third parties in case of emergencies or disaster relief.

4. Section 97.113(a)(4) implements Radio Regulations Article 25.2A. Previously, Article 25.2 stated "When transmissions between amateur stations of different countries are permitted, they shall be made in plain language and shall be limited to messages of a technical nature relating to tests and to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified." Article 25.2A, as adopted at WRC–03, now states "Transmissions between amateur stations of different countries shall not be encoded for the purpose of obscuring their meaning, except for control signals exchanged between earth command stations and space stations in the amateur satellite service." To conform § 97.113(a)(4) to the amended Radio Regulation, the Commission amended this section to prohibit amateur stations exchanging messages with amateur stations in other countries from making transmissions that are encoded for the purpose of obscuring their meaning, except for control signals exchanged between earth command stations and space stations in the amateur-satellite service. The effect of this revision is to allow FCC-licensed amateur stations to exchange messages using digital communication codes and foreign languages when the intent is not for the purpose of obscuring the message's meaning.

5. Section 97.117 implements Radio Regulation Article 25.2. Article 25.2, as revised at WRC–03, now states "Transmissions between amateur stations of different countries shall be limited to communications incidental to the purposes of the amateur service, as defined in No. 1.56 [which defines the amateur service] and to remarks of a personal character. To conform § 97.117 to the amended Article 25.2 of the Radio Regulations, the Commission amended this section to state that amateur stations may transmit communications incidental to the purposes of the amateur service and to remarks of a personal character." The effect of this revision is to expand the scope of messages FCC-licensed amateur stations may transmit to included communications incidental to the purposes of the amateur service and to remarks of a personal character. The Commission also revised the definition of International Morse code and various digital codes in § 97.3 the Amateur Radio Service rules to conform with the updated definitions of these codes in the Radio Regulations.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

1. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Report to Congress

2. The Commission will send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission.

Ramona Melson,

Chief of Staff, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 2. Section 97.3 is amended to revise paragraph (a)(27) to read as follows:

§ 97.3 Definitions.

(a) * * *

(27) *International Morse code.* A dot-dash code as defined in ITU–T Recommendation F.1 (March, 1998), Division B, I. Morse code.

* * * * *

■ 3. Section 97.111 is amended to revise paragraph (a)(1) to read as follows:

§ 97.111 Authorized transmissions.

(a) * * *

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has notified the ITU that it objects to such communications. The FCC will issue public notices of current arrangements for international communications.

* * * * *

■ 4. Section 97.113 is amended to revise paragraph (a)(4) to read as follows:

§ 97.113 Prohibited transmissions.

(a) * * *

(4) Music using a phone emission except as specifically provided elsewhere in this section; communications intended to facilitate a criminal act; messages encoded for the purpose of obscuring their meaning, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification.

* * * * *

■ 5. Section 97.115 is amended to revise paragraph (a)(2) to read as follows:

§ 97.115 Third party communications.

(a) * * *

(2) Any station within the jurisdiction of any foreign government when transmitting emergency or disaster relief communications and any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. No station shall transmit messages for a third party to any station within the jurisdiction of any foreign government whose administration has not made such an arrangement. This prohibition does not apply to a message for any third party who is eligible to be a control operator of the station.

* * * * *

■ 6. Section 97.117 is revised to read as follows:

§ 97.117 International communications.

Transmissions to a different country, where permitted, shall be limited to communications incidental to the purposes of the amateur service and to remarks of a personal character.

■ 7. Section 97.309 is amended to revise paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 97.309 RTTY and data emission codes.

(a) * * *

(1) The 5-unit, start-stop, International Telegraph Alphabet No. 2, code defined

in ITU–T Recommendation F.1, Division C (commonly known as "Baudot").

(2) The 7-unit code specified in ITU–R Recommendations M.476–5 and M.625–3 (commonly known as "AMTOR").

(3) The 7-unit, International Alphabet No. 5, code defined in IT—T Recommendation T.50 (commonly known as "ASCII").

* * * * *

[FR Doc. 06–4028 Filed 5–2–06; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 71, No. 85
Wednesday, May 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24639; Directorate Identifier 2005–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell RCZ–833J/K, –851J/K, and –854J Communication (COM) Units, Equipped With XS–852E/F Mode S Transponders; and Honeywell XS–856A/B and –857A Mode S Transponders; Installed on But Not Limited to Certain Transport Category Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Honeywell COM units and transponders, installed on but not limited to certain transport category airplanes. This proposed AD would require a revision to the Normal Procedures section of the Airplane Flight Manual to advise the flightcrew to check the status of the transponder after changing the air traffic control (ATC) code. This proposed AD would also require replacing certain identification plate(s) with new plate(s), testing certain COM units or transponders as applicable, and corrective action if necessary. For certain airplanes, this proposed AD would require replacing the transponders of certain COM units with new or modified transponders. For certain other airplanes, this proposed AD would require installing a modification into certain transponders. This proposed AD results from the transponder erroneously going into standby mode if the flightcrew takes longer than five seconds when using the rotary knob of the radio management unit to change the ATC code. We are proposing this AD to prevent the transponder of the COM unit from going into standby mode, which could increase the workload on the flightcrew and result in improper functioning of the traffic alert and collision avoidance system.

DATES: We must receive comments on this proposed AD by June 19, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

Go to *https://pubs.cas.honeywell.com/* or contact Honeywell International Inc., Commercial Electronic Systems, 5353 West Bell Road, Glendale, Arizona 85308–3912, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24639; Directorate Identifier 2005–NM–171–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that the transponder erroneously goes into standby mode if the flightcrew takes longer than five seconds when using the rotary knob of the radio management unit to change the air traffic control (ATC) code. (This error will not occur if the keyboard is used to change the ATC code.) This error occurs on certain Honeywell RCZ communication (COM) units that contain elementary surveillance transponders. When the transponder goes into standby mode, the secondary surveillance radar (SSR) symbol and the airplane's position disappear from the ATC ground radar display. Also, the traffic alert and collision avoidance systems (TCAS) onboard the airplane and other nearby airplanes are compromised. Current operational procedures typically do not instruct the flightcrew to re-check the transponder status after changing the ATC code. The transponder erroneously going into

standby mode, if not corrected, could increase the workload on the flightcrew and result in improper functioning of the TCAS.

Relevant Service Information

We have reviewed Honeywell Alert Service Bulletin 7510700–23–A0048, dated January 27, 2006; and Honeywell Alert Service Bulletin 7517400–23–A0017, dated January 23, 2006.

For COM units RCZ-833J part numbers (P/Ns) 7510700–763 and –863; RCZ–833K P/Ns 7510700–765 and –875; RCZ–851J P/N 7510700–813; RCZ–851K P/N 7510700–815; and RCZ–854J P/Ns 7510700–725 and –825, Honeywell Alert Service Bulletin 7510700–23–A0048 describes doing the following procedures:

- Replacing the product signature plate, identification plate, and modification plate with new plates.
- Marking all the modifications installed in the COM unit on the new modification plate.
- Testing the COM unit.
- Reporting certain information to the manufacturer.

Honeywell Alert Service Bulletin 7510700–23–A0048 also specifies prior or concurrent accomplishment of Honeywell Alert Service Bulletin 7510700–23–A0047, Revision 001, dated July 29, 2005.

Honeywell Alert Service Bulletin 7510700–23–A0047 describes procedures for installing MOD AT into the COM unit and testing the COM unit. MOD AT involves replacing the XS–852E/F mode S transponder, P/N 7517400–911 or –912, of the applicable COM unit with a new or modified XS–852E/F mode S transponder that has MOD V installed. Honeywell Alert Service Bulletin 7510700–23–A0047 also refers to Honeywell Alert Service Bulletin 7517400–23–A6015, Revision 001, dated July 29, 2005, as an additional source of service information for modifying the XS–852E/F mode S transponder by installing MOD V into the transponder.

For mode S transponders XS–856A P/Ns 7517400–865 and –885; XS–856B P/Ns 7517400–866 and –886; and XS–857A P/Ns 7517400–876 and –896, Honeywell Alert Service Bulletin 7517400–23–A0017 describes doing the following procedures:

- Replacing the modification plate of the transponder with a new plate.
- Marking all the modifications installed in the transponder on the new modification plate of the transponder.
- Testing the transponder.
- Reporting certain information to the manufacturer.

Honeywell Alert Service Bulletin 7517400–23–A0017 also specifies prior or concurrent accomplishment of Honeywell Alert Service Bulletin 7517400–23–A6016, dated August 30, 2005. Honeywell Alert Service Bulletin 7517400–23–A6016 describes procedures for installing MOD Y into the transponder and testing the transponder.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require revising the Normal Procedures section of the applicable Airplane Flight Manual to advise the flightcrew to check the status of the transponder after changing the ATC code. This AD would also require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between Proposed AD and Service Bulletins."

Differences Between Proposed AD and Service Bulletins

Service Bulletin 7510700–23–A0048 recommends testing certain COM units; however, the service bulletin does not specify what corrective action to take if the COM unit fails the test. This proposed AD would require, before further flight after the test, reinstalling MOD V into the transponder of the COM unit, in accordance with Service Bulletin 7517400–23–A6015.

Service Bulletin 7517400–23–A0017 recommends testing certain transponders; however, the service bulletin does not specify what corrective action to take if the transponder fails the test. This proposed AD would require, before further flight after the test, reinstalling MOD Y into the transponder, in accordance with Service Bulletin 7517400–23–A6016.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions.

Costs of Compliance

There are about 1,365 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1,023 airplanes of U.S. registry. Of those airplanes, about 603 airplanes are equipped with RCZ–833J/K, –851J/K, or 854J COM units and about 420 airplanes are equipped with XS–856A/B or –857A mode S transponders. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	None	$80	1,023	$81,840.
Part identification, testing, and replacement for RCZ–833J/K, –851J/K, and –854J COM units.	3	$35	$275	603	$165,825.
Part identification, testing, and installation of software for XS–856A/B and –857A mode S transponders.	3 to 8 [1]	$175	$415 to $815 [1].	420	$174,300 to $342,300.[1]

[1] Depending on test procedure.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International, Inc.: Docket No. FAA–2006–24639; Directorate Identifier 2005–NM–171–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 19, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Honeywell parts identified in paragraphs (c)(1) and (c)(2) of this AD, approved under Technical Standard Order TSO–C112, installed on but not limited to Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes; Cessna Model 550 and 560 airplanes; Cessna Model 650 airplanes; Dassault Model Mystere-Falcon 900 and Falcon 900EX airplanes; Dassault Model Falcon 2000 and Falcon 2000EX airplanes; EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; Learjet Model 45 airplanes; Lockheed Model 282–44A–05 (C–130B) airplanes; Lockheed Model 382G series airplanes; Raytheon Model Hawker 800 (including variant U–125A), 800XP, and 1000 airplanes; certificated in any category.

(1) Communication (COM) unit RCZ–833J part numbers (P/Ns) 7510700–763 and –863; RCZ–833K P/Ns 7510700–765 and –875; RCZ–851J P/N 7510700–813; RCZ–851K P/N 7510700–815; and RCZ–854J P/Ns 7510700–725, and –825.

(2) Mode S transponder XS–856A P/Ns 7517400–865 and –885; XS–856B P/Ns 7517400–866 and –886; and XS–857A P/Ns 7517400–876 and –896.

Unsafe Condition

(d) This AD results from the transponder erroneously going into standby mode if the flightcrew takes longer than five seconds when using the rotary knob of the radio management unit to change the air traffic control code. We are issuing this AD to prevent the transponder of the COM unit from going into standby mode, which could increase the workload on the flightcrew and result in improper functioning of the traffic alert and collision avoidance system.

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.

Airplane Flight Manual (AFM) Revision

(f) For all airplanes: Within 5 days after the effective date of this AD, revise the Normal Procedures section of the applicable AFM to include the following statement:

"After completion of any 4096 ATC Code change (also referred to as Mode A Code), check the status of the transponder. If the transponder indicates that it is in standby mode, re-select the desired mode (*i.e.*, the transponder should be in the active mode)."

This may be done by inserting a copy of this AD in the AFM. Accomplishing the actions specified in paragraph (h) or (j), as applicable, of this AD terminates the requirement of this paragraph.

Replacement of Identification Plates for Certain COM Units

(g) For airplanes equipped with any COM unit identified in paragraph (c)(1) of this AD: Within 18 months after the effective date of this AD, replace the product signature plate, identification plate, and MOD plate of the COM unit with new plates and test the COM unit, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510700–23–A0048, dated January 27, 2006. If the COM unit fails the test, before further flight, reinstall MOD V into the transponder of the COM unit in accordance with Honeywell Alert Service Bulletin 7517400–23–A6015, Revision 001, dated July 29, 2005.

Replacement of Certain Transponders

(h) For airplanes equipped with any COM unit identified in paragraph (c)(1) of this AD: Before or concurrently with the actions required by paragraph (g) of this AD, replace the XS–852E/F mode S transponder of the COM unit with a new or modified XS–852E/F mode S transponder that has MOD V installed, in accordance with Honeywell Alert Service Bulletin 7510700–23–A0047, Revision 001, dated July 29, 2005. After accomplishing the replacement required by this paragraph, the AFM revision required by paragraph (f) of this AD may be removed from the AFM.

Note 1: Honeywell Alert Service Bulletin 7510700–23–A0047, Revision 001, dated July 29, 2005, refers to Honeywell Alert Service Bulletin 7517400–23–A6015, Revision 001, dated July 29, 2005, as an additional source of service information for installing MOD V into an XS–852E/F mode S transponder.

Replacement of Identification Plate for Certain Transponders

(i) For airplanes equipped with any transponder identified in paragraph (c)(2) of this AD: Within 18 months after the effective date of this AD, replace the modification plate of the transponder with a new plate and test the transponder, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7517400–23–A0017, dated January 23, 2006. If the transponder fails the test, before further flight, reinstall MOD Y into the transponder as specified in paragraph (j) of this AD.

Installation of MOD Y Into Certain Transponders

(j) For airplanes equipped with any transponder identified in paragraph (c)(2) of this AD: Before or concurrently with the actions required by paragraph (i) of this AD, install MOD Y into the applicable mode S transponder, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7517400–23–A6016, dated August 30, 2005. After accomplishing the replacement required by this paragraph, the AFM revision required by paragraph (f) of this AD may be removed from the AFM.

Parts Installation

(k) For all airplanes: As of the effective date of this AD, no person may install any part identified in paragraph (c)(1) or (c)(2) on any airplane, unless the applicable software

modification has been installed in the transponder in accordance with paragraph (h) or (j) of this AD, as applicable.

No Reporting Requirement

(l) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on April 25, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–6651 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24667; Directorate Identifier 2006–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; Goodyear Aviation Tires, Part Number 217K22–1, Installed on Various Transport Category Airplanes, Including But Not Limited to Bombardier Model BD–700–1A10 and BD–700–1A11 Airplanes; and Gulfstream Model G–1159, G–1159A, G–1159B, G–IV, GIV–X, GV, and GV–SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain aviation tires installed on various transport category airplanes. This proposed AD would require a one-time inspection of the nosewheel tires to determine if they are within a designated serial number range, and replacement if necessary. This proposed AD results from reports of tread separations and tread-area bulges on the nosewheel tires. We are proposing this AD to prevent tread separation from a nosewheel tire during takeoff or landing, which could result in compromised nosewheel steering or ingestion of separated tread by an engine, and consequent reduced controllability of the airplane on the runway or in the air.

DATES: We must receive comments on this proposed AD by June 19, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada; Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; or Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316–0001; as applicable, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nick Miller, Aerospace Engineer, Systems and Flight Test Branch, ACE–117C, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; telephone (847) 294–7518; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24667; Directorate Identifier 2006–NM–009–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of tread separations and tread-area bulges on certain Goodyear Aviation nosewheel tires that are within a designated serial number range. Investigation revealed that the nosewheel tires have poor adhesion properties, which could cause tread loss during takeoff or landing. This condition, if not corrected, could result in compromised nosewheel steering or ingestion of separated tread by an engine, and consequent reduced controllability of the airplane on the runway or in the air.

Relevant Service Information

We have reviewed Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005. The service bulletin describes procedures for inspecting the nosewheel tires for the affected serial numbers, and for replacing affected tires. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

We have also reviewed the following Gulfstream Alert Customer Bulletins. These Alert Customer Bulletins, all dated October 12, 2005, are additional sources of service information for identifying the affected serial numbers and replacing the tires if necessary.

GULFSTREAM ALERT CUSTOMER BULLETINS

Gulfstream model	Alert customer bulletin
G–1159 (G–II) and G–1159B (G–IIB) series airplanes	G–II and G II–B, Number 30.
G–1159A (G–III) series airplanes	G–III, Number 16.
G–IV (G–IV, G300, G400) series airplanes	G–IV, Number 34; G300, Number 34; and G400, Number 34.
GIV–X (G350, G450) series airplanes	G350, Number 3; and G450, Number 3.
GV series airplanes	GV, Number 24.
GV–SP (G550, G500) series airplanes	G500, Number 5; and G550, Number 5.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the Goodyear Aviation service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

Although the Goodyear Aviation service bulletin specifies a compliance time of 14 days for replacing affected tires, this proposed AD would require a compliance time of 60 days for doing the replacement. Most have complied with the proposed requirements, and the majority of the affected tires have been removed from service. Therefore, a compliance time of 60 days would ensure that the remainder of the tires are removed from service within a time that does not compromise safety.

Although the Goodyear Aviation service bulletin specifies to return tires to the manufacturer, this proposed AD would not require that action.

Explanation of Service Bulletin Revisions

This proposed AD would give credit to operators for previous accomplishment of the original release of Goodyear Aviation Service Bulletin SB–2005–32–004, dated October 11, 2005, but not for accomplishment of revisions 1 through 4 of the service bulletin. Revisions 1 through 4 of the service bulletin were internal to Goodyear and were not released to operators.

Costs of Compliance

There are about 1,282 Gulfstream airplanes and about 104 Bombardier airplanes that use the affected tires in the worldwide fleet. This proposed AD would affect about 1,035 Gulfstream airplanes, and about 104 Bombardier airplanes of U.S. registry. The proposed inspection for the affected serial numbers would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $91,120, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Transport Category Airplanes: Docket No. FAA–2006–24667; Directorate Identifier 2006–NM–009–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 19, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Goodyear Aviation Tires, Part Number 217K22–1, identified in Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005; installed on various transport category airplanes, certificated in any category, including but not limited to Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes; and Gulfstream Model G–1159, G–1159A, G–1159B, G–IV, GIV–X, GV, and GV–SP series airplanes.

Unsafe Condition

(d) This AD results from reports of tread separations and tread-area bulges on the nosewheel tires. We are issuing this AD to prevent tread separation from nosewheel tires during takeoff or landing, which could result in compromised nosewheel steering or ingestion of separated tread by an engine, and consequent reduced controllability of the airplane on the runway or in the air.

Compliance

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

Inspection to Determine Serial Number, and Replacement

(f) Within 60 days after the effective date of this AD: Inspect the nosewheel tires to determine whether an affected serial number (S/N) is installed, in accordance with the Accomplishment Instructions of Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005; and, except as provided by paragraph (g) of this AD, replace any tire with an affected S/N before further flight in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: The Gulfstream Alert Customer Bulletins listed in Table 1 of this AD are additional sources of service information for identifying the affected serial numbers and replacing the tires as applicable.

TABLE 1.—GULFSTREAM ALERT CUSTOMER BULLETINS

Gulfstream model	Alert customer bulletin	Date
G–1159 (GII) and G–1159B (GIIB)series airplanes	G–II and G II–B, Number 30	October 12, 2005.
G–1159A (GIII) series airplanes	G–III, Number 16	October 12, 2005.
G–IV (G–IV, G300, G400) series airplanes	G–IV, Number 34; G300, Number 34; and G400, Number 34.	October 12, 2005.
GIV–X (G450, G350) series airplanes	G350, Number 3; and G450, Number 3	October 12, 2005.
GV series airplanes	GV, Number 24	October 12, 2005.
GV–SP (G550, G500) series airplanes	G500, Number 5; and G550, Number 5	October 12, 2005.

Special Flight Permit

(g) A special flight permit may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) for one flight to operate the airplane to a location where the requirements of this AD can be accomplished, provided no bulge is present on the tire with the affected S/N.

Parts Installation

(h) After the effective date of this AD, no person may install on any airplane a nosewheel tire that has an S/N in the affected range identified in the Accomplishment Instructions of Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005.

No Parts Return

(i) Although Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005, specifies to return tires to the manufacturer, this AD does not require that action.

Actions Accomplished in Accordance With Original Issue of Service Bulletin

(j) Actions done before the effective date of this AD in accordance with Goodyear Aviation Service Bulletin SB–2005–32–004, dated October 11, 2005, are acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on April 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–6650 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–250–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter, the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted three separate items proposing revisions pertaining to prepayment of civil penalties, easements of necessity for reclamation on bankruptcy sites, and various statutes to eliminate outdated language. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Kentucky program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., e.s.t., June 2, 2006. If requested, we will hold a public hearing on May 30, 2006. We will accept requests to speak until 4 p.m., e.s.t., on May 18, 2006.

ADDRESSES: You may submit comments, identified by "KY–250–FOR/ Administrative Record No. 1642" by any of the following methods:

- E-mail: *bkovacic@osmre.gov.*
- Mail/Hand Delivery: William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8400.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number "KY–250–FOR/Administrative Record No. KY–1642" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: You may review copies of the Kentucky program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Lexington Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by

contacting OSM's Lexington Field Office. In addition, you may receive a copy of the submission during regular business hours at the following location: Department for Natural Resources, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Submission
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Submission

By letter dated March 28, 2006, Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative ([KY–250–FOR], administrative record No. KY–1642). The full text of the program amendment is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes follows.

The first proposed change was mandated by the Supreme Court of Kentucky in the case of *Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet* v. *Kentec Coal Co., Inc.*, No. 2003–SC–000622–DG. The Court issued an opinion on September 22, 2005, in which it found that the provisions of 405 KAR [Kentucky Administrative Regulations] 7:092 that required a corporate permittee to prepay an assessed civil penalty to get a due process hearing on the penalty amount was an unconstitutional violation of equal protection provisions of the State and Federal constitutions. The court also held that the assessment of the penalty against Kentec without prepayment and without consideration of the permittee's inability to pay was a violation of Section 2 of the Kentucky Constitution and an unreasonable and arbitrary exercise of the Kentucky Environmental and Public Protection Cabinet's (cabinet) authority. The Office of Legal Services filed a petition for rehearing that was denied by the court on December 22, 2005.

The Department for Natural Resources' Division of Mine Reclamation and Enforcement, in response to this ruling, has altered the provisions on its notices of assessment of civil penalties to comply with the ruling. The Division uses the following statement of appeal rights on the assessment notices:

"Should you decide not to negotiate, you have three (3) options remaining to resolve the proposed assessment. You may (1) choose not to contest the amount of the proposed assessment or the violation in which case a final order of the Secretary will be entered. *Note: if an administrative hearing as to the fact of the violation was properly requested under 405 KAR 7:092, the final order will only determine the amount of the penalty and not the fact of the violation;* (2) request an assessment conference to contest the proposed assessment; *Note: The Kentucky Bar Association has determined that the appearance of an individual who is not a licensed attorney, on behalf of a third person, corporation or another entity, at a penalty assessment conference constitutes the unauthorized practice of law. Corporations or other entities must be represented by counsel at penalty assessment conferences. Individuals may represent themselves;* or (3) request an administrative hearing instead of an assessment conference. See 405 KAR 7:092, Section 6. Prepayment of the proposed assessment is no longer required." [emphasis added]

The Office of Administrative Hearings has also altered language on the Penalty Assessment Conference Officer's Report that advises permittees of their rights to an administrative hearing. That language reads as follows:

"Any person issued a proposed penalty assessment may request an administrative hearing to contest the Conference Officer's recommended penalty or the fact of the violation or both by filing with the Office of Administrative Hearings, 35–36 Fountain Place, Frankfort, Kentucky 40601, a petition under Section 6 of 405 KAR 7:092. The Cabinet may also request under Section 5 of 405 KAR 7:092 an administrative hearing to contest the Conference Officer's recommended penalty. *[Permittee] should take notice that given the decision by the Supreme Court of Kentucky in Environmental and Public Protection Cabinet v. Kentec, 2005 WL 2316191, ____ S.W.3d ____, (2005), the provisions of 405 KAR 7:092, Section 6 (2)(b) requiring prepayment of the proposed penalty ARE NO LONGER IN EFFECT and [Permittee] DOES NOT need to prepay the recommended penalty amount in the event it decides to request a Formal Administrative Hearing.*

If a request for an administrative hearing is not filed with the Office of Administrative Hearings within thirty (30) days of mailing of this Report and Recommendation, the Secretary shall enter an order providing: (a) that [Permittee] has waived all rights to an administrative hearing on the amount of the proposed assessment; (b) that the fact of violation is deemed admitted; and (c) that the penalty assessment contained in this Report and Recommendation is deemed accepted and is due and payable to the Cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of 405 KAR 7:092, the finding set forth in clause (b) of the preceding sentence shall be omitted from the Secretary's order and the penalty assessment contained in this Report and Recommendation shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation." [emphasis added]

This is the second time the Supreme Court of Kentucky has ruled that prepayment requirements used by the cabinet for due process hearings regarding surface mining violations are unconstitutional under the Kentucky Constitution. The ruling in *Franklin* v. *Natural Resources and Environmental Protection Cabinet*, 799 S.W.2d 1 (Ky. 1990) held that a similar prepayment requirement that applied to all persons violated the equal protection clauses of the State and Federal constitutions. Kentucky undertook a major revamp of its hearing procedures in response to that ruling and put the current hearings process in place. That process, insofar as the prepayment requirement is concerned, has now been found unconstitutional.

The second proposed change is Senate Bill 219, recently passed by the General Assembly and delivered to the Governor for his signature. The bill creates an easement of necessity to conduct reclamation operations by entities who have assumed the reclamation obligations of a bankrupt permittee and where the rights of entry held by the permittee have been terminated. The terms only apply to those areas where *only* reclamation is

being performed. It does not apply to areas where coal removal is planned by a successor to the permittee. The legislation calls for payment of a sum certain to rights holders and allows the parties to take any disputes about the sufficiency of the payment to court for an adjudication of an appropriate amount. The provisions of Senate Bill 219 will expire on July 15, 2008, and will likely be signed into law.

The third proposed change is Senate Bill 136 which deletes certain language from Chapter 350 of the Kentucky Revised Statutes (KRS), the chapter containing the Kentucky surface mining laws. This bill eliminates language in: KRS 350.060 relating to the two-acre exemption and to permit renewal applications that were not timely filed; KRS 350.075 calling for submission of regulations before August 1, 1986; KRS 350.090 relating the exceptions for applications or renewals submitted in compliance with KRS 350.060(2); KRS 350.093 dealing with bond coverage exceptions for third party actions; KRS 350.445 that deals with roads above highwalls that "support coal mining activities;" and KRS 350.285 relating to removal of coal on private lands. Each of these amendments to statutes eliminates language from the chapter that is outdated or was disapproved by OSM in previous years.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kentucky program. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: KY–250–FOR/Administrative Record No. KY–1642" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on May 18, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential

effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 4, 2006.

H. Vann Weaver,

Acting Regional Director.

[FR Doc. E6–6654 Filed 5–2–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

RIN 1029–AC50

Tennessee Federal Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of comment period and notice of hearing.

SUMMARY: We are extending the public comment period on the proposed Tennessee Federal Program rule published on April 6, 2006. The comment period is being extended in order to afford the public more time to comment and to allow enough time to hold a public hearing which has been requested by several individuals. We are also notifying the public of the date, time, and location for the public hearing.

DATES: Comments on the proposed rule must be received on or before 4 p.m., local time on June 30, 2006. The public hearing will be held on June 1, 2006, at 7 p.m. local time.

ADDRESSES: *Written or Electronic Comments:* you may submit comments identified by RIN 1029–AC50, by any of the following methods:

- E-Mail: *tdieringer@osmre.gov.* Include docket number 1029–AC50 in the subject line of the message.
- Mail/Hand-Delivery/Courier: Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 710 Locust Street, 2nd Floor, Knoxville, Tennessee 37902.
- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of the proposed rule published on April 6, 2006.

Public Hearing: The public hearing will be held at Holiday Inn Select Downtown, 525 Henley Street, Knoxville, Tennessee 37902, telephone: 865–522–2800, on June 1, 2006, at 7 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Tim Dieringer, Field Office Director, Telephone: 865–545–4103; e-mail: *tdieringer@osmre.gov.*

SUPPLEMENTARY INFORMATION: On April 6, 2006 (71 FR 17682), we published a proposed rule that would revise the Tennessee Federal Program. The revisions would: (1) Provide regulations establishing trust funds or annuities to fund the treatment of long-term postmining pollutional discharges; (2) delete the minimum requirements of eighty percent (80%) ground cover for certain postmining land uses and provide that herbaceous ground cover be limited to that necessary to control erosion and support the postmining land use; and (3) exempt areas developed for wildlife habitat, undeveloped land, recreation, or forestry from the requirements that bare

areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

We have received several requests for a public hearing on the proposed rule. We are extending the public comment period in order to afford the public more time to comment and to allow enough time to schedule and hold the hearing. The date, time, and location for the public hearing may be found under **DATES** and **ADDRESSES** above.

The hearings will be open to anyone who would like to attend and/or testify. The primary purpose of the public hearing is to obtain your comments on the proposed rule so that we can prepare a complete and objective analysis of the proposal. The purpose of the hearing officer is to conduct the hearing and receive the comments submitted. Comments submitted during the hearing will be responded to in the preamble to the final rule, not at the hearing. We appreciate all comments but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analyses of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or relevant publications.

At the hearing, a court reporter will record and make a written record of the statements presented. This written record will be made part of the administrative record for the rule. If you have a written copy of your testimony, we encourage you to give us a copy. It will assist the court reporter in preparing the written record. Any disabled individual who needs reasonable accommodation to attend the public hearing is encouraged to contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 25, 2006.

H. Vann Weaver,

Acting Regional Director.

[FR Doc. E6–6653 Filed 5–2–06; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0230; FRL–8060–9]

Inert Ingredients; Proposed Revocation of Tolerance Exemptions with Insufficient Data for Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to revoke the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because there are insufficient data to make the determination of safety required by FFDCA section 408(b)(2), or because they are redundant and, therefore, are not necessary. In addition, EPA has identified substances within certain of these tolerance exemptions that meet the definition of low-risk polymers and is proposing to establish new tolerance exemptions for them. The revocation actions proposed in this document contribute towards the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 129 tolerance exemptions which would be counted as tolerance reassessment toward the August 2006 review deadline.

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0230, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0230. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under "Delivery" and "Important Note." The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Kerry Leifer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

A. What Action is the Agency Taking?

1. *Revocation because of insufficient data.* EPA is now in the process of reassessing all inert ingredient exemptions from the requirement of a tolerance ("tolerance exemptions") established prior to August 2, 1996, as required by FFDCA section 408(q). Under FFDCA section 408(q), tolerance reassessment may lead to regulatory action under FFDCA section 408(e)(1). When taking action under FFDCA section 408(e)(1), EPA may leave a tolerance exemption in effect only if the Agency determines that the tolerance exemption is safe. EPA is proposing to revoke 129 inert ingredient tolerance exemptions because insufficient data are available to the Agency to make the safety determination required by FFDCA section 408(c)(2).

In making the FFDCA reassessment safety determination, EPA considers the validity, completeness, and reliability of the data that are available to the Agency, FFDCA section 408 (b)(2)(D), and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure), FFDCA section 408 (b)(2)(C). Data gaps exist for these inert ingredients in areas critical to reassessment. Without these data, the assessment of possible effects to infants and children cannot be made. Thus, EPA has insufficient data to make the safety finding of FFDCA section 408(c)(2) and is proposing to revoke the inert ingredient tolerance exemptions identified in this document.

In developing risk assessment documents for inert ingredient tolerance exemptions, EPA currently reviews data submitted to the Agency as well as information from reputable, publicly available sources. For example, studies may be available in professional (peer-reviewed) journals, and chemical assessments may be available on the Internet from U.S. Government agencies (e.g., EPA, the Agency for Toxic Substances and Disease Registry, National Institutes of Health, Food and Drug Administration (FDA)) and international organizations (e.g., World Health Organization, Organization for Economic Cooperation and Development (OECD)). In some cases, representatives from chemical and pesticide manufacturing industry associations endeavored to locate data to support reassessment of surfactant chemicals. Nonetheless, sufficient valid and reliable data were not available to make the requisite FFDCA safety finding.

EPA could not have made the requisite FFDCA safety finding unless, at the very least, a set of basic toxicity studies had been available to the Agency. It is possible that the tests agreed to under OECD's Screening Information Data Set (SIDS) program would have sufficed. Especially important to inert ingredient reassessment is an acceptable repeat-dose study. The preferred test for repeat-dose toxicity is the "Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test" (OECD Test Guideline 422). More information about the OECD SIDS and EPA's High Production Volume (HPV) programs is found at *http://www.epa.gov/oppt/chemrtk/sidsappb.htm*. In some cases, the full OECD SIDS may not have been necessary because EPA has available a limited number of studies and information on some of the inert

ingredients in question (e.g., acute toxicity studies). In other cases, the limited toxicity information available to the Agency may indicate a need for further testing. EPA always recommends that parties interested in supporting an inert ingredient consult with the Agency prior to embarking on a testing strategy in order to determine existing data gaps and if testing certain chemicals within a multi-chemical exemption would serve to represent the entire exemption.

The Agency is proposing to revoke one other inert ingredient because it does not have sufficient data, as discussed earlier. The inert ingredient's two tolerance exemptions in 40 CFR 180.1001(c) and (e) were inadvertently removed from the CFR between the 1999 and 2003 editions. Since that time, 180.1001(c) and (e) have been renamed as 40 CFR 180.910 and 189.930, respectively. These tolerance exemptions were omitted from the CFR by mistake, therefore, they are considered to be active tolerance exemptions under 40 CFR 180.910 and 180.930 that are subject to reassessment as required by the FFDCA section 408(q). The tolerance exemption under 40 CFR 180.910 reads as follows: "α-Alkyl(C_{12}-C_{15})-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the poly(oxyethylene) content averages 3 moles." The name of the tolerance exemption under 40 CFR 180.930 differs slightly but not substantively, and reads as follows: "α-Alkyl (C_{12}-C_{15})-ω-hydroxypoly(oxyethylene) sulfate and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the poly(oxyethylene) content averages 3 moles." As stated in this unit, this inert ingredient does not has sufficient data and EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.910 and 180.930.

In summary, the safety finding required by FFDCA section 408(b)(2) cannot be made for certain inert ingredient tolerance exemptions due to insufficient data. Therefore, EPA is proposing to revoke under FFDCA section 408(e)(1) the tolerance exemptions identified at the end of this document under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective 2 years after the date of publication of the final rule in the **Federal Register**.

EPA is planning to hold two identical public meetings about this proposed action on inert ingredient tolerance exemptions with insufficient data for reassessment. EPA will review its reassessment progress for inert ingredients, describe the Agency's data finding efforts, discuss data needs and the screening level studies that may suffice, and other topics that may prove useful to those who are considering developing data in support of these inert ingredients. Both identical public meetings will be held on Tuesday, May 23, 2006, at the Office of Pesticide Program's new office building located at One Potomac Yard, 2777 S. Crystal Dr., Arlington, VA, 22202. The first meeting will be held from 9 a.m. to 11 a.m. and the second meeting will be from 1 p.m. to 3 p.m. In order to ensure adequate space for attendees, the Agency requests an RSVP from those who are interested in attending the public meetings. Please RSVP to Karen Angulo at either (703) 306–0404 or *angulo.karen@epa.gov*, and indicate whether you prefer the morning or afternoon meeting and the number of attendees in your group. The formal announcement of these public meetings appears elsewhere in this issue of the **Federal Register**.

2. *Five new tolerance exemptions for polymer chemicals*—i. *Exemptions.* Several of the tolerance exemptions discussed in this unit include numerous chemicals. While EPA does not have sufficient data to make the safety finding for all of the chemicals within these multi-chemical exemptions, EPA has identified certain chemicals within these exemptions that meet the criteria specified in accordance with the Toxic Substances Control Act for defining a low-risk polymer under 40 CFR 723.250. Polymers that are eligible for exemption under 40 CFR 723.250 will not present an unreasonable risk of injury to human health and the environment. Therefore, EPA is proposing to establish five tolerance exemptions under 40 CFR 180.960.

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

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

iii. *Determination of safety for U.S. population, infants and children.* Dietary (food and drinking water) and residential risks are not of concern for chemicals that meet the criteria specified for defining a low-risk polymer in 40 CFR 723.250. Therefore, EPA finds that exempting these polymer chemicals in 40 CFR 180.960 will be safe for the general population including infants and children.

iv. *Analytical enforcement methodology.* An analytical method is not required for the new tolerance exemption for enforcement purposes because the Agency is establishing an exemption from the requirement of a tolerance.

3. *Revocations for administrative reasons.* The Agency has identified seven tolerance exemptions that can be revoked for administrative reasons, as described in this unit.

i. The Agency has determined that two tolerance exemptions describe chemicals and substances that do not exist, and can be revoked on the date of publication of the final rule in the **Federal Register**.

a. The first exemption is "Ethyl vinyl acetate (CAS Reg. No. 24937–78–8)" under 40 CFR 180.930. This chemical name is wrong; the correct name associated with this CAS Reg. No. is "Ethylene, polymer with vinyl acetate." This CAS Reg. No. already has a tolerance exemption under 40 CFR 180.960 (polymers), therefore, the tolerance exemption under 40 CFR 180.930 is unnecessary and can be revoked.

b. The second exemption is for "α-(Methylene (4-(1,1,3,3-tetramethylbutyl)-*o*-phenylene)bis-ω-hydroxypoly(oxyethylene) having 6–7.5 moles of ethylene oxide per hydroxyl group." This name is in error because it describes a chemical that does not exist. Therefore, the tolerance exemption under 40 CFR 180.930 can be revoked.

ii. The Agency has identified five tolerance exemptions that can be revoked because they are redundant. These redundant tolerance exemptions are unnecessary and can be revoked on

the date of publication of the final rule in the **Federal Register**.

a. The tolerance exemption "Sodium mono- and dimethyl naphthalenesulfonate; molecular weight (in amu) 245–260" under 40 CFR 180.920 is unnecessary because there is an identically named exemption in 40 CFR 180.910.

b. The tolerance exemptions "Sodium butyl naphthalenesulfonate" under 40 CFR 180.920 and 180.930 can be revoked because they are included in the broader tolerance exemptions "Sodium mono-, di-, and tributyl naphthalenesulfonates" in 40 CFR 180.910 and 180.930.

c. Similarly, the two tolerance exemptions called "α-[*p*-(1,1,3,3-Tetramethylbutyl) phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl) phenol with an average of 4–14 or 30–70 moles of ethylene oxide; ..." under 40 CFR 180.910 and 180.930 can be revoked because they are included in the broader tolerance exemptions that are also in 40 CFR 180.910 and 180.930 that have "α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide;...."

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do These Actions Become Effective?

1. EPA is proposing to revoke the tolerance exemptions identified in this document that have insufficient data effective 2 years after the date of publication of the final rule in the **Federal Register**. Any commodities listed in this proposal treated with pesticide products containing the inert ingredients and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that:

i. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

ii. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

2. EPA is proposing the establishment of new tolerance exemptions under 40 CFR 180.960 effective on the date of publication of the final rule in the **Federal Register**.

3. EPA is proposing to revoke for administrative reasons the redundant and incorrect tolerance exemptions identified in this document under 40 CFR 180.910, 180.920, and 180.930 effective on the date of publication of the final rule in the **Federal Register**.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document proposes to revoke 129 inert ingredient tolerance exemptions, which will be counted in a final rule as a tolerance reassessment toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocation in this proposal is not discriminatory and is designed to ensure that both domestically produced and imported foods meet the food safety standard established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision (RED) documents. EPA has developed guidance concerning submissions for import tolerance support which was published in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the Internet at *http://www.epa.gov*. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any

special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, the Agency has concluded in a memorandum dated May 25, 2001 that for import tolerance revocation there is a negligible joint probability of certain defined conditions holding simultaneously which would indicate an RFA/Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) concern and require more analysis. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.910 [Amended]

2. In § 180.910, the table is amended by removing the following entries:

a. α-Alkyl (C_9–C_{18}-ω-hydroxypoly(oxyethylene) with poly(oxyethylene) content of 2–30 moles.

b. α-(*p*-Alkylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of alkylphenol (alkyl is a mixture of propylene tetramer and pentamer isomers and averages C_{13}) with 6 moles of ethylene oxide.

c. α-Alkyl (C_6–C_{14})-ω-hydroxypoly(oxypropylene) block copolymer with polyoxyethylene; polyoxypropylene content is 1–3 moles; polyoxyethylene content is 4–12 moles; average molecular weight (in amu) is approximately 635.

d. α-(*p-tert*-Butylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 4–12 moles.

e. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

f. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) produced by condensation of 1 mole of dinonylphenol (nonyl group is a propylene trimer isomer) with an average of 4–14 or 140–160 moles of ethylene oxide.

g. Dodecylbenzenesulfonic acid, amine salts.

h. α-(*p*-Dodecylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4–14 or 30–70 moles of

ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4–14 or 30–70.

i. Ethylene oxide adducts of 2,4,7,9-tetramethyl-5-decynediol, the ethylene oxide content averages 3.5, 10, or 30 moles.

j. α-Lauryl-ω-hydroxypoly(oxyethylene), average molecular weight (in amu) of 600.

k. α-Lauryl-ω-hydroxypoly(oxyethylene) sulfate, sodium salt; the poly(oxyethylene) content is 3–4 moles.

l. Manganous oxide.

m. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly (oxyethylene) content averages 4–14 moles or 30 moles.

n. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

o. Polyglyceryl phthalate ester of coconut oil fatty acids.

p. Poly(methylene-*p*-*tert*-butylphenoxy)- poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4–12 moles.

q. Poly(methylene-*p*-nonylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4–12 moles.

r. Secondary alkyl (C_{11}–C_{15}) poly(oxyethylene) acetate, sodium salt; the ethylene oxide content averages 5 moles.

s. Sodium diisobutylnapthalenesulfonate.

t. Sodium dodecylphenoxybenzenedisulfonate.

u. Sodium isopropylisohexylnaphthalenesulfonate.

v. Sodium lauryl glyceryl ether sulfonate.

w. Sodium monoalkyl and dialkyl (C_8–C_{16}) phenoxybenzenedisulfonate mixtures containing not less than 70% of the monoalkylated product.

x. Sodium mono- and dimethylnaphthalenesulfonates, molecular weight (in amu) 245–260.

y. Sodium mono-, di-, and tributyl naphthalenesulfonates.

z. Sodium mono-, di-, and triisopropyl naphthalenesulfonate.

aa. Sodium *N*-oleoyl-*N*-methyltaurine.

bb. Sodium sulfite.

cc. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.

dd. α-[*p*-(1,1,3,3-Tetramethylbutyl) phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl) phenol with an average of 4–14 or 30–70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4–14 or 30–70.

ee. Tridecylpoly(oxyethylene) acetate, sodium salt; where the ethylene oxide content averages 6–7 moles.

§ 180.920 [Amended]

3. In § 180.920, the table is amended by removing the following entries:

a. α-Alkyl (C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) copolymers with poly(oxypropylene); polyoxyethylene content averages 3–12 moles and polyoxypropylene content 2–9 moles.

b. α-Alkyl (C_{12}–C_{15})-ω-hydroxypoly(oxyethylene) sulfosuccinate, isopropylamine and *N*-hydroxyethyl isopropylamine salts of; the poly(oxyethylene) content averages 3–12 moles.

c. α-Alkyl(C_{10-12})-ω-hydroxpoly(oxyethylene) poly(oxypropylene) copolymer; poly(oxyethylene) content is 11–15 moles; poly(oxyproplene) content is 1–3 moles.

d. α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly (oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content averages 13–17 moles and the oxypropylene content averages 2–6 moles.

e. α-Alkyl (C_{10}–C_{16})-ω-hydroxypoly(oxyethylene)poly (oxypropylene) mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the combined poly(oxyethylene) poly(oxypropylene) content averages 3–20 moles.

f. α-Alkyl (C_{12}–C_{18})-ω-hydroxypoly(oxyethylene/ oxypropylene) hetero polymer in which the oxyethylene content is 8–12 moles and the oxypropylene content is 3–7 moles.

g. α-Alkyl (C_{12}–C_{15})-ω-hydroxypoly(oxyethylene/ oxypropylene) hetero polymer in which the oxyethylene content is 8–13 moles and the oxypropylene content is 7–30 moles.

h. α-Alkyl (C_{21}–C_{71})-ω-hydroxypoly (oxyethylene) in which the poly(oxyethylene) content is 2 to 91 moles and molecular weight range from 390 to 5,000.

i. *n*-Alkyl(C_8–C_{18})amine acetate.

j. Amine salts of alkyl (C_8–C_{24}) benzenesulfonic acid (butylamine, dimethylaminopropylamine, mono- and diisopropylamine, mono- , di-, and triethanolamine).

k. *N*-(Aminoethyl) ethanolamine salt of dodecylbenzenesulfonic acid.

l. *N,N*-Bis[α-ethyl-ω-hydroxypoly(oxyethylene) alkylamine; the poly(oxyethylene) content averages 3 moles; the alkyl groups (C_{14}–C_{18}) are derived from tallow, or from soybean or cottonseed oil acids.

m. *N,N*-Bis(2-hydroxyethyl)alkylamine, where the alkyl groups (C_8–C_{18}) are derived from coconut, cottonseed, soya, or tallow acids.

n. *N,N*-Bis 2-(ω-hydroxypolyoxyethylene) ethyl) alkylamine; the reaction product of 1 mole *N,N*-bis(2-hydroxyethyl)alkylamine and 3–60 moles of ethylene oxide, where the alkyl group (C_8–C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

o. *N,N*-Bis–2-(ω-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine; the reaction product of 1 mole of *N,N*-bis(2-hydroxyethyl alkylamine) and 3–60 moles of ethylene oxide and propylene oxide, where the alkyl group (C_8–C_{18}) is derived from coconut, cottonseed soya, or tallow acids.

p. Butoxytriethylene glycol phosphate.

q. Cyclohexanol.

r. α-(Di-sec-butyl)phenylpoly(oxypropylene) block polymer with poly(oxyethylene); the poly(oxypropylene) content averages 4 moles, the poly(oxyethylene) content averages 5 to 12 moles, the molecular.

s. Disodium 4-isodecyl sulfosuccinate.

t. Dodecylphenol.

u. α-Dodecylphenol-ω-hydroxypoly(oxyethylene/ oxypropylene) hetero polymer where ethylene oxide content is 11–13 moles and oxypropylene content is 14–16 moles, molecular weight (in amu) averages 600 to 965.

v. Isopropylbenzenesulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.

w. (3-Lauramidopropyl) trimethylammonium methyl sulfate.

x. Linoleic diethanolamide (CAS Reg. No. 56863–02–6).

y. Methyl bis(2-hydroxyethyl)alkyl ammonium chloride, where the carbon chain (C_8–C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

z. α,α′-[Methylenebis]-4-(1,1,3,3-tetramethylbutyl)-*o*-phenylene bis[ω-hydroxypoly(oxyethylene)] having 6–7.5 moles of ethylene oxide per hydroxyl group.

aa. Methylnapthalenesulfonic acid—formaldehyde condensate, sodium salt.

bb. Methyl poly(oxyethylene) alkyl ammonium chloride, where the poly(oxyethylene) content is 3–15 moles and the alkyl group (C_8–C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

cc. Methyl violet 2B.

dd. Morpholine salt of dodecylbenzenesulfonic acid.

ee. Napthalenesulfonic acid-formaldehyde condensate, ammonium and sodium salts.

ff. Partial sodium salt of *N*-lauryl-α-iminodipropionic acid.

gg. Poly(methylene-*p*-nonylphenoxy)poly(oxypropylene) propanol; the poly(oxy-propylene) content averages 4–12 moles.

hh. Primary *n*-alkylamines, where the alkyl group (C_8–C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

ii. Sodium butyl naphthalenesulfonate.

jj. Sodium 1,4-dicyclohexyl sulfosuccinate.

kk. Sodium 1,4-dihexyl sulfosuccinate.

ll. Sodium 1,4-diisobutyl sulfosuccinate.

mm. Sodium 1,4-dipentyl sulfosuccinate.

nn. Sodium 1,4-ditridecyl sulfosuccinate.

oo. Sodium mono- and dimethyl naphthalenesulfonate; molecular weight (in amu) 245–260.

pp. Sulfosuccinic acid ester with *N*-(2,-hydroxy-propyl) oleamide, ammonia and isopropylamine salts of.

qq. Tall oil diesters with polypropylene glycol (CAS Reg. No. 68648–12–4).

rr. *N,N,N′,N″*-Tetrakis-(2-hydroxypropyl) ethylenediamine.

ss. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding sodium salts of the phosphate esters; the poly(oxyethylene) content averages 6 to 10 moles.

§ 180.930 [Amended]

4. In § 180.930, the table is amended by removing the following entries:

a. α-Alkyl (C_9–C_{18})-ω-hydroxypoly(oxyethylene): the poly(oxyethylene) content averages 2–20 moles.

b. α-Alkyl (C_{12}–C_{15})-ω-hydroxypoly(oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content is 8–13 moles and the oxypropylene content is 7–30 moles.

c. α-Alkyl ($C_8$8–C_{10}) hydroxypoly(oxypropylene) block polymer with polyoxyethylene; polyoxypropylene content averages 3 moles and polyoxyethylene content averages 5–12 moles.

d. α-Alkyl (C_6-C_{14})-ω-hydroxypoly(oxypropylene) block copolymer with polyoxyethylene; polyoxypropylene content is 1–3 moles; polyoxyethylene content is 7–9 moles; average molecular weight (in amu) approximately 635.

e. α-(*p*-Alkylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of alkylphenol (alkyl is a mixture of propylene tetramer and pentamer isomers and averages C_{13}) with 6 moles of ethylene oxide.

f. Amine salts of alkyl (C_8–C_{24}) benzenesulfonic acid (butylamine; dimethylamino propylamine; mono- and diisopropyl- amine; and mono- , di- , and triethanolamine).

g. α-(*p-tert*-Butylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 4–12 moles.

h. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

i. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly(oxyethylene), produced by the condensation of 1 mole of dinonylphenol (nonyl group is a propylene trimer isomer) with an average of 4–14 moles of ethylene oxide.

j. Dodecylbenzenesulfonic acid, amine salts.

k. α-(*p*-Dodecylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4–14 or 30–70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4–14 or 30–70 moles.

l. Ethylene oxide adducts of 2,4,7,9-tetramethyl-5-decynediol, the ethylene oxide content averages 3.5, 10, or 30 moles.

m. Ethyl vinyl acetate (CAS Reg. No. 24937–78–8).

n. α-Lauryl-ω-hydroxypoly(oxyethylene), average molecular weight (in amu) of 600.

o. α-Lauryl-ω-hydroxypoly(oxyethylene), sulfate, sodium salt; the poly(oxyethylene) content is 3–4 moles.

p. Manganous oxide.

q. α-(Methylene (4-(1,1,3,3-tetramethylbutyl)-*o*-phenylene)bis-ω-hydroxypoly(oxyethylene) having 6–7.5 moles of ethylene oxide per hydroxyl group.

r. Mono-, di-, and trimethylnapthalenesulfonic acids-formaldehyde condensates, sodium salts.

s. Naphthalenesulfonic acid and its sodium salt.

t. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

u. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

v. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 or 30–90 moles of ethyiene oxide.

w. Polyglyceryl phthalate esters of coconut oil fatty acids.

x. Poly(methylene-*p tert*-butylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4–12 moles.

y. Poly(methylene-*p*-nonylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4–12 moles.

z. Poly(methylene-*p*-nonylphenoxy)poly(oxypropylene) propanol; the poly(oxypropylene) content averages 4–12 moles.

aa. Secondary alkyl (C_{11}–C_{15}) poly(oxyethylene) acetate, sodium salt; the ethylene oxide content averages 5 moles.

bb. Sodium butylnaphthalenesulfonate.

cc. Sodium diisobutylnaphthalenesulfonate.

dd. Sodium isopropylisohexylnaphthalenesulfonate.

ee. Sodium isopropylnaphthalenesulfonate.

ff. Sodium monoalkyl and diakyl (C_8–C_{13}) phenoxybenzenedisulfonate mixtures containing not less than 70% of the monoalkylated product.

gg. Sodium mono- and dimethylnaphthalenesulfonate, molecular weight (in amu) 245–260.

hh. Sodium mono-, di-, and tributylnaphthalenesulfonates.

ii. Sodium *N*-oleoyl-*N*-methyl taurine.

jj. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p* (1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.

kk. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,-3,3-tetramethylbutyl) phenol with an average of 4–14 or 30–70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4–14 or 30–70.

ll. Tridecylpoly(oxyethylene) acetate sodiums salt; where the ethylene oxide content averages 6–7 moles.

§ 180.940 [Amended]

5. Section 180.940 is amended as follows:

a. The table in paragraph (a) is amended by removing the following entries:

i. α-Alkyl(C_{10}–C_{14})-ω- hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 768 to 837.

ii. α-Alkyl(C_{12}–C_{18})-ω hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1120.

b. The table in paragraph (b) is amended by removing the following entries:

i. α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8–9 moles ethylene oxide, average molecular weight (in amu), 400.

ii. Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1).

c. The table in paragraph (c) is amended by removing the following entries:

i. α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly (oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837.

ii. α-Alkyl(C_{11}–C_{15})-ω-hydroxypoly (oxyethylene) with ethylene oxide content 9 to 13 moles.

iii. α-Alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) polyoxypropylene, average molecular weight (in amu), 965.

iv. α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1120.

v. α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8–9 moles ethylene oxide, average molecular weight (in amu), 400.

vi. Naphthalene sulfonic acid, sodium salt.

vii. Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives.

viii. Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives alkylated at 3% by weight with C_6–C_9 linear olefins.

ix. Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1).

6. In § 180.960, the table is amended by alphabetically adding the following entries:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * *	*
α-(*o*,*p*-Dinonylphenyl)-ω-hydroxypoly(oxyethylene) produced by condensation of 1 mole of dinonylphenol (nonyl group is a propylene trimer isomer) with an average of 140–160 moles of ethylene oxide	9014–93–1
* * * *	*
α-(*p*-Dodecylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 30–70 moles of ethylene oxide	9014–92–0 26401–47–8
* * * *	*
α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 30 moles	None
α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 30–90 moles of ethylene oxide	None
* * * *	*
α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 30–70 moles of ethylene oxide	9036–19–5 9002–93–1
* * * *	*

[FR Doc. 06–4154 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0400; FRL–8068–5]

Pesticide Inert Ingredient Tolerance Exemptions with Insufficient Data for Reassessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public meetings.

SUMMARY: EPA will hold two identical public meetings on Tuesday, May 23, 2006, on the Agency's proposed action on pesticide inert ingredient tolerance exemptions that lack sufficient toxicity

data to make the determination of safety for human health required by the Federal Food, Drug, and Cosmetic Act (FFDCA). During the public meetings, EPA will review its reassessment progress for inert ingredients, describe the Agency's data finding efforts, discuss data needs and the screening level studies that may suffice, and other topics that may prove useful to those who are considering developing data in support of these inert ingredients.

DATES: Two identical meetings will be held on Tuesday, May 23, 2006, with the first meeting from 9–11 a.m. and the second from 1–3 p.m. In order to ensure adequate space for attendees, the Agency requests an RSVP from those who are interested in attending the public meetings. Please RSVP to the contact person identified under **FOR FURTHER INFORMATION CONTACT** and indicate whether you prefer the morning or afternoon meeting and the number of attendees in your group.

ADDRESSES: The location of both meetings is the Office of Pesticide Program's new office building located at One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0400. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

EPA is holding two identical public meetings about the proposed action on inert ingredient tolerance exemptions with insufficient data for reassessment under FFDCA. The Agency is unable to make a FFDCA safety finding because basic toxicology studies are not currently available. EPA is proposing to revoke the tolerance exemptions and make them expire 2 years from the publication of the final rule to allow for data development. During both identical public meetings, EPA will review its reassessment progress for inert ingredients, describe the Agency's data finding efforts, discuss data needs and the screening level studies that may suffice, and other topics that may prove useful to those who are considering developing data in support of these inert ingredients. The formal announcement of this proposed rule appears elsewhere in this issue of the **Federal Register.**

Both identical public meetings will be held on Tuesday, May 23, 2006, at the Office of Pesticide Program's new office building. The first meeting will be held from 9–11 a.m. and the second meeting will be from 1–3 p.m. In order to ensure adequate space for attendees, the Agency requests an RSVP from those who are interested in attending the public meetings. Please RSVP to the contact person identified under **FOR FURTHER INFORMATION CONTACT** and indicate whether you prefer the morning or afternoon meeting and the number of attendees in your group.

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–4163 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0307; FRL–8068–3]

Inert Ingredients; Proposal to Revoke 2 Pesticide Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke 2 inert ingredient exemptions from the requirement of a tolerance because these substances are no longer contained in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Upon the issuance of the final rule revoking the tolerance exemptions, the 2 tolerance exemptions will be counted as "reassessed" for purposes of FFDCA's section 408(q).

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0307, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the

Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The telephone number for the Docket Facility is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0307. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under "Delivery" and "Important Note." The hours of operation for the Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

EPA is proposing to revoke 2 inert ingredient exemptions from the requirement of a tolerance because these substances are no longer contained in currently registered pesticide products requiring reassessment under section 408(q) of FFDCA. It is EPA's general practice to revoke tolerances and tolerance exemptions for pesticide chemical residues (which includes both active and inert ingredients) for which there are no associated active registered uses under FIFRA, or for which there are no registered products to which the tolerance or tolerance exemption applies, or for tolerances or tolerance exemptions that have been superseded, unless a person commenting on the

proposal indicates a need for the tolerance or exemption to cover residues in or on imported commodities or legally treated domestic commodities.

The 2 inert ingredient tolerance exemptions subject to this proposal are under 40 CFR 180.920 and are "Ethylene glycol monomethyl ether" and "Methylene blue", the later of which is restricted to use as a dye for formulations used on cotton. EPA is proposing that the revocation of the 2 tolerance exemptions will become effective on the date of the final rule's publication in the **Federal Register**. For counting purposes, and based on this proposed action, 2 exemptions would be counted as reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

A. What Can I Do if I Wish to Maintain an Exemption that the Agency is Proposing to Revoke?

EPA's records show that the inert ingredients subject to this notice are not contained in any currently registered pesticide products with uses that would require tolerances or tolerance exemptions under section 408 of FFDCA. Parties who believe that EPA's records are incorrect and that one or more of these ingredients are indeed contained in a currently registered pesticide product are encouraged to submit documentation to EPA in the form of the currently registered pesticide product's accepted Confidential Statement of Formula. Parties who know of a pending registration action for a product that contains an inert ingredient subject to this notice may submit documentation to EPA in the form of a copy of the Agency's letter confirming the receipt of an application for registration or registration amendment for such product. In addition, parties who are currently in the process of developing a pesticide product containing an inert ingredient subject to this notice may submit to EPA a letter asserting their intention to apply for a FIFRA section 3 registration of said product within 2 years. This letter must include documentation of the inclusion of the inert ingredient in the proposed pesticide product, such as a description of the formulation's ingredients, and must confirm their intention to submit an application for registration or registration amendment within 2 years from the publication date of this Proposed Rule.

EPA is aware that inert ingredients are also contained in pesticide adjuvant products which are not subject to registration under FIFRA. The Agency does not keep records of currently used adjuvants or their ingredients, therefore, it has been unable to conclusively confirm the use of adjuvants containing one of these inert ingredients. Parties who know of currently used adjuvant products that contain an inert ingredient subject to this proposal are encouraged to submit documentation to EPA in the form of the adjuvant product's current label and/or documentation of the registration of the adjuvant product with a State adjuvant registration program.

Also, inert ingredient tolerance exemptions will be retained if the tolerances or exemptions (which EPA refers to as "import" tolerances) are necessary to allow importation into the United States of food containing such residues. Through this proposed rule, the Agency is inviting individuals who need these import tolerance exemptions to identify those exemptions that are needed to cover imported commodities.

EPA will retain an inert ingredient tolerance exemption if the documentation described above is submitted to EPA by the end of the comment period as specified under DATES in this document, and the Agency can verify the existence of a currently registered pesticide product, a registration action pending at EPA, an import tolerance, or a currently used adjuvant product that contains the ingredient in question.

Parties interested in the retention of any of the tolerance exemptions subject to this notice should be aware that because these ingredients are currently subject to reassessment under section 408(q) of FFDCA, additional data may be needed to support retention of the exemption. Reassessment activities for such ingredients must be completed by August 2006. If the Agency is unable to determine that the exemptions for these ingredients meet the FFDCA standard for reassessment, the Agency will revoke the exemptions.

B. When Do These Actions Become Effective?

EPA is proposing that revocation of these tolerance exemptions become effective on the day the final rule revoking these tolerance exemptions is published in the **Federal Register**. If you have comments regarding whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.B. Similarly, if you have comments regarding these tolerance exemption revocations or the effective date of the revocations, please submit comments as described under Unit I.B. Any commodities treated with the pesticide products containing an inert ingredient subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(i)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration (FDA) that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

VI. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with pesticides containing the ingredients proposed for revocation in this notice. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.920 [Amended]

2. Section 180.920 is amended by removing from the table the entries for:

i. Ethylene glycol monomethyl ether; and

ii. Methylene blue

[FR Doc. E6–6671 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–122; DA 06–927]

Unlicensed Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks to refresh the record on issues raised in petitions for reconsideration of the *Report and Order* in this proceeding. The petitions sought reconsideration and clarification, in part, of the equipment authorization requirements for Unlicensed National Information Infrastructure (U–NII) devices employing dynamic frequency selection (DFS). We seek additional comment on the DFS issues raised in the petitions for reconsideration and, in particular, how these issues are addressed by the Project Team's revised compliance and measurement procedures and the Commission's rules.

DATES: Comments must be filed on or before May 15, 2006, and reply comments must be filed on or before May 18, 2006.

FOR FURTHER INFORMATION CONTACT: Shameeka Hunt, Office of Engineering and Technology, (202) 418–2062, e-mail: *Shameek.Hunt@fcc.gov*, TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 03–122, DA No. 06–927, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- E-mail: [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- Mail: [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, ET Docket No. 03–122, DA No. 06–927, released April 26, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

Summary of Public Notice

1. The Office of Engineering and Technology (OET) seeks to refresh the record on issues raised in petitions for reconsideration of the *Report and Order*, 69 FR 2677, January 20, 2004, in this proceeding. The petitions sought reconsideration and clarification, in part, of the equipment authorization requirements for Unlicensed National Information Infrastructure (U–NII) devices employing dynamic frequency selection (DFS). The International Telecommunication Advisory Committee-Radiocommunication (ITAC–R) Government/Industry Project Team (Project Team) recently reached consensus on revised compliance and measurement procedures for DFS, and the National Telecommunications and Information Administration (NTIA) has presented these recommendations to the Commission. NTIA notes that the revised procedures represent the Federal Government's requirements for compliance measurement procedures for U–NII devices employing DFS and include modified definitions, new response requirements, and reporting requirements compared to previous versions of the procedures.

2. On November 12, 2003, the Commission adopted a *Report and Order*, in this proceeding, which amended part 15 of the rules to make an additional 255 megahertz of spectrum available in the 5.470–5.725 GHz band for U–NII devices, including Radio Local Area Networks (RLANs). In addition to making more spectrum available for use by U–NII devices, the Commission took steps to minimize the potential for these devices to cause interference to existing radiofrequency operations. Specifically, the Commission adopted requirements for U–NII devices in the 5.250–5.350 GHz and 5.470–5.725 GHz bands to employ Dynamic Frequency Selection (DFS) and Transmit Power Control (TPC). The Commission codified requirements for these U–NII devices in part 15, Subpart E of its rules (47 CFR 15.401 *et seq.*).

3. In the *Report and Order*, the Commission also provided an interim measurement procedure to be used by the Commission and others in determining whether U–NII devices comply with the rules. The Commission stated that the provisions of this test procedure would need to be modified as equipment was developed and as testing methodologies were refined. The Commission also stated that the OET Laboratory may issue updated measurement procedures in the future. The Project Team has worked since the release of the *Report and Order* to develop new measurement procedures for performing DFS compliance measurement tests for U–NII equipment operating in the 5250–5350 MHz and 5470–5725 MHz bands.

4. Globespan Virata (Globespan), Wi-Fi Alliance, and Extreme Networks filed petitions seeking clarification or reconsideration of various aspects of the rules adopted in the *Report and Order*. Globespan requests that the Commission revise the rules to state that U–NII devices are not required to detect and avoid frequency hopping radar signals. Globespan further requests that if it was the intent of the Commission to include frequency hopping radars in the DFS requirements, the Commission should specify a measurement procedure for this requirement. Wi-Fi Alliance seeks clarification, in part, of the channel availability check time requirement in section 15.407(h)(2)(ii). Finally, Extreme Networks seeks clarification of the definition of a U–NII central controller that must include DFS capability.

5. OET notes that these petitions for reconsideration raise issues regarding DFS compliance and measurement procedures that are addressed in the Project Team's revised procedures. Therefore, in order to refresh the record,

we seek additional comment on the DFS issues raised in the petitions filed by Globespan, Wi-Fi Alliance, and Extreme Networks and, in particular, how these issues are addressed by the Project Team's revised compliance and measurement procedures and the Commission's rules.

Federal Communications Commission.

Julius P. Knapp,

Deputy Chief, Office of Engineering and Technology.

[FR Doc. E6–6742 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–844; MB Docket No. 06–83; RM–11325]

Radio Broadcasting Services; Eagle Lake and Vernon Center, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Radioactive, LLC to reallot and modify its construction permit for an unbuilt FM station from Channel 231A at Vernon Center, Minnesota, to Channel 231A at Eagle Lake, Minnesota. See **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before June 6, 2006, and reply comments on or before June 20, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Marissa G. Repp, Esq. and Tarah S. Grant, Esq., Hogan & Hartson LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109 (Counsel for Radioactive, LLC).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 06–83, adopted April 12, 2006, and released April 14, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Pursuant to § 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 231A at Eagle Lake, Minnesota. Channel 231A can be allotted to Eagle Lake at proposed reference coordinates of 44–12–29 NL and 93–55–00 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Vernon Center, Channel 231A and by adding Eagle Lake, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–6612 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–793; MB Docket No. 06–77; RM–11324]

Radio Broadcasting Services; Belle Meade, Goodlettsville, Hendersonville, TN, Hodgenville, Horse Cave, Lebanon, Lebanon Junction, KY, Manchester and Millersville, TN, New Haven and Springfield, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on an Amended Proposal filed jointly on behalf of Newberry Broadcasting, Inc., Elizabethtown CBC, Inc., CBC of Marion County, Inc., Washington County CBC, Inc., and Cumulus Licensing LLC. This document proposes the substitution of Channel 294C3 for Channel 294A at Belle Meade, Tennessee, reallotment of Channel 294C3 to Millersville, Tennessee, Station WNFN license to specify operation on Channel 294C3 at Millersville; the substitution of Channel 293A for Channel 294A at Horse Cave, Kentucky, and modification of the Station WHHT license to specify operation on Channel 293A; the substitution of Channel 297A for Channel 292A at Hodgenville, Kentucky, and modification of the Station WKMO license to specify operation on Channel 297A; the substitution of Channel 257A for Channel 297A at Lebanon Junction, Kentucky, and modification of the Station WTHX license to specify operation on Channel 257A; the reallotment of Channel 246C2 from Goodlettsville to Belle Meade, Tennessee, and modification of the Station WRQQ license to specify Belle Meade as the community of license; the reallotment of Channel 221A from Hendersonville to Goodlettsville, Tennessee, and modification of the Station WQQK license to specify Goodlettsville as the community of license; the substitution of Channel 259C0 for Channel 259C at Manchester, Tennessee, reallotment of Channel 259C0 to Hendersonville, and modification of the Station WWTN license to specify operation on Channel 259C0 at Hendersonville; the reallotment of Channel 274A from Springfield, Kentucky, to New Haven, Kentucky, and modification of the Station WAKY–FM license to specify New Haven as the community of license; the substitution of Channel

265A for Channel 265C3 at Lebanon, Kentucky, reallotment of Channel 265A to Springfield, Kentucky, and modification of the Station WLSK license to specify operation on Channel 265A at Springfield. The coordinates for the Channel 294C3 allotment at Millersville, Tennessee, would be 36–26–24 and 86–37–39; the coordinates for Channel 293A allotment at Horse Cave, Kentucky, would be 37–13–57 and 85–52–06; the coordinates for the Channel 297A allotment at Hodgenville, Kentucky, would be 37–40–34 and 85–40–57; the coordinates for the Channel 257A allotment at Lebanon Junction, Kentucky, would be 37–44–37 and 85–38–52; the coordinates for the Channel 246C2 allotment at Belle Meade, Tennessee, would be 36–17–50 and 86–45–11; the coordinates for the Channel 221A allotment at Goodlettsville, Tennessee, would be 36–17–50 and 86–45–11; the coordinates for the Channel 259C0 allotment at Hendersonville, Tennessee, would be 35–49–03 and 86–31–24; the coordinates for the Channel 274 allotment at New Haven, Kentucky, would be 37–46–07 and 85–35–57; the coordinates for the Channel 265A allotment at Springfield, Kentucky, would be 37–38–50 and 85–11–50.

DATES: Comments must be filed on or before May 22, 2006, and reply comments on or before June 7, 2006.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, c/o Vinson & Elkins 1455 Pennsylvania Ave., NW., Suite 600, Washington, DC 20004. John F. Garziglia, c/o Womble, Carlyle, Sandridge & Rice, 1401 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau. (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MB Docket No. 06–77; adopted April 5, 2006, and released April 7, 2006. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 292A and by adding Channel 297A at Hodgenville, removing Channel 294A and by adding Channel 293A at Horse Cave, removing Lebanon, Channel 265A, removing Channel 297A and adding Channel 257A at Lebanon Junction, adding New Haven, Channel 274A, and removing Channel 274A and adding Channel 265A at Springfield.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 294A and adding Channel 246C2 at Belle Meade, removing Channel 246C2 and adding Channel 221A at Goodlettsville, removing Channel 221A and adding Channel 259C0 at Hendersonville, removing Manchester, Channel 259C, and by adding Millersville, Channel 294C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–6679 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub in the Lower Colorado River Basin and To List the Headwater Chub as Endangered or Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list a distinct population segment (DPS) of the roundtail chub (*Gila robusta*) in the lower Colorado River basin, and to list the headwater chub (*G. nigra*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). The petition also asked the Service to designate critical habitat. After review of all available scientific and commercial information, we find that the petitioned action is not warranted for a DPS of the roundtail chub in the lower Colorado River basin, as explained below, but that listing is warranted for the headwater chub. Currently, however, listing of the headwater chub is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, the headwater chub will be added to our candidate species list. We will develop a proposed rule to list the headwater chub as our priorities allow. Any determinations on critical habitat will be made during development of the proposed rule.

DATES: The finding announced in this document was made on April 27, 2006.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions

concerning this species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Arizona Ecological Services Office, at the address above (602–242–0210).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Each subsequent 12-month finding will be published in the **Federal Register.**

On April 14, 2003, we received a petition dated April 2, 2003, requesting that we list a distinct population segment (DPS) of the roundtail chub in the lower Colorado River basin as endangered or threatened, that we list the headwater chub as endangered or threatened, and that we designate critical habitat concurrently with the listing for both species. The petition, submitted by the Center for Biological Diversity (Center), was clearly identified as a petition for a listing rule, and it contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated June 4, 2003. In that letter, we also advised the petitioners that, due to funding constraints in fiscal year 2003, we would not be able to begin processing the petition in a timely manner.

On May 18, 2004, the Center sent a Notice of Intent to sue, contending that the Service had violated the Act by failing to make a timely 90-day finding on the petition to list a DPS of the roundtail chub in the lower Colorado River basin, and the headwater chub. On September 20, 2004, the Center filed a complaint against the Secretary of the Interior and the Service for failure to make a 90-day petition finding under section 4 of the Act. In a stipulated settlement agreement we agreed to submit a 90-day finding to the **Federal Register** by June 30, 2005 (*Center for Biological Diversity* v. *Norton*, CV–04–496–TUC–CKJ (D. AZ)). The settlement agreement was approved by the District Court for the District of Arizona on May 5, 2005. On June 30, 2005, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the roundtail chub as a DPS in the lower Colorado River basin, and the headwater chub throughout its range, may be warranted. The finding and our initiation of a status review was published in the **Federal Register** on July 12, 2005 (70 FR 39981). We are required, pursuant to the court-approved stipulated settlement agreement, to make our 12-month finding pursuant to the Act (16 U.S.C. 1533(b)(3)(B)) on or before April 6, 2006. This notice constitutes our 12-month finding for the petition to list a DPS of the roundtail chub in the lower Colorado River basin, and to list the headwater chub, as endangered or threatened.

Biology

The roundtail and headwater chubs are both cyprinid fish (members of Cyprinidae, the minnow family) with streamlined body shapes. Color in roundtail chub is usually olive-gray to silvery, with the belly lighter, and sometimes with dark blotches on the sides; headwater chub color is usually dark gray to brown overall, with silvery sides that often have faded lateral stripes. Roundtail chub are generally 25 to 35 centimeters (cm) (9 to 14 inches (in)) in length, but can reach 50 cm (20 in). Headwater chub are quite similar in appearance to roundtail chub, although they are generally smaller, likely due to the smaller streams in which they occur (Minckley 1973; Sublette *et al.* 1990; Propst 1999; Minckley and Demaris 2000; Voeltz 2002).

Baird and Girard (1852) first described roundtail chub from specimens collected from the Zuni River in northeastern Arizona and northwestern New Mexico. Headwater chub was first described from Ash Creek and the San Carlos River in east-central Arizona in 1874 (Cope and Yarrow 1875). Since the 1800s, both roundtail and headwater chub have been recognized as distinct entities, although at varying taxonomic levels (Miller 1945; Holden 1968; Rinne 1969; Holden and Stalnaker 1970; Rinne 1976; Smith *et al.* 1979; DeMarais 1986; Rosenfeld and Wilkinson 1989; DeMarais 1992; Dowling and DeMarais 1993; Douglas *et al.* 1998; Minckley and DeMarais 2000; Gerber *et al.* 2001). At present, both are recognized as distinct species, based on discrete occurrences of specific morphology (Minckley and DeMarais 2000). Both roundtail and headwater chub are recognized as species on the American Fisheries Society's most recent list of accepted common and scientific names of fishes (Nelson *et al.* 2004).

Roundtail Chub Distinct Population Segment

In the petition to list these species, we were asked to consider designating a DPS for the roundtail chub in the lower Colorado River basin. Under the Act, we must consider for listing any species, subspecies, or, DPSs of vertebrate species/subspecies, if information is sufficient to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we developed a joint policy with the National Oceanic and Atmospheric Administration (NOAA) Fisheries entitled Policy Regarding the Recognition of Distinct Vertebrate Population (DPS Policy) to clarify our interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the Act (61 FR 4721; February 7, 1996). Under our DPS policy, we consider three elements in a decision regarding the status of a possible DPS as endangered or threatened under the Act. The elements are: (1) The population segment's discreteness from the remainder of the taxon to which it belongs; (2) the population segment's significance to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, when treated as if it were a species, is the population segment endangered or threatened?). Our policy further recognizes it may be appropriate to assign different classifications (*i.e.*, threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4721; February 7, 1996).

Discreteness

The DPS policy's standard for discreteness requires an entity given DPS status under the Act to be

adequately defined and described in some way that distinguishes it from other populations of the species. The historical range of the roundtail chub included both the upper and lower Colorado River basins in the States of Wyoming, Utah, Colorado, New Mexico, Arizona, and likely Nevada and Baja California and Sonora, Mexico (Propst 1999; Bezzerides and Bestgen 2002; Voeltz 2002). In recent times, the upper and lower basin populations of the roundtail chub have been physically separated by the Glen Canyon Dam. Results from comparisons of genetic information of roundtail chubs between the lower and upper basins of the Colorado River were based on small sample sizes and provided inconclusive results (DeMarais 1992; Dowling and DeMarais 1993; Minckley and DeMarais 2000; Gerber *et al.* 2001). Therefore, the best available scientific data are not conclusive on the question of whether the lower basin populations of the roundtail chub are discrete from the upper basin populations. However, because we determine in the following section that the lower basin populations are not significant to the taxon as a whole, we need not address further the "discreteness" test of the DPS policy.

Significance

Under our DPS policy, a population segment must be significant to the taxon to which it belongs. The evaluation of "significance" may address, but is not limited to, (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Ecological Setting. Based on our review of the available information, we found that there are some differences in various ecoregion variables between the upper and lower Colorado River basins. For example, McNabb and Avers (1994) and Bailey (1995) delineated ecoregions and sections of the United States based on a combination of climate, vegetation, geology, and other factors. Populations of roundtail chub in the lower basin are primarily found in the Tonto Transition and Painted Desert Sections of the Colorado Plateau Semi-Desert Province in the Dry Domain, and the White Mountain-San Francisco Peaks-Mogollon Rim Section of the Arizona-New Mexico Mountains Semi-Desert-Open Woodland-Coniferous Forest Province Dry Domain. Populations of roundtail chub in the upper basin are primarily found in the Northern Canyonlands and Uinta Basin Sections of the Intermountain Semi-Desert and Desert Province in the Dry Domain, and the Tavaputs Plateau and Utah High Plateaus and Mountains Sections of the Nevada-Utah Mountains Semi-Desert-Coniferous Forest Province in the Dry Domain (McNabb and Avers 1994; Bailey 1995). These ecoregion differences result in differences in hydrograph, sediment, substrate, nutrient flow, cover, water chemistry, and other habitat variables of roundtail chub. Also, there are differences in type, timing, and amount of precipitation between the two basins, with the upper basin (3–65 inches/year (Sims 1968)) somewhat less arid than the lower (5–25 inches/year (Green and Sellers 1964)).

The type and timing of precipitation, which are major factors in determining the pattern of streamflow, and which when plotted as the amount of runoff or discharge against time are known as a hydrograph (Dunne and Leopold 1978), also appear to be somewhat different between the two basins. The hydrograph of a stream is a major factor in determining habitat characteristics and their variability over space and time. Habitats of roundtail chub in the lower basin have a monsoon hydrograph or a mixed monsoon-snowmelt hydrograph. A monsoon hydrograph results from distinctly bimodal annual precipitation, which creates large, abrupt, and highly variable flow events in late summer and large, longer, and less variable flow events in the winter (Burkham 1970; Sellers 1974; Minckley and Rinne 1991). Monsoon hydrographs are characterized by high variability, including rapid rise and fall of flow levels with flood peaks of one or more orders of magnitude greater than base, or "normal low" flow (Burkham 1970).

In the upper basin, roundtail chub habitats have strong snowmelt hydrographs, with some summer/fall/winter precipitation, but with the majority of major flow events in spring and early summer (Bailey 1995; Carlson and Muth 1989; Miller and Hubert 1990). Snowmelt hydrographs are characterized by low variability, long, slow rises and falls in flow and peak flow events that are less than an order of magnitude greater than the base flow.

The lower basin has lower stream flows and warmer temperatures in late spring and early summer; whereas this is typically the wettest period in the upper basin. Sediment loads vary substantially between streams in both basins, but are generally lesser in the upper basin than the lower (Carlson and Muth 1989), and patterning of sediment movement differs substantially because of the different hydrographs. In general, roundtail chub habitat in the lower Colorado River basin is of lower gradient, smaller average substrate size, higher water temperatures, higher salinity, smaller base flows, higher flood peaks, lesser channel stability and higher erosion, and substantially different hydrographs than the habitat in the upper Colorado River basin.

Measurable hydrographic differences between the two basins are evident, as are differences in landscape level roundtail chub habitats between the upper and lower basins; these differences, however, do not appear to result in significant disparities in life history of roundtail chubs between the two basins. Roundtail chub in the upper and lower basins have basically the same life history and occupy similar in-stream habitats (Besserides and Bestgen 2002; Voeltz 2002). Furthermore, loss of the lower basin roundtail chub would not result in a loss of a form of the species that occurs in a setting unique from that found in the upper basin.

Gap in the Range and Marked Differences in Genetic Characteristics. Roundtail chub in the lower Colorado River basin is at the southern portion of the historic and current distribution of the species. Although the species may have occurred in Mexico, there are no records to support this. Within the distribution of every species there exists a peripheral population, an isolate or subpopulation of a species at the edge of the taxon's range. Long-term geographic isolation and loss of gene flow between populations is the foundation of genetic changes in population resulting from natural selection or change. Evidence of changes in these populations may include genetic, behavioral, and/or morphological differences from populations in the rest of the species' range. While the available genetic information is sparse, it indicates that roundtail chubs sampled from Chevelon Creek in the Little Colorado River drainage of the lower Colorado River basin share the same mtDNA haplotype with upper basin roundtail chubs (Gerber *et al.* 2001; as discussed above under "Discreteness"). Therefore, based on the genetic information currently available, roundtail chub in the lower Colorado River basin should not be considered biologically or ecologically significant based simply on genetic characteristics. We also considered

information regarding morphological and behavioral differences with regard to adaptations that may be occurring in the lower Colorado River basin roundtail chub and found no evidence of any differences. Biological and ecological significance under the DPS policy is always considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used "sparingly" while encouraging the conservation of genetic diversity.

Whether the Population Represents the Only Surviving Natural Occurrence of the Taxon. As part of a determination of significance, our DPS policy suggests that we consider whether there is evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The roundtail chub in the lower Colorado River basin is not the only surviving natural occurrence of the species. Consequently, this factor is not applicable to our determination regarding significance.

Conclusion

Following a review of the available information, we conclude that the roundtail chub populations in the lower Colorado River basin are not significant to the remainder of the taxon. We made this determination based on the best available information, which does not demonstrate that (1) these populations persist in an ecological setting that is unique for the taxon; (2) the loss of these populations would result in a significant gap in the range of the taxon; and (3) these populations differ markedly from populations of roundtail chub in the upper basin in their genetic characteristics, or in other considerations that might demonstrate significance. Further, available information does not demonstrate that the life history and behavioral characteristics of roundtail chub in the lower basin are unique to the species. Therefore, on the basis of the best scientific and commercial information available, we find that proposing to list a DPS for the lower Colorado River basin populations of roundtail chub is not warranted; these populations do not meet our definition of a distinct population segment.

Headwater Chub

Distribution

The historical distribution of headwater chub in the lower Colorado River basin is poorly documented, due to the paucity of early collections and the widespread anthropogenic (manmade) changes (*i.e.*, habitat alteration and nonnative species introductions (Girmendonk and Young 1997)) to aquatic ecosystems beginning in the mid 19th century. The headwater chub was historically considered common throughout its range (Minckley 1973; Holden and Stalnaker 1975; Propst 1999). Voeltz (2002), estimating historical distribution based on museum collection records, agency database searches, literature searches, and discussion with biologists, found that headwater chub likely occurred in a number of tributaries of the Verde River, most of the Tonto Creek drainage, much of the San Carlos River drainage, and parts of the upper Gila River in New Mexico (Voeltz 2002). Voeltz (2002) estimated that headwater chub historically occupied approximately 500 km (312 mi) in Arizona and New Mexico. The species currently occurs in the same areas, but has a smaller distribution. In Arizona, four tributaries of the Verde River (Fossil Creek, the East Verde River, Wet Bottom Creek, and Deadman Creek), and Tonto Creek and eight of its tributaries (Buzzard Roost, Gordon, Gun, Haigler, Horton, Marsh, Rock, Spring, and Turkey Creeks), are currently occupied; and in New Mexico, in the upper East Fork, lower Middle Fork, and lower West Forks of the Gila River (Voeltz 2002; S. Stefferud *in litt.* 2005) support headwater chub. Headwater chub may still occur in parts of the San Carlos River basin; however recent survey information for these streams is unavailable (Minckley and DeMarais 2000, Voeltz 2002).

Headwater chub occur in the middle to upper reaches of moderately-sized streams (Minckley and Demaris 2000). Bestgen and Propst (1989) examined status and life history in the Gila River drainage in New Mexico and found that headwater chubs occupied tributary and mainstem habitats in the upper Gila River at elevations of 1,325 meters (m) (4,347 feet (ft)) to 2,000 m (6,562 ft). Maximum water temperatures of headwater chub habitat varied between 20 to 27 °C, and minimum water temperatures were around 7 °C (Bestgen and Propst 1989; Barrett and Maughan 1995). Typical adult microhabitat consists of nearshore pools adjacent to swifter riffles and runs over sand and gravel substrate, with young of the year and juvenile headwater chub using smaller pools and areas with undercut banks and low current (Anderson and Turner 1978; Bestgen and Propst 1989). Spawning in Fossil Creek occurred in spring and was observed in March in pool-riffle areas with sandy-rocky substrates (Neve 1976). Neve (1976) reported that the diet of headwater chub included aquatic insects, ostracods (small crustaceans), and plant material.

Previous Federal Actions

We placed the roundtail chub (as *G. r. grahami*, which then included headwater chub) on the list of candidate species as a category 2 species on December 30, 1982 (47 FR 58454) and on January 6, 1989 (54 FR 554). Category 2 species were those for which existing information indicated that listing was possibly appropriate, but for which substantial supporting biological data were lacking. On November 21, 1991 (56 FR 58804), we continued to list headwater chub (now referred to as *G. robusta*, which included headwater and roundtail chub) as a category 2 species. Due to lack of funding to gather existing information on these fishes, they remained in category 2 through the 1994 (59 FR 58982; November 15, 1994) Candidate Notices of Review. In the 1996 Candidate Notice of Review (61 FR 7596; February 28, 1996), category 2 was eliminated, and roundtail and headwater chub were no longer recognized as candidates for listing. Following receipt of the 2002 petition, and pursuant to a stipulated settlement agreement, we published a 90-day finding on July 12, 2005 (70 FR 39981), in which we found that the petitioners had provided sufficient information to indicate that listing of the roundtail and headwater chubs may be warranted. In order to ensure we had the best scientific and commercial information available to determine whether listing of these species was indeed warranted, we opened a 60-day public comment period, ending September 12, 2005, and commenced a status review.

Status of the Headwater Chub

Headwater chub (as *G. robusta grahami*) was considered a threatened species by the American Fisheries Society on its list of fishes receiving legal protection and of special concern in 1987 (Johnson 1987). Since that time, declines of the headwater chub have been further noted both in the scientific peer reviewed literature (Bestgen and Propst 1989) and in State agency reports (Girmendonk and Young 1997; Brouder *et al.* 2000; Bezzerides and Bestgen 2002; Voeltz 2002).

The most comprehensive and recent of the status reports concerning headwater chub was completed by the Arizona Game and Fish Department in 2002, and peer-reviewed by Federal agency personnel, university researchers, and experts on the headwater chub (AGFD; Voeltz 2002).

Stream-specific distribution and status information for roundtail and headwater chub populations in the lower Colorado River basin was gathered from published literature; unpublished agency reports, records, manuscripts, and files; scientific collecting permit reports; personal communications with knowledgeable biologists; and academic databases. Based on this comprehensive information on all available current and historical survey records, AGFD estimated historical and current ranges of the headwater chub and found that the species had declined significantly from historical levels. The AGFD report also used a classification system, as described below in Table 1, to report status and threat information, which defined populations based on the abundance and recruitment of the population and presence or absence of obvious threats.

TABLE 1.—DEFINITIONS OF STATUS DESCRIPTION CATEGORIES USED TO DESCRIBE THE STATUS OF HEADWATER CHUB POPULATIONS

[From Voeltz 2002]

Status	Definition
Stable-Secure	Chubs are abundant or common, data over the past 5–10 years shows a stable, reproducing population with successful recruitment; no impacts from nonnative aquatic species exist; and no current or future habitat altering land or water uses were identified.
Stable-Threatened	Chubs are abundant or common, data over the past 5–10 years shows a reproducing population, although recruitment may be limited; predatory or competitive threats from nonnative aquatic species exist; and/or some current or future habitat altering land or water uses were identified.
Unstable-Threatened	Chubs are uncommon or rare with a limited distribution; data over the past 5–10 years shows a declining population with limited recruitment; predatory or competitive threats from nonnative aquatic species exist; and/or serious current or future habitat altering land or water uses were identified.
Extirpated	Chubs are no longer believed to occur in the system.
Unknown	Lack of data precludes determination of status.

Voeltz (2002) reviewed the 19 currently known populations of headwater chub and found that one was stable-secure, six were stable-threatened, six were unstable-threatened, three were extirpated, and three were unknown. Deadman Creek, the one population that Voeltz considered stable-secure, has since been invaded by nonnative green sunfish (*Lepomis cyanella*) (Voeltz, Arizona Game and Fish Department, pers. comm. 2003), and should now be considered stable-threatened. Headwater chub are known to occupy only 40 percent of their former range, and have an unknown distribution on another 10 percent of their former range. Based on the best available scientific information, the headwater chub occurs in 16 of 19 known populations, which now occur in fragmented and isolated stream segments and represent only 40 to 50 percent of the species' former range (approximately 200 km (125 mi) of 500 km (312 mi)) in Arizona and New Mexico (Voeltz 2002).

Populations of headwater chub are found in four separate drainage basins that are isolated from one another (the Verde River, Tonto Creek, San Carlos River, and upper Gila River). Within these four basins, there is further fragmentation and isolation of some populations. We consider a particular basin to be at risk of extirpation if there are fewer than a minimum of two stable-secure populations because any single population can be eliminated by stochastic events or catastrophic disturbance, such as fire (see Meffe and Carroll 1994). According to information in Voeltz (2002), and survey information collected since that time (as described above), headwater chub cannot be considered secure in any drainage because there are no stable-secure populations in any drainage in which they occur.

In summary, the data show that the status of headwater chub is poor and declining. It has been extirpated from approximately 50 percent of its historical range; all 16 known populations are experiencing threats (see "Summary of Factors Affecting the Headwater Chub" discussion and Table 2 below); and it is no longer considered secure in any part of its historical range (Voeltz 2002; Voeltz, Arizona Game and Fish Department, pers. comm. 2003). Although 6 of the 16 extant populations are considered "stable" based on abundance and evidence of recruitment, we believe all six of these populations have a high likelihood of becoming extirpated in the foreseeable future, primarily because at least one, and in most cases several, nonnative aquatic species that have been implicated in the decline of headwater chub are present in these streams (Voeltz 2002).

Summary of Factors Affecting the Headwater Chub

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Species. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or man-made factors affecting its continued existence. In making this finding, information regarding the status of, and threats to, the headwater chub in relation to the five factors provided in section 4(a)(1) of the Act is discussed below and summarized in Table 2 below.

TABLE 2.—SUMMARY OF HEADWATER CHUB STATUS AND THREATS BY STREAM REACH

[Voeltz 2002; Voetlz, AGFD, pers. comm. 2003]

Stream reach	Status	Threats
Christopher Creek	E	Considered extirpated by nonnative species.
Horton Creek	E	Considered extirpated by nonnative species.
Rye Creek	E	Considered extirpated by nonnative species.

TABLE 2.—SUMMARY OF HEADWATER CHUB STATUS AND THREATS BY STREAM REACH—Continued

[Voeltz 2002; Voetlz, AGFD, pers. comm. 2003]

Stream reach	Status	Threats
Deadman Creek	ST	Nonnatives, grazing, recreation.
Buzzard Roost Creek	ST	Roads, channelization, grazing, mining, nonnatives, recreation, logging, water use, fire.
Gordon Creek	ST	Roads, grazing, nonnatives, recreation, logging, fire.
Haigler Creek	ST	Roads, grazing, nonnatives, recreation, logging, fire.
Marsh Creek	ST	Roads, grazing, nonnatives, recreation, logging, fire.
Rock Creek	ST	Roads, grazing, mining, nonnatives, recreation, logging, fire.
Spring Creek	ST	Roads, grazing, mining, nonnatives, recreation, logging, fire.
Ash Creek	U	Roads, grazing, nonnatives, recreation, fire.
Wet Bottom Creek	U	Roads, grazing, nonnatives, recreation, fire.
San Carlos River	U	Roads, channelization, grazing, nonnatives, recreation, water use.
Upper Gila River	UT	Roads, channelization, development, grazing, mining, nonnatives, recreation, logging, water use, fire.
Gun Creek	UT	Roads, channelization, grazing, mining, nonnatives, recreation, logging, fire.
Tonto Creek	UT	Roads, channelization, development, grazing, mining, nonnatives, recreation, logging, water use, fire.
East Verde River	UT	Roads, channelization, development, grazing, nonnatives, recreation, logging, water use, fire.
Fossil Creek	UT	Roads, channelization, development, grazing, nonnatives, recreation, logging, water use, fire.
Webber Creek	UT	Roads, channelization, development, grazing, nonnatives, recreation, logging, water use, fire.

E=extirpated; ST=stable, threatened; U=unknown; UT=unstable, threatened.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Within the historical range of the headwater chub, much of the stream habitat has been destroyed or degraded, and loss of this habitat continues today (Minckley 1973; Tellman *et al.* 1997; Propst 1999; Voeltz 2002). At certain locations, activities such as groundwater pumping, surface water diversions, impoundments, dams, channelization (straightening of the natural watercourse, typically for flood control purposes), improperly managed livestock grazing, wildfire, agriculture, mining, roads, logging, residential development, and recreation all contribute to riparian and cienega (wetland) habitat loss and degradation in Arizona and New Mexico (Minckley and Deacon 1991; Tellman *et al.* 1997; Propst 1999; Voeltz 2002). These activities and their effects on headwater chub are discussed in further detail below.

Water withdrawal. Headwater chub has been eliminated from much of its historical range because many areas formerly occupied are now unsuitable due to dewatering (Miller 1961; Miller 1972; Minckley 1973; Deacon *et al.* 1979; Williams *et al.* 1987; Bestgen and Propst 1989; Girmendonk and Young 1997; Bezzerides and Bestgen 2002; Voeltz 2002). Habitat for these fishes is likely eliminated once surface flow drops below 0.3 cubic meters per second (10 cubic feet per second) because the stream lacks the depth and habitat features, such as deep pools, that the species requires (U.S. Fish and Wildlife Service 1989). The upper Gila River, in the vicinities of Cliff, Redrock, and Virden, New Mexico, has been entirely dewatered on occasion by diversions for agriculture (Bestgen 1985). In addition, the communities of Strawberry, Pine, and Payson, Arizona, are exploring means of securing municipal water from Fossil Creek, which could substantially reduce flows in that stream (Voeltz 2002; J. Nystedt, U.S. Fish and Wildlife Service, pers. comm. 2004). Groundwater pumping in Tonto Creek regularly eliminates surface flows during parts of the year (Abarca and Weedman 1993). Groundwater pumping in the East Verde River eliminates the flow in many parts of the stream, especially when interbasin water transfers from Blue Ridge Reservoir are not occurring (Girmendonk and Young 1997). Groundwater pumping in Webber Creek for municipal use, as well as at least one diversion for agricultural use, reduces flows in that stream (Voeltz 2002). Groundwater pumping and surface water withdrawal directly eliminate headwater chub habitat because they remove water. Obviously, without water, there is no fish habitat, but flowing water also helps to create the habitat diversity that headwater chub require. Lack of flow often results in only pool habitat remaining, which can concentrate headwater chub with nonnative species and increase predation pressure of nonnative fishes on headwater chub, which has been documented in Marsh Creek and the East Verde River (Voeltz 2002). Water withdrawal is a threat in at least 6 of the 16 extant populations of headwater chub (Bestgen and Propst 1989; Girmendonk and Young 1997; Propst 1999; Voeltz 2002).

Livestock grazing. Poorly managed livestock grazing has been documented to negatively impact headwater chub habitat. Poor livestock-grazing management is often cited as one of the most significant factors contributing to regional stream channel downcutting (the entrenchment of stream channels and creation of arroyos) in the late 1800s; profound effects from this period occurred throughout the watershed of Tonto Creek, which contains 70 percent of all extant headwater chub populations, and these effects are still evident today and compounded by ongoing grazing (Croxen 1926; Ganda 1997). Poorly managed livestock grazing destabilizes stream channels and disturbs riparian ecosystem functions (Herefore 1992; Tellman *et al.* 1997). Poorly managed livestock grazing negatively affects headwater chub habitat through removal of riparian vegetation (Clary and Webster 1989; Clary and Medin 1990; Schulz and Leininger 1990; Armour *et al.* 1991; Fleishner 1994), which results in reduced bank stability, fewer pools, and higher water temperatures, creating habitats that are too extreme to support headwater chub (Meehan 1991; Kauffman and Krueger 1984; Swanson *et al.* 1982; Minckley and Rinne 1985; Fleishner 1994; Belsky *et al.* 1999). Poorly managed livestock grazing also

causes increased sediment in the stream channel, due to streambank trampling and riparian vegetation loss (Weltz and Wood 1986; Waters 1995; Pearce *et al.* 1998). Livestock physically alter streambanks through trampling and shearing, leading to bank erosion (Platts and Nelson 1989; Trimble and Mendel 1995). In combination, loss of riparian vegetation and bank erosion alters channel morphology, including increased erosion and deposition, downcutting, and an increased width/depth ratio, all of which lead to a loss of deep pool habitats required by the headwater chub, and loss of shallow side and backwater habitats used by larval chub (Trimble and Mendel 1995; Belsky *et al.* 1999).

Poorly managed livestock grazing causes the structure and diversity of the fish community to shift due to changes in availability and suitability of habitat types (Rahel and Hubert 1991). This loss of aquatic habitat complexity reduces the diversity of habitat types available to fish communities (Gorman and Karr 1978). In the arid west, this loss of habitat complexity has been found to accelerate the displacement of native fish species by nonnatives (Minckley and Rinne 1991; Baltz and Moyle 1993; Lawler *et al.* 1999). Livestock grazing also contributes significantly to the introduction and spread of nonnative aquatic species through the proliferation of ponded water in stock tanks (U.S. Fish and Wildlife Service 2001). The U.S. Forest Service found that livestock grazing "may affect [headwater chub] and eventually trend the species toward federal listing" on allotments on the Tonto National Forest (Biological Evaluation and Assessment for the Green Valley Complex, Tonto National Forest 2002). Though largely a past threat, Voeltz (2002) found that livestock grazing occurs in every drainage in which headwater chub occur.

Stream channelization and irrigation. Sections of many Gila Basin rivers and streams have been and continue to be channelized for flood control, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization changes the gradient of the stream above and below the channel. It increases streamflow in the channelized section, which results in increased rates of erosion of the stream and its tributaries, accompanied by gradual deposits of sediment in downstream reaches that increase the risk of flooding (Emerson 1971; Simpson *et al.* 1982). Channelization has affected headwater chub habitat by reducing its complexity, eliminating cover, reducing nutrient input, improving habitat for nonnative species, changing sediment transport, altering substrate size, and reducing the length of the stream (and therefore the amount of aquatic habitat available) (Gorman and Karr 1978; Simpson 1982; Schmetterling *et al.* 2001). Channelization occurs within at least 50 percent of extant populations (Voeltz 2002).

Irrigation directly from streams reduces or eliminates water in existing fish habitat. Fish can be carried into irrigation ditches, where they may die following desiccation (drying). Irrigation dams prevent movement of fish between populations, resulting in genetic isolation within species; small populations are subject to genetic threats, such as inbreeding depression (reduced health due to elevated levels of inbreeding) and to genetic drift (a reduction in gene flow within the species that can increase the probability of unhealthy traits; Meffe and Carrol 1994). There are numerous surface water diversions in headwater chub habitats, including the upper Gila River, East Verde River, and Tonto Creek. Larger dams may also prevent movement of fish between populations, and dramatically alter the flow regime of streams through the impoundment of water behind and below (Ligon *et al.* 1995).

Mining activities. Mining activities were more widespread historically and likely constituted a greater threat in the past; however, the continued mining of sand, gravel, iron, gold, copper, or other materials remains a potential threat to the habitat of headwater chub. The effects of mining activities on populations include adverse effects to water quality and lowered flow rates due to dewatering of nearby streams needed for mining operations (ADEQ 1993). Ongoing sand and gravel mining in Tonto Creek is eliminating headwater chub habitat (Abarca and Weedman 1993; Voeltz 2002). Sand and gravel mining removes riparian vegetation and destabilizes streambanks, which results in habitat loss for the headwater chub (Brown *et al.* 1998). Mining occurs within at least 6 of the 16 extant populations (Voeltz 2002).

Roads and Logging. Roads have adversely affected headwater chub habitat by destroying riparian vegetation and by increasing surface runoff, sedimentation, and erosion (Burns 1971; Eaglin and Hubert 1993). Roads require instream structures, such as culverts and bridges, that remove aquatic habitat and can act as barriers to fish movement (Barrett *et al.* 1992; Warren and Pardew 1998). All of these activities negatively impact headwater chub by lowering water quality and reducing the quality and quantity of pools, by filling pools with sediments, by reducing the quantity of large woody-debris necessary to form pools, and by imposing barriers to movement. The end result is deterioration of habitat for the headwater chub (Burns 1971; Eaglin and Hubert 1993). Roads are found within every drainage containing extant populations of headwater chub (Voeltz 2002).

Vehicular use of roads in creek bottoms, as has been documented in Tonto Creek (Voeltz 2002), degrades headwater chub habitat and can result in headwater chub mortality. Such use inhibits riparian plant growth, breaks down banks, causes erosion and sedimentation, and increases turbidity in the stream, particularly where vehicles drive through the stream and immediately downstream of the vehicular activity. These effects result in wider and shallower stream channels (Meehan 1991). This causes progressive adjustments in other variables of hydraulic geometry and results in changes to the configuration of pools, runs, riffles, and backwaters; levels of fine sediments and substrate embeddedness; availability of instream cover; and other fish habitat factors in the vicinity of vehicle crossings (Rosgen 1994). Resultant changes to the stream channels alter the way in which flood flows interact with the stream channel and may exacerbate flood damage to banks, channel bottoms, and riparian vegetation. The breaking down of stream banks by vehicles reduces undercut banks and overhanging vegetation that chub use as cover. Fish fry and eggs could also be killed or injured if vehicles are driven through stream segments where these life stages occur. Vehicles driven rapidly through the stream could splash young fish or eggs onto the bank where they may desiccate. Larger fish are likely to swim away and avoid death or injury. Public vehicular use is also often associated with an elevated risk of human-caused fire.

Adverse effects of stream sedimentation to fish and fish habitat have been extensively documented (Murphy *et al.* 1981; Newcombe and MacDonald 1991; Barrett *et al.* 1992). Excessive sedimentation causes channel changes that are adverse to headwater chub habitat. These activities have direct impacts on headwater chub habitat because excessive sediment can fill backwaters and deep pools used by headwater chub, and sediment deposition in the main channel can cause a tendency toward stream braiding (*e.g.*, the stream becomes wider, shallower, and has numerous

channels as opposed to one channel), which reduces adult chub habitat. Excessive sediment will smother invertebrates (Newcombe and MacDonald 1991), thereby reducing chub food production and availability, and related turbidity reduces the chub's ability to see and capture food (Barrett *et al.* 1992).

Although logging is a landuse in the watersheds of 13 of the remaining 16 streams known to contain headwater chub populations (Voeltz 2002), logging is largely a threat of the past, resulting from previous management practices no longer in place. The alteration of watersheds resulting from road-building and logging is deleterious to fish and other aquatic life forms (*e.g.*, Burns 1971; Eaglin and Hubert 1993). Roads and logging increase surface runoff, sedimentation, and mudslides, and destroy riparian vegetation (Lewis 1998; Jones *et al.* 2000).

Recreation. Recreation was noted as a land-use in all of the watersheds containing headwater chub (Voeltz 2002). The impacts of recreation are highly dependant on the type of activity, with activities such as birdwatching having little to no impact and activities such as off-road vehicle use potentially having severe impacts on aquatic habitats. Specific problems with recreation were noted in the Upper Gila River, and Tonto and Webber Creeks (Voeltz 2002). For example, Voeltz (2002) noted that in-channel vehicular traffic was a threat to headwater chubs in Tonto Creek (also discussed above under *Roads*). Much of the current range of the headwater chub occurs on public lands administered by the U.S. Forest Service, and public use of these lands is high; such use creates an elevated risk of human-caused impacts such as off-road vehicle use.

Development activities. Headwater chub habitat is also threatened increasingly from urban and suburban development (Tellman *et al.* 1997). Urban and suburban development affects headwater chub and its habitat in a number of ways, such as direct alteration of streambanks and floodplains from construction of buildings, gardens, pastures, and roads (Tellman *et al.* 1997), or as mentioned above, diversion of water, both from streams and connected groundwater (Glennon 1995). On a broader scale, urban and suburban development alters the watershed, which changes the hydrology, sediment regimes, and pollution input (Dunne and Leopold 1978; Horak 1989; Medina 1990; Reid 1993; Waters 1995). In addition, it has been documented that the introduction of nonnative plants and animals, such as releases from home aquariums, that can adversely affect headwater chub become more likely as nearby human populations increase (Aquatic Nuisance Species Task Force 1994).

Suburban and urban development have degraded and eliminated headwater chub habitat. The Phoenix metropolitan area, founded in part due to its proximity to the Salt and Gila Rivers, is a population center of 3.5 million people. Communities in the middle and upper Verde River watershed, such as the Prescott-Chino Valley, the Cottonwood-Clarkdale-Camp Verde communities, Strawberry, Pine, and Payson, are all seeing rapid population growth. Many of these communities are near headwater chub populations, and 25 percent of known headwater chub populations occur in areas of urban and commercial development (Voeltz 2002). On a broader scale, as of 2005, Arizona was listed as the second fastest in Statewide population growth in the nation, and Arizona is projected to grow by 109 percent by the year 2030 (U.S. Census Bureau 2005).

Human activities in the watershed have had substantial adverse impacts to headwater chub habitat. Watershed alteration is a cumulative result of many human uses, including timber harvest, livestock grazing, roads, recreation, channelization, and residential development. The combined effect of all of these actions results in a substantial loss and degradation of habitat (Burns 1971; Reid 1993). For example, in Williamson Valley Wash, human uses (*e.g.*, recreational use of off-road vehicles) in the highly erodible upper watershed have resulted in increased erosion and high loads of sediment. In 1993, flooding in Williamson Valley Wash carried enough sediment that the isolated pool where Gila chub (*Gila intermedia*), a related species to the headwater chub, were previously collected became completely filled with sand and gravel (Weedman *et al.* 1996).

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We do not believe that overutilization is a threat to headwater chub in Arizona because angler catch is considered light (J. Warnecke, Arizona Game and Fish Department, pers. comm. 2004). However, in the upper Gila River in New Mexico, there are reports of anglers purposefully discarding chub species, which may be having a negative effect on populations of headwater chub locally (Voeltz 2002).

Factor C: Disease or Predation

Nonnative fish that prey on and/or compete with headwater chub are a serious and persistent threat to the continued existence of this species. Direct predation by nonnative fishes on, and competition of nonnative fishes with, the headwater chub has resulted in rangewide population declines and local extirpations (*e.g.*, Christopher Creek, Rye Creek, and Horton Creek). Nonnative aquatic organisms negatively affect native fish through predation, aggression and harassment, resource competition, habitat alteration, aquatic community disruption, introduction of diseases and parasites, and hybridization (numerous citations; see U.S. Fish and Wildlife Service (2001)). Based on survey information, nonnative species occur in every known population of headwater chub (Voeltz 2002).

Headwater chub evolved in a fish community with low species diversity and where few predators existed, and as a result developed few or no mechanisms to deal with predation (Carlson and Muth 1989). In its habitats, the headwater chub was probably the most predatory fish and experienced little or no competition. Nonnative fishes known from within the historical range of headwater chub in the Gila River basin include channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), red shiner, (*Cyprinella lutrensis*), fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), rainbow trout (*Oncorynchus mykiss*), western mosquitofish (*Gambusia affinis*), carp (*Cyprinus carpo*), warmouth (*Lepomis gulosus*), bluegill (*Lepomis macrochiris*), yellow bullhead (*Ameiurus natalis*), black bullhead (*Ameiurus melas*), and goldfish (*Carassius auratus*) (Arizona Game and Fish Department Heritage Data Management System, U.S. Fish and Wildlife Service 2001).

The introduction and spread of nonnative species has long been identified as one of the major factors in the continuing decline of native fishes throughout North America and particularly in the southwest (Miller 1961; Lachner *et al.* 1970; Ono *et al.* 1983; Minckley and Deacon 1991; Carlson and Muth 1989; Cohen and Carlton 1995; Fuller *et al.* 1999). In the American southwest, Miller *et al.* (1989) concluded that introduced nonnatives were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those

fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Aquatic Nuisance Species Task Force 1994; Lassuy 1995). In Arizona, release or dispersal of new nonnative aquatic organisms is a continuing phenomenon (Rosen *et al.* 1995; U.S. Fish and Wildlife Service 2001). Introduction of nonnative species has also been consistently cited as a threat to the native fish fauna of the Colorado River, and is listed as a factor in the listing rules of nine other fish species with historical ranges that overlap with headwater chub (bonytail (*Gila elegans*) (45 FR 27710), humpback chub (*Gila cypha*) (32 FR 4001), Gila chub (67 FR 51948), Colorado pikeminnow (*Ptychocheilus lucius*) (32 FR 4001), spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*),(51 FR 23769), razorback sucker (*Xyrauchen texanus*) (56 FR 54957), desert pupfish (*Cyprinodon macularius*) (61 FR 10842), and Gila topminnow (*Poecilopsis occidentalis*) (32 FR 4001)). In the Gila River basin, introduction of nonnatives is considered a major factor in the decline of all native fish species (Minckley 1985; Williams *et al.* 1985; Minckley and Deacon 1991).

Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, both intentional and accidental, and authorized and unauthorized. Mechanisms for nonnative dispersal in the southwestern United States include inter-basin water transfer, sport stocking, aquaculture, aquarium releases, bait-bucket release (release of fish used as bait by anglers), and for use in biological control (U.S. Fish and Wildlife Service 2001).

Dudley and Matter (2000) found that nonnative green sunfish prey on, compete with, and virtually eliminate recruitment of Gila chub (a recently federally listed species that is closely related to headwater chub) in Sabino Creek in Arizona. Similar effects of green sunfish on Gila chub have been documented in Silver Creek in Arizona (Unmack *et al.* 2003). In the Verde River, Bonar *et al.* (2004) found that largemouth bass, smallmouth bass, bluegill, green sunfish, channel catfish, flathead catfish, and yellow bullhead all consumed native fish. Roundtail chub (a closely related species to headwater chub) have been found in stomachs of largemouth bass in the lower Salt River (P. Unmack, Arizona State University, pers. comm. 2004). Bestgen and Propst (1989) reported that, of nonnatives present in New Mexico, smallmouth bass, flathead catfish, and channel catfish most impacted headwater chub via predation.

Nonnative crayfish also appear to prey on and compete with all life stages of Gila chub (Carpenter 2000, 2005), a fish species closely related to headwater chub. At least two species of crayfish (*Procambaris clarki* and *Orconectes virilis*) have been introduced into Arizona aquatic systems and one or both species co-occur with headwater chub in at least four streams. Crayfish are considered a cause of decline for one population of headwater chub, and are documented as having contributed to the extirpation of two of its populations (Voeltz 2002).

Disease, and especially parasites, are a threat. Asian tapeworm (*Bothriocephalus acheilognathi*) was introduced into the United States via imported grass carp in the early 1970s. It has since become well-established in the southeast and mid-south and has been recently found in the southwest. The definitive host in the life cycle of *B. acheilognathi* is cyprinid fishes, and, therefore, it is a potential threat to the headwater chub as well as to the other native fishes in Arizona. The Asian tapeworm affects fish health in several ways. Two direct impacts are by impeding the digestion of food as it passes through the intestinal track, and when large numbers of worms feed off of the fish they can cause emaciation and starvation. The Asian tapeworm is present in the Colorado River basin in the Virgin River (Heckman *et al.* 1986) and the Little Colorado River (Clarkson *et al.* 1997). It has recently invaded the Gila River basin and was found during the fall 1998 Central Arizona Project (CAP) monitoring in the Gila River near Ashurst-Hayden Dam.

Anchor worm (*Lernaea cyprinacea*) (Copepoda), an external parasite, is unusual in that it has little host specificity, infecting a wide range of fishes and amphibians. Severe *Lernaea* sp. infections have been noted in a number of chub populations. Hendrickson (1993) noted very high infections of *Lernaea* sp. during warm periods in the Verde River, and Voeltz (2002) reported that headwater chubs found in Gun Creek in 2000, when surface flow was almost totally lacking, "showed signs of stress, and many had Lernaea, black grub, lesions and an unidentified fungus." Increases in infection negatively affect headwater chub populations with Girmendonk and Young (1997) concluding that "parasitic infestations may greatly affect the health and thus population size of native fishes."

Factor D: The Inadequacy of Existing Regulatory Mechanisms

There are currently no specific Federal protections for headwater chub, and generalized Federal protections found in Forest plans, Clean Water Act dredge and fill regulations for streams, and other statutory, regulatory, or policy provisions have not been shown to be effective in preventing the decline of this species. Presently, Federal, State, and Tribal statutes, regulations, and planning have not achieved significant conservation of headwater chub and its habitat.

As described above, introductions of nonnative fish are likely a significant threat to headwater chub. Fish introductions are illegal unless approved by the respective States. However, enforcement is difficult. Many nonnative fish populations are established through illegal introductions. Nine species of fish, crayfish, and waterdogs (tiger salamanders (*Ambystoma pigrimum*)) may be legally used as bait in Arizona, all of which are nonnative to the State of Arizona and several of which are known to have serious adverse effects on native species. The portion of the State in which use of live bait is permitted is limited, and use of live bait is restricted in much of the Gila River system in Arizona (Arizona Game and Fish Department 2004). New Mexico allows use of live bait-fish (New Mexico Game and Fish Department 2004). Live bait use of two species of sunfish and all "minnows" are allowed. Goldfish (Carassius auratus), a nonnative formerly allowed for live bait use, is no longer allowed. Arizona and New Mexico also continue to stock nonnative fishes within areas that are connected to habitat of headwater chub.

Increasing restrictions of live bait use will reduce the input of nonnative species into headwater chub habitat. However, it will do little to reduce unauthorized bait use or other forms of "bait-bucket" transfer (*e.g.*, dumping of unwanted aquarium fish, which may be invasive nonnative species) not directly related to bait use. In fact, those other "bait-bucket" transfers are expected to increase as the human population of Arizona increases and as nonnative species remain available to the public through aquaculture and the aquarium trade. The general public has been known to dump unwanted pet fish and other aquatic species into irrigation ditches such as the CAP aqueduct in the Phoenix metropolitan area (U.S. Fish and Wildlife Service 2001).

The Arizona Game and Fish Department also regulates species of

nonnatives that can legally be brought into the State. Prohibited nonnative species are put onto the Restricted Live Wildlife List (Commission Order 12–4–406). However, species are allowed unless they are prohibited by placement on the list, rather than the more conservative approach of prohibited unless specifically allowed, and this leaves a serious regulatory inadequacy that allows the opportunity for many noxious nonnatives to be legally imported and introduced into Arizona. New Mexico has adopted a more stringent approach; no live animal (except domesticated animals or domesticated fowl or fish from government hatcheries) is allowed to be imported without a permit (NMS 17–3–32). However, the majority of the headwater chub range occurs within Arizona.

The Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. In addition, the U.S. Forest Service is required to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in planning areas (36 CFR 219.19). The Forest Service is the largest landowner and manager of headwater chub habitat. The Forest Service lists the headwater chub as a sensitive species in the lower Colorado River basin in the southwestern region (Arizona and New Mexico). However, a sensitive species designation provides little protection to the headwater chub because it only requires the Forest Service to analyze the effects of their actions on sensitive species, but does not require that they choose environmentally benign actions. Voeltz (2002) found that livestock grazing occurred in every drainage in which headwater chub occur and he considered this land use an ongoing threat. Most of these areas where the majority of extant populations of headwater chub occur are managed by the Forest Service.

Wetland values and water quality of aquatic sites inhabited by the headwater chub are afforded varying protection under the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended; Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands); and section 404 of the Clean Water Act, which regulates dredging and filling activities in waterways.

The New Mexico Department of Game and Fish has adopted a wetland protection policy whereby the Department does not endorse any project that would result in a net decrease in either wetland acreage or wetland habitat values. This policy may afford some protection to headwater chub habitat, although it is advisory only and destruction or alteration of wetlands is not regulated by State law.

The State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for restoration of riparian resources. At this time, we have no monitoring information on the effects of this Executive Order, nor do we have information indicating that actions taken under it have been effective in reducing adverse effects to the headwater chub.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of their actions. Most actions taken by the Forest Service and other Federal agencies that affect the headwater chub are subject to NEPA. NEPA requires Federal agencies to describe the proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. However, Federal agencies are not required to select the alternative having the least significant environmental impacts. A Federal action agency may select an action that will adversely affect sensitive species provided that these effects were known and identified in a NEPA document.

Status of headwater chub on Tribal lands is not well known. Any regulatory or other protective measures for the species on Tribal lands would be at the discretion of the individual Tribe and non-Tribal entities would not likely be privy to information on the adequacy of such measures. The San Carlos Apache Tribe has developed a fisheries management plan that provides protection to headwater chub; however, there are only two populations of the species that occur on San Carlos Apache lands.

The State of New Mexico is seeking to add the headwater chub as an endangered species under its Wildlife Conservation Act, which prohibits take (New Mexico Wildlife Conservation Act 17–2–41(B)). Unlike the Federal Act, however, habitat destruction does not constitute take under New Mexico's law. The Arizona Game and Fish Department has created a draft conservation agreement and strategy for several native Arizona fishes including headwater chub. These efforts are not yet complete. AGFD has also implemented conservation actions that have benefited the species, including assisting with restoration of headwater chub habitat in Fossil Creek. We are working with both Arizona and New Mexico to ensure that these efforts will be as effective as possible. However, at this time, these efforts are not finalized, no funding has been committed to ensure their execution, and their future effectiveness is uncertain. We will evaluate these efforts using the guidelines developed in our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003).

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

The rarity of headwater chub increases its extinction risk associated with stochastic events such as drought, flood, and wildfire. Headwater chub populations have been fragmented and isolated to smaller stream segments and are thus vulnerable to natural or manmade factors (*e.g.*, drought, groundwater pumping) that might further reduce their population sizes. Headwater chub are not considered secure in any of the stream segments where they occur (Voeltz 2002). In general, Arizona is an arid state; about one-half of Arizona receives less than 10 inches of rain a year. As described above in factor A, dewatering and other forms of habitat loss have resulted in fragmentation of headwater chub populations, and water demands from a rapidly increasing human population could further reduce habitat available to these species, and further fragment populations. In examining the relationship between species distribution and extinction risk in southwestern fishes, Fagan *et al.* (2002) found that the number of occurrences or populations of a species is less significant a factor in determining extinction risk than is habitat fragmentation. Fragmentation of habitat makes the headwater chub vulnerable to extinction from threats of further habitat loss and competition from nonnative fish and other threats because immigration and recolonization from adjacent populations is not likely. Thus, the risk of extinction of this species, based on their degree of fragmentation alone, is high and is predicted to increase with increasing fragmentation and rarity (Fagan *et al.* 2002).

The probability of catastrophic stochastic events that could eliminate isolated populations of this species is

exacerbated by a century of livestock grazing and fire suppression that has led to unnaturally high fuel loadings (Cooper 1960; Covington and Moore 1994; Swetnam and Baison 1994; Touchan *et al.* 1995; White 1985). We have information indicating that the intensity of forest fires has increased in recent times (Covington and Moore 1994; National Interagency Fire Center 2006). Fires in the Southwest frequently occur during the summer monsoon season. As a result, fires are often followed by rain that washes ash-laden debris into streams (Rinne 2004). Extreme summer fires, such as the 1990 Dude Fire, and corresponding ash flows have decimated some fish populations including headwater chub populations in the East Verde River (Voeltz 2002). Recently, several extreme summer fires, including the 2002 Rodeo-Chedeski Fire and the 2004 Willow Fire, have resulted in significant losses of individuals and populations of headwater chub throughout Arizona (A. Robinson, Arizona Game and Fish Department, pers. comm. 2005). Carter and Rinne (unpubl. data) found that the Picture Fire both benefited and eliminated headwater chub from portions of Spring Creek. The fire eliminated chubs from Turkey Creek, a tributary to Spring Creek. In other parts of Spring Creek, however, chubs initially declined but later thrived after the fire, presumably because most of the nonnative fishes were eliminated. Every extant population of headwater chub is at risk of experiencing effects from wildfire.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the headwater chub. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding, and consulted with recognized headwater chub experts and other Federal and State resource agencies. On the basis of the best scientific and commercial information available, we find that proposing to list the headwater chub throughout its range is warranted, but that immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

In making this finding, we recognize that there have been declines in the distribution and abundance of the headwater chub, primarily attributed to the introduction and subsequent predation by, and competition with, nonnative fishes, as documented in a large body of scientific research (Miller 1961; Minckley 1973; Bestgen and Propst 1989; Miller *et al.* 1989; Minkley and Deacon 1991; Creef and Clarkson 1993; Bonar *et al.* 2004), as well as declines resulting from a host of land uses that have dewatered and degraded the species' habitats (Miller 1961; Miller 1972; Minckley 1973; Deacon *et al.* 1979; Bestgen and Propst 1989; Bezzerides and Bestgen 2002; Voeltz 2002). Direct predation and competition of nonnative fishes on the headwater chub has resulted in rangewide population declines and local extirpations (*e.g.*, Christopher Creek, Rye Creek, and Horton Creek). Because we have found that nonnative species are present in every remaining population of this species, we conclude that all remaining populations are at risk of declines and extirpation as a result of predation by nonnative species. Furthermore, all remaining populations are fragmented and isolated, making them vulnerable to further declines and local extirpations from other factors, as discussed in detail above and outlined in Table 2 above (Fagan *et al.* 2002). Populations that go extinct following habitat fragmentation are unlikely to be recolonized due to the isolation from, and lack of, habitat connectivity to potential source populations.

The isolation of remaining headwater chub populations and habitat fragmentation as a result of nonnative fish introductions and habitat alteration have made remaining populations vulnerable to extinction from random events such as parasites and stochastic events (Fagan *et al.* 2002). Stochastic events, such as fire, have only recently been recognized as an important factor in the decline of this species (Rinne 2004). We believe that fire will continue to be a factor in the decline of this species (National Interagency Fire Center 2006; *www.nifc.gov*). Other factors include parasitism and the inadequacy of existing regulatory mechanisms. These factors have contributed to declines or extirpations of headwater chub.

We conclude that the overall magnitude of threats to the headwater chub is high, and that the overall immediacy of these threats is imminent. While we conclude that listing the headwater chub is warranted, an immediate proposal to list this species is precluded by other higher priority listing actions. At the present time there are over 280 species that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants, 95 of which have the same listing priority as the headwater chub. During fiscal year (FY) 2006, almost our entire national listing budget will be consumed by work on various listing actions to comply with court orders and court-approved settlement agreements; to meet statutory deadlines for petition finding or listing determinations; to evaluate and determine emergency listing; and to complete essential litigation-related, administrative, and program management tasks.

The headwater chub will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that an emergency listing is not warranted for this species at this time because a number of populations exist, and some of these appear to be stable at the current time. However, if at any time we determine that emergency listing of the headwater chub is warranted, we will seek to initiate an emergency listing.

We intend that any proposed listing action for these fish species will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Arizona Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is the Arizona Ecological Services Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 27, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E6–6648 Filed 5–2–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 85
Wednesday, May 3, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 27, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: List Sampling Frame Survey.

OMB Control Number: 0535–0140.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from "List Sampling Frame." The List Sampling Frame is a database of names and addresses, with control data, that contains the components from which these samples can be drawn.

Need and Use of the Information: The List Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce for each state a relatively complete, current, and unduplicated list of names to sample for agricultural operation surveys. Government agencies and educational institutions use information from these surveys in planning, farm policy analysis, and program administration.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 350,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 55,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–6634 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 27, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Animal & Plant Health Inspection Service

Title: National Poultry Improvement Plan (NPIP).

OMB Control Number: 0579–0007.

Summary of Collection: The National Poultry Improvement Plan (NPIP) is a voluntary Federal-State-industry mechanism for controlling certain poultry diseases and for improving poultry flocks and products through disease control techniques. The National Turkey Improvement Plan was combined with the NPIP in 1970 to create the NPIP, as it now exists. Emu, rhea, ostrich, and cassowary breeding flocks are also allowed participation in the Plan. The effective implementation of the NPIP necessitates the use of several information collection activities, including sentinel bird identification, as well as the creation and submission of flock testing reports, sales reports,

breeding flock participation summaries, hatchery participation summaries, salmonella investigation reports, salmonella serotyping requests, and small chick order printouts. Authority for this program is contained in the U.S. Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 429). The cooperative work is carried out through a Memorandum of Understanding with the participating States.

Need and Use of the Information: Information is collected from various types of poultry breeders and flock owners to determine the number of eggs hatched and sold as well as to report outbreaks of diseases. This information allows APHIS officials to track, control, and prevent many types of poultry diseases.

Description of Respondents: State, Local or Tribal Government; Federal Government; Farms.

Number of Respondents: 10,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 39,638.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–6635 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 27, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Departmental Administration

Title: USDA PIV Request for Credential.

OMB Control Number: 0505–0022.

Summary of Collection: To obtain approval of information that must be provided by Federal contractors and other applicable individuals (including all employees and some affiliates) when applying for a USDA credential (identification card). The information is necessary to comply with the requirements outlined in Homeland Security Presidential Directive (HSPD) 12, and Federal Information Processing Standard (FIPS) 201, Personal Identity Verification (PIV) Phase I and II. In years past, government agencies have all required various levels and means of authenticating Federal employees and contractors as a requirement to enter government buildings and use government systems. HSPD 12 mandates the creation of a standard for identity proofing and credentialing Federal employees and contractors.

Need and Use of the Information: Information will be collected using form AD 1197, Request for USDA Identification (ID) Badge, that will be completed on behalf of employees contractors, or other applicable individuals requiring long term access to federally controlled facilities and/or information systems who began work at USDA on or after October 27, 2005. This information is required as part of USDA's PIV I identity proofing and registration process. For PIV II, implemented before October 27, 2006 form AD 1197 will be eliminated and the identity process will be streamlined with addition of a Web-based HSPD–12 system.

Description of Respondents: Individuals or households; Federal Government.

Number of Respondents: 37,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120,350.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–6636 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0047]

Bovine Spongiform Encephalopathy; Availability of an Estimate of Prevalence in the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that an analysis of the prevalence of bovine spongiform encephalopathy (BSE) in the United States has been prepared by the Animal and Plant Health Inspection Service. We are making the analysis of BSE prevalence in this country available to the public.

ADDRESSES: Copies of the analysis are available for review on the Internet (see **SUPPLEMENTARY INFORMATION** below) and in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Brian McCluskey, National Surveillance Coordinator, National Surveillance Unit, Center for Animal Health Surveillance, VS, APHIS, USDA, 2150 Centre Avenue, Fort Collins, CO 80526–8177; 970–494–7589.

SUPPLEMENTARY INFORMATION: Bovine spongiform encephalopathy (BSE) is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). Since 1990, the United States has conducted surveillance for BSE in this country with increasing intensity, including an enhanced surveillance effort implemented following the diagnosis of BSE in a cow of Canadian origin in Washington State in December 2003.

The Animal and Plant Health Inspection Service (APHIS) has conducted an analysis of the BSE surveillance data collected in the United States. Based on this analysis, APHIS has arrived at an estimate of BSE prevalence in this country. This information will help to guide and support any future requests for consideration of the overall BSE status of the United States.

We are making our analysis of BSE prevalence in the United States available to the public. This report is considered a draft and will undergo peer review.

The analysis may be viewed on the APHIS Web site at *http://www.aphis.usda.gov/newsroom/hot_issues/bse/bse_in_usa.shtml*. Click on the document titled "An Estimate of the Prevalence of BSE in the United States." The analysis may be also viewed on the Regulations.gov Web site. Go to *http://www.regulations.gov*, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2006–0047, click on "Submit," then click on the Docket ID link in the search results page. The analysis will appear in the resulting list of documents.

You may request paper copies of the analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the analysis ("An Estimate of the Prevalence of BSE in the United States") when requesting copies. The analysis is also available for review in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 1st day of May 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–6728 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Commodity Partnerships for Small Agricultural Risk Management Education Sessions (Commodity Partnerships Small Sessions Program)

Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements—Correction.

Catalog of Federal Domestic Assistance Number (CFDA): 10.459.

Dates: Applications are due June 2, 2006, 5 p.m. EDT.

Summary: Due to technical errors, the following notice supersedes the original Request for Applications, published on April 18, 2006 for Commodity Partnerships for Small Agricultural Risk Management Education Sessions Program at 71 FR 19858–19864.

Overview: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $500,000 for Commodity Partnerships for Small Agricultural Risk Management Education Sessions (the Commodity Partnerships Small Sessions Program). The purpose of this cooperative partnership agreement program is to deliver training and information in the management of production, marketing, and financial risk to U.S. agricultural producers. The program gives priority to educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage. A maximum of 50 cooperative partnership agreements will be funded, with no more than five in each of the ten designated RMA Regions. The maximum award for any cooperative partnership agreement will be $10,000. Recipients of awards must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.457 (Commodity Partnerships for Risk Management Education), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices for each program.

This Announcement Consists of Eight Parts:

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Commodity Partnerships Small Sessions Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the

creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information. One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

D. Project Goal

The goal of this program is to ensure that "* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools".

E. Purpose

The purpose of the Commodity Partnership Small Session Program is to provide U.S. farmers and ranchers with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

II. Award Information

A. Type of Award

Cooperative Partnership Agreements, which require the substantial involvement of RMA.

B. Funding Availability

Approximately $500,000 is available in fiscal year 2006 to fund up to 50 cooperative partnership agreements. The maximum award for any agreement will be $10,000. It is anticipated that a maximum of five agreements will be funded in each of the ten designated RMA Regions. In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to award recipients for use in broadening the size or scope of awarded projects if agreed to by the recipient. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2006.

C. Location and Target Audience

RMA Regional Offices and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, MT Regional Office: (MT, WY, ND, and SD).

Davis, CA Regional Office: (CA, NV, UT, AZ, and HI).

Jackson, MS Regional Office: (KY, TN, AR, LA, and MS).

Oklahoma City, OK Regional Office: (OK, TX, and NM).

Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, and NC).

Spokane, WA Regional Office: (WA, ID, OR, and AK).

Springfield, IL Regional Office: (IL, IN, OH, and MI).

St. Paul, MN Regional Office: (MN, WI, and IA).

Topeka, KS Regional Office: (KS, MO, NE, and CO).

Valdosta, GA Regional Office: (AL, GA, SC, FL, and Puerto Rico).

Applicants must designate in their application narratives the RMA Region where educational activities will be conducted and the specific groups of producers within the region that the applicant intends to reach through the project. Priority will be given to producers of Priority Commodities. Applicants proposing to conduct educational activities in more than one RMA Region must submit a separate application for each RMA Region. This requirement is not intended to preclude producers from areas that border a designated RMA Region from participating in that region's educational activities. It is also not intended to prevent applicants from proposing the use of certain informational methods, such as print or broadcast news outlets, that may reach producers in other RMA Regions.

D. Maximum Award

Any application that requests Federal funding of more than $10,000 for a project will be rejected.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award

Recipient Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the award recipient will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers and agribusiness leaders in

the designated RMA Region of training and informational opportunities.

• Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

• Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

• Assist in the selection of subcontractors and project staff.

• Collaborate with the recipient in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.

• Collaborate with the recipient in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.

• Collaborate with the recipient on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

• Conduct an evaluation of the performance of the recipient in meeting the deliverables of the project.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or cooperative partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Contact To Request Application Package

Program application materials for the Commodity Partnerships Program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements*. Applicants may also request application materials from: Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

B. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portion (Forms RME–1 and RME–2) of the application package on a compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission, which must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance".

2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs". Federal funding requested (the total of direct and indirect costs) must not exceed $10,000.

3. A completed and signed OMB Standard Form 424–B, "Assurances, Non-constructive Programs".

4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page.

Part II—A written narrative of no more than 2 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the third evaluation criterion, is to be completed in detail in RME Form–2, applicants may wish to highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 2 pages will be reviewed.

• No smaller than 12-point font size.

• Use an easily readable font face (*e.g.*, Arial, Geneva, Helvetica, Times Roman).

• 8.5 by 11 inch paper.

• One-inch margins on each page.

• Printed only on one side of paper.
• Unbound, held together only by rubber bands or metal clips; not bound or stapled in any other way.

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424–A are derived.

Part IV—Provide a "Statement of Non-financial Benefits". (Refer to Section III, Eligibility Information, above).

5. "Statement of Work", Form RME–2, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

C. Submission Dates and Times

Applications Deadline: June 2, 2006, 5 p.m. EDT. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

D. Intergovernmental Review.

Not applicable.

E. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Alcohol, food, beverage or entertainment;

g. Pay costs incurred prior to receiving a cooperative partnership agreement;

h. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

F. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 60 percent reimbursement of the funds awarded under the cooperative partnership agreement as indicated in Section III. Eligibility Information, C. Other—Non-financial Benefits. One goal of the Commodity Partnerships Small Sessions Program is to maximize the use of the limited funding available for risk management education for producers of Priority Commodities. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

G. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement.

b. RMA will withhold all indirect cost rate funds for an award to an applicant requesting indirect costs if the applicant has not negotiated an indirect cost rate with its cognizant Federal agency.

c. If an applicant is in the process of negotiating an indirect cost rate with its cognizant Federal agency, RMA will withhold all indirect cost rate funds from that applicant until the indirect cost rate has been established.

d. If an applicant's indirect cost rate has expired or will expire prior to award announcements, a clear statement on renegotiation efforts must be included in the application.

e. It is incumbent on all applicants to have a current indirect cost rate or begin negotiations to establish an indirect cost rate prior to the submission deadline. Because it may take several months to obtain an indirect cost rate, applicants needing an indirect cost rate are encouraged to start work on establishing these rates well in advance of submitting an application. The U.S. Office of Management and Budget (OMB) is responsible for assigning cognizant Federal agencies.

f. Applicants may be asked to provide a copy of their indirect cost rate negotiated with their cognizant agency.

H. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Services should allow for the extra security handling time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA/RME, Room 5720, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Services: Attention: Risk Management Education Program, USDA/RMA/RME/Stop 0808, Room 5720, South Building, 1400 Independence Ave, SW., Washington, DC 20250–0808.

I. Electronic submissions

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to *http://www.grants.gov,* click on "Find Grant Opportunities", click on "Search Grant Opportunities," and enter the CFDA number (beginning of the RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov.*

J. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until after the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Commodity Partnerships Small Sessions Program will be evaluated within each RMA Region according to the following criteria:

Priority—Maximum 10 Points

The applicant can submit projects that are not related to Priority Commodities. However, priority will be given to projects relating to Priority Commodities and the degree in which such projects relate to the Priority Commodities. Projects that relate solely to Priority Commodities will be eligible for the most points.

Project Benefits—Maximum 25 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 15 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Applicants are required to submit this Statement of Work on Form RME–2.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective RMA Region will receive higher rankings.

Past Performance—Maximum 10 Points

If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current federal assistance agreements. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA reserves the right to add up to 10 points and subtract 5 points to applications due to past performance. Applicants with very good past performance will receive a score from 6–10 points. Applicants with acceptable past performance will receive a score from 1–5 points. Applicants with unacceptable past performance will receive a score of minus 5 points for this evaluation factor. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. Under this cooperative partnership agreement, RMA will subjectively rate the recipient on project performance as indicated in Section II, G. The applicant must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project—Note: cannot exceed 60% of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or that are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel

will then rank each application against others within the RMA Region according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 45. Funding will not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative partnership agreements with those selected applicants. The agreements provide the amount of Federal funds for use in the project period, the terms, and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2007, whichever is later.

After a partnership agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower than other applications in an RMA Region, or applications that are highly similar to a higher-scoring application in the same RMA Region. Highly similar is an application that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded cooperative partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

2. Requirement To Provide Project Information to an RMA-Selected Contractor

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application, are available at the address, and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Award recipients of all cooperative partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), 7 CFR part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires award recipients to submit Form RD 400–4, Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

C. Reporting Requirements

Award recipients will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (Form RME–3) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Recipients will be required to submit prior to the award:

- A completed and signed Form RD 400–4, Assurance Agreement (Civil Rights).
- A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities".
- A completed and signed AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
- A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace".
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

For Further Information Contact: Applicants and other interested parties are encouraged to contact: Lon Burke, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, Washington, DC 20250–0808, phone: 202–720–5265, fax: 202–690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements*.

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.457 (Commodity Partnerships for Risk Management Education), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on April 26, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–6669 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Commodity Partnerships for Risk Management Education (Commodity Partnerships Program)

Announcement Type: Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements—Correction.

Catalog of Federal Domestic Assistance Number (CFDA): 10.457.

Dates: Applications are due June 2, 2006, 5 p.m. EDT.

Summary: Due to technical errors, the following notice supersedes the original Request for Applications, published on April 18, 2006 for Commodity Partnerships for Risk Management Education Program at 71 FR 19851–19858.

Overview: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $5.0 million for Commodity Partnerships for Risk Management Education (the Commodity Partnerships Program). The purpose of this cooperative partnership agreement program is to deliver training and information in the management of production, marketing, and financial risk to U.S. agricultural producers. The program gives priority to educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage. A maximum of 40 cooperative partnership agreements will be funded, with no more than four in each of the ten designated RMA Regions. The maximum award for any of the 40 cooperative partnership agreements will be $150,000. Recipients of awards must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project.

This Announcement Consists of Eight Parts:

I. Funding Opportunity Description

A. Legislative Authority

The Commodity Partnerships Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

D. Project Goal

The goal of this program is to ensure that "* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools."

E. Purpose

The purpose of the Commodity Partnership Program is to provide U.S. farmers and ranchers with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

II. Award Information

A. Type of Award

Cooperative Partnership Agreements, which require the substantial involvement of RMA.

B. Funding Availability

Approximately $5,000,000 is available in fiscal year 2006 to fund up to 40 cooperative partnership agreements. The maximum award will be $150,000. It is anticipated that a maximum of four agreements will be funded for each designated RMA Region. Applicants should apply for funding under that RMA Region where the educational activities will be directed.

In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to award recipients for use in broadening the size or scope of awarded projects if agreed to by the recipient. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2006.

C. Location and Target Audience

RMA Regional Offices and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within their Region.

Billings, MT Regional Office: (MT, WY, ND, and SD).

Davis, CA Regional Office: (CA, NV, UT, AZ, and HI).

Jackson, MS Regional Office: (KY, TN, AR, LA, and MS).

Oklahoma City, OK Regional Office: (OK, TX, and NM).

Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, and NC).

Spokane, WA Regional Office: (WA, ID, OR, and AK).

Springfield, IL Regional Office: (IL, IN, OH, and MI).

St. Paul, MN Regional Office: (MN, WI, and IA).

Topeka, KS Regional Office: (KS, MO, NE, and CO).

Valdosta, GA Regional Office: (AL, GA, SC, FL, and Puerto Rico).

Applicants must designate in their application narratives the RMA Region where educational activities will be conducted and the specific groups of producers within the region that the applicant intends to reach through the project. Priority will be given to producers of Priority Commodities. Applicants proposing to conduct educational activities in more than one RMA Region must submit a separate application for each RMA Region. This requirement is not intended to preclude producers from areas that border a designated RMA Region from participating in that region's educational activities. It is also not intended to prevent applicants from proposing the use of certain informational methods, such as print or broadcast news outlets, that may reach producers in other RMA Regions.

D. Maximum Award

Any application that requests Federal funding of more than $150,000 will be rejected.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award

Recipient Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the award recipient will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.
- Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.
- Document all educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient may also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

- Assist in the selection of subcontractors and project staff.
- Collaborate with the recipient in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.
- Collaborate with the recipient in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.
- Collaborate with the recipient on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Conduct an evaluation of the performance of the recipient in meeting the deliverables of the project.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this

program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applicants that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Contact To Request Application Package

Program application materials for the Commodity Partnerships Program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements*. Applicants may also request application materials from: Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

B. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portion (Forms RME 1 and RME–2) of the application package on a compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission, which must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance."

2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs." Federal funding requested (the total of direct and indirect costs) must not exceed $150,000.

3. A completed and signed OMB Standard Form 424–B, "Assurances, Non-constructive Programs."

4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page

Part II—A written narrative of no more than 10 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the third evaluation criterion, is to be completed in detail in RME Form-2, applicants may wish to highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- No smaller than 12 point font size.
- Use an easily readable font face (*e.g.*, Arial, Geneva, Helvetica, Times Roman).
- 8.5 by 11 inch paper.
- One-inch margins on each page.
- Printed on only one side of paper.
- Held together only by rubber bands or metal clips; not bound or stapled in any other way.

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424-A are derived.

Part IV—Provide a "Statement of Non-financial Benefits." (Refer to Section III, Eligibility Information, C. Other—Non-financial Benefits, above.)

5. "Statement of Work," Form RME–2, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

C. Submission Dates and Times

Applications Deadline: Applications are due June 2, 2006, 5 p.m. EDT. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

D. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage, or entertainment;

g. Pay costs incurred prior to receiving a partnership agreement;

h. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

E. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 60 percent reimbursement of the funds awarded under the cooperative partnership agreement as indicated in Section III. Eligibility Information, C. Other—Non-financial Benefits. One goal of the Commodity Partnerships program is to maximize the use of the limited funding available for risk management education for producers of Priority Commodities. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

F. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement.

b. RMA will withhold all indirect cost rate funds for an award to an applicant requesting indirect costs if the applicant has not negotiated an indirect cost rate with its cognizant Federal agency.

c. If an applicant is in the process of negotiating an indirect cost rate with its cognizant Federal agency, RMA will withhold all indirect cost rate funds from that applicant until the indirect cost rate has been established.

d. If an applicant's indirect cost rate has expired or will expire prior to award announcements, a clear statement on renegotiation efforts must be included in the application.

e. It is incumbent on all applicants to have a current indirect cost rate or begin negotiations to establish an indirect cost rate prior to the submission deadline. Because it may take several months to obtain an indirect cost rate, applicants needing an indirect cost rate are encouraged to start work on establishing these rates well in advance of submitting an application. The U.S. Office of Management and Budget (OMB) is responsible for assigning cognizant Federal agencies.

f. Applicants may be asked to provide a copy of their indirect cost rate negotiated with their cognizant agency.

G. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Services should allow for the extra security handling time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA/RME, Room 5720, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Services: Attention: Risk Management Education Program, USDA/RMA/RME/ Stop 0808, Room 5720, South Building, 1400 Independence Ave, SW., Washington, DC 20250–0808.

H. Electronic Submissions

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to *http://www.grants.gov*, click on "Find Grant Opportunities," click on "Search Grant Opportunities," and enter the CFDA number (located at the beginning of this RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

I. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Commodity Partnerships Program will be evaluated within each RMA Region according to the following criteria:

Priority—Maximum 10 Points

The applicant can submit projects that are not related to Priority Commodities. However, priority is given to projects relating to Priority Commodities and the degree in which such projects relate to the Priority Commodities. Projects that relate solely to Priority Commodities will be eligible for the most points.

Project Benefits—Maximum 35 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the total number of producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 15 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Applicants are required to submit this Statement of Work on Form RME–2.

Partnering—Maximum 15 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness

professionals, and agricultural leaders to carry out a local program of education and information in a designated RMA Region. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the RMA Region; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective RMA Region will receive higher rankings.

Past Performance—Maximum 10 Points

If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current federal assistance agreements. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA reserves the right to add up to 10 points to applications due to past performance. Applicants with very good past performance will receive a score from 6–10 points. Applicants with acceptable past performance will receive a score from 1–5 points. Applicants with unacceptable past performance will receive a score of minus 5 points for this evaluation factor. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. Under this cooperative partnership agreement, RMA will subjectively rate the recipient on project performance as indicated in Section II, G.

The applicant must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

Budget Appropriateness and Efficiency—Maximum 15 points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project—**Note:** cannot exceed 60% of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 60. Funding will not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership agreements with those selected applicants. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the

award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2007, whichever is later.

After a partnership agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower than other applications in an RMA Region, or applications that propose to deliver education to groups of producers in an RMA Region that are largely similar to groups reached in a higher ranked application.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

2. Requirement To Provide Project Information to an RMA-selected Representative

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded partnership agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Project leaders of all partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires that recipients submit Form RD 400–4, Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Conference

RMA requires that project leaders attend a post award conference to become fully aware of agreement

requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility. In their applications, applicants should budget for possible travel costs associated with attending this conference.

C. Reporting Requirements

Award recipients will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (Form RME–3) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Recipients will be required to submit prior to the award:

- A completed and signed Form RD 400–4, Assurance Agreement (Civil Rights).
- A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities."
- A completed and signed AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions."
- A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace."
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Lon Burke, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, Room 5720, Washington, DC 20250–0808, phone: 202–720–5265, fax: 202–690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements*.

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.458 (Crop Insurance Education in Targeted States), and CFDA No. 10.459 (Commodity Partnerships Small Sessions Program). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on April 26, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–6670 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Crop Insurance Education in Targeted States (Targeted States Program)

Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Agreements—Correction.

Catalog of Federal Domestic Assistance Number (CFDA): 10.458.

Dates: Applications are due June 2, 2006, 5 p.m. EDT.

Summary: Due to technical errors, the following notice supersedes the original Request for Applications, published on April 18, 2006 for Crop Insurance Education in Targeted States Program at 71 FR 19864–19871.

Overview: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $4.5 million to fund cooperative agreements under the Crop Insurance Education in Targeted States program (the Targeted States Program). The purpose of this cooperative agreement program is to deliver crop insurance education and information to U.S. agricultural producers in certain States that have been designated as historically underserved with respect to crop insurance. The states, collectively referred to as Targeted States, are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. A maximum of 15 cooperative agreements will be funded, one in each of the 15 Targeted States. Recipients of awards must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.457 (Commodity Partnerships for Risk Management Education), and CFDA No. 10.459 (Commodity Partnerships for Small Agricultural Risk Management Education Sessions). Prospective applicants should carefully examine and compare the notices for each program.

This Announcement Consists of Eight Parts:

Part I—Funding Opportunity Description
A. Legislative Authority
B. Background

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Targeted States Program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (Act).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information. One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 524(a)(2) of the Act. This section authorizes funding for the establishment of crop insurance education and information programs in States that have historically been underserved by the Federal crop insurance program. In accordance with the Act, the fifteen States designated as "underserved" are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming (collectively referred to as "Targeted States").

C. Project Goal

The goal of the Targeted States Program is to ensure that farmers and ranchers in the Targeted States are sufficiently informed so as to take full advantage of existing and emerging crop insurance products.

D. Purpose

The purpose of the Targeted States Program is to provide farmers and ranchers in Targeted States with education and information to be able to understand:

- The kinds of risk addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk;
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools; and
- How to make informed decisions on crop insurance prior to the sales closing date deadline.

II. Award Information

A. Type of Award

Cooperative Agreements, which require the substantial involvement of RMA.

B. Funding Availability

Approximately $4,500,000 is available in fiscal year 2006 to fund up to 15 cooperative agreements, a maximum of one agreement for each of the Targeted States. The maximum funding amount anticipated for each Targeted State's agreement is as follows. Applicants should apply for funding for that Targeted State where the applicant intends on delivering educational activities.

Maine	$225,000
New Hampshire	173,000
Vermont	226,000
Connecticut	225,000
Rhode Island	157,000
Massachusetts	209,000
New York	617,000
New Jersey	272,000
Pennsylvania	754,000
Maryland	370,000
Delaware	261,000
West Virginia	209,000
Nevada	208,000
Utah	301,000
Wyoming	293,000
Total	4,500,000

Funding amounts were determined by first allocating an equal amount of $150,000 to each Targeted State. Remaining funds were allocated on a pro rata basis according to each Targeted State's share of 2000 agricultural cash receipts relative to the total for all Targeted States. Both allocations were totaled for each Targeted State and rounded to the nearest $1,000. In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manager of FCIC, be allocated pro-rata to State award recipients for use in broadening the size or scope of awarded projects within the Targeted State if agreed to by the recipient.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2006.

C. Location and Target Audience

Targeted States serviced by RMA Regional Offices are listed below. Staff

from the respective RMA Regional Offices will provide substantial involvement for Targeted States projects conducted within the respective Regions.

Billings, MT Regional Office: (WY).

Davis, CA Regional Office: (NV and UT).

Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, and WV).

Applicants must designate in their application narrative the Targeted State where crop insurance educational activities for the project will be delivered. Applicants may apply to deliver education to producers in more than one Targeted State, but a separate application must be submitted for each Targeted State.

D. Maximum Award

Any application that requests Federal funding of more than the amount listed above for a project in a given Targeted State will be rejected.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award

Recipient Tasks

In conducting activities to achieve the purpose and goal of this program in a designated Targeted State, the award recipient will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; (c) inform producers of the crop insurance sales closing dates prior to the deadline; and (d) inform producers and agribusiness leaders in the designated Targeted State of training and informational opportunities.
- Deliver crop insurance training and informational opportunities to agricultural producers and agribusiness professionals in the designated Targeted State in a timely manner in order for producers to make informed decisions prior to the crop insurance sales closing dates deadline. This will include organizing and delivering educational activities using instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on crop insurance tools and decisions.
- Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient may also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through three of RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

- Assist in the selection of subcontractors and project staff.
- Collaborate with the recipient in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.
- Collaborate with the recipient in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.
- Collaborate with the recipient on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Conduct an evaluation of the performance of the recipient in meeting the deliverables of the project.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of crop insurance education for farmers and ranchers within a Targeted State. Individuals are eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching.

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

IV. Application and Submission Information

A. Contact to Request Application Package

Program application materials for the Targeted States Program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements.* Applicants may also request application materials from: Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov.*

B. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portion (Forms RME 1 and RME–2) of the application package on a compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission, which must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance."

2. A completed and signed OMB Standard Form 424–A, "Budget

Information—Non-construction Programs." Federal funding requested (the total of direct and indirect costs) must not exceed the maximum level for the respective Targeted State, as specified in section II, Award Information.

3. A completed and signed OMB Standard Form 424–B, "Assurances, Non-constructive Programs."

4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page.

Part II—A written narrative of no more than 10 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the second evaluation criterion, is to be completed in detail in RME Form-2, applicants may wish to highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- No smaller than 12 point font size.
- Use an easily readable font face (*e.g.*, Arial, Geneva, Helvetica, Times Roman).
- 8.5 by 11 inch paper.
- One-inch margins on each page.
- Printed on only one side of paper.
- Held together only by rubber bands or metal clips; not bound or stapled in any other way.

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424–A are derived.

Part IV—(Not required for Targeted States Program).

5. "Statement of Work," (Form RME–2), which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

C. Submission Dates and Times

Applications Deadline: June 2, 2006, 5 p.m. EDT. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

D. Funding Restrictions

Cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative agreement application;

e. Fund political activities;

f. Alcohol, food, beverage, or entertainment;

g. Pay costs incurred prior to receiving a cooperative agreement;

h. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

E. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 60 percent reimbursement of the funds awarded under the cooperative agreement. One goal of the Targeted States Program is to maximize the use of the limited funding available for crop insurance education for Targeted States. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

F. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative agreement.

b. RMA will withhold all indirect cost rate funds for an award to an applicant requesting indirect costs if the applicant has not negotiated an indirect cost rate with its cognizant Federal agency.

c. If an applicant is in the process of negotiating an indirect cost rate with its cognizant Federal agency, RMA will withhold all indirect cost rate funds from that applicant until the indirect cost rate has been established.

d. If an applicant's indirect cost rate has expired or will expire prior to award announcements, a clear statement on renegotiation efforts must be included in the application.

e. It is incumbent on all applicants to have a current indirect cost rate or begin negotiations to establish an indirect cost rate prior to the submission deadline. Because it may take several months to obtain an indirect cost rate, applicants needing an indirect cost rate are encouraged to start work on establishing these rates well in advance of submitting an application. The U.S. Office of Management and Budget (OMB) is responsible for assigning cognizant Federal agencies.

f. Applicants may be asked to provide a copy of their indirect cost rate negotiated with their cognizant agency.

G. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA/RME, Room 5720, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Services: Attention: Risk Management Education Program, USDA/RMA/RME/Stop 0808, Room 5720, South Building, 1400 Independence Ave., SW., Washington, DC 20250–0808.

H. Electronic Submissions

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to *http://www.grants.gov*, click on "Find Grant Opportunities," click on "Search Grant Opportunities," and enter the CFDA number (beginning of the RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Lon Burke, USDA–RMA–RME, phone: (202) 720–5265, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

I. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are

encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Targeted States program will be evaluated within each Targeted State according to the following criteria:

Project Benefits—Maximum 35 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the total number of producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 25 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement. Applicants are required to submit this Statement of Work on Form RME–2.

Partnering—Maximum 15 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated Targeted State. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the Targeted State; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective Targeted State. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective Targeted State will receive higher rankings.

Past Performance—Maximum 10 Points

If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current federal assistance agreements. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA reserves the right to add up to 10 points and subtract 5 points to applications due to past performance. Applicants with very good past performance will receive a score from 6–10 points. Applicants with acceptable past performance will receive a score from 1–5 points. Applicants with unacceptable past performance will receive a score of minus 5 points for this evaluation factor. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. Under this cooperative partnership agreement, RMA will subjectively rate the recipient on project performance as indicated in Section II, G. The applicant must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project—Note: cannot exceed 60% of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA

personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the Targeted State in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within a Targeted State, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the Targeted State according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative agreements for each Targeted State. Funding will not be provided for an application receiving a score less than 60. An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative agreements with those applicants. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2007, whichever is later.

After a cooperative agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores below 60, or applications with evaluation scores that are lower than those of other applications in a Targeted State.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded cooperative agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

2. Requirement to Provide Project Information to an RMA-selected Contractor

Applicants awarded cooperative agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded cooperative agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement to Assure Compliance with Federal Civil Rights Laws

Project leaders of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), 7 CFR part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires that recipients submit Form RD 400–4, Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement to Participate in a Post Award Conference

RMA requires that project leaders attend a post award conference to become fully aware of cooperative agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility. In their applications, applicants should budget for possible travel costs associated with attending this conference.

C. Reporting Requirements

Award recipients will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (Form RME–3) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Recipients will be required to submit prior to the award:

- A completed and signed Form RD 400–4, Assurance Agreement (Civil Rights).
- A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities."
- A completed and signed AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions."
- A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace."
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

For Further Information Contact: Applicants and other interested parties are encouraged to contact: Lon Burke, USDA–RMA–RME, phone: 202–720–5265, fax: 202–690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements/*.

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the Federal Register June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.457 (Commodity Partnerships for Risk Management Education), and CFDA No. 10.459 (Commodity Partnerships Small Sessions Program). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on April 26, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–6668 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet May 19, 2006 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minute, (2) Handout discussion (3) Public Comment, (4) Financial Report (5) Subcommittees (6) Matters before the group/discussion—items of interest (7) Discussion/approval of projects (8) Next agenda and meeting date.

DATES: The meeting will be held on May 19, 2006, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by May 15, 2006. Public comment will have the opportunity to address the committee at the meeting.

Dated: April 25, 2006.

Blaine Baker,

Designated Federal Official.

[FR Doc. 06–4151 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Preliminary Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China

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

DATES: *Effective Date:* May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 and (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the People's Republic of China ("PRC") for the period November 1, 2004, through October 31, 2005. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005). On November 30, 2005, Nucor Corporation, a domestic producer of certain hot-rolled carbon steel flat products, requested that the Department conduct an administrative review of Angang Group International Trade Corporation, Angang Group Hong Kong Co., Ltd., New Iron & Steel Co., Ltd., Shanghai Baosteel Group Corporation, Baoshan Iron and Steel Co., Ltd., and Baosteel Group International Trade Corporation. On December 22, 2005, the Department published a notice of initiation of an antidumping duty administrative review on certain hot-rolled carbon steel flat products from the PRC. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* ("*Notice of Initiation*"), 70 FR 76024 (December 22, 2005). The period of review ("POR") is November 1, 2004 through October 31, 2005. We are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR by the named firms.

On December 27, 2005, the Department issued its antidumping duty questionnaire. On January 6, 2006, Angang Group International Trade Corporation, Angang Group Hong Kong Co., Ltd., New Iron & Steel Co., Ltd. (collectively "Angang"), submitted a letter stating that Angang has no sales, shipments, or entries of subject merchandise to the United States during the POR. Also on January 6, 2006, Shanghai Baosteel Group Corporation, Baoshan Iron and Steel Co., Ltd., and Baosteel Group International Trade Corporation, (collectively "Baosteel"), submitted a letter stating that Baosteel has no sales of subject merchandise to the United States during the POR.

The Department conducted a customs data query for possible entries of subject merchandise into the United States during the POR by Angang and Baosteel ("respondents"). On January 10, 2006, we sent an inquiry to U.S. Customs and Border Protection ("CBP") asking for notification from CBP if it had information contrary to respondents' claims that there were no shipments of subject merchandise into the United States during the POR by the respondents. We received no response from CBP in regard to this January 10, 2006, request, which indicates that CBP did not find any shipments of subject merchandise from respondents during the POR.

Also on January 10, 2006, we requested that CBP provide the entry documentation for certain entries of respondents' merchandise claimed to be non-subject to confirm that these were entries of non-subject merchandise. On February 23, 2006, CBP provided the Department with entry documentation for the specified sales. Based on the results of our corroborative CBP query indicating no shipments of subject merchandise by respondents during the POR, and our analysis of the data contained in the CBP-provided customs entry documentation, showing non-subject entries, we find that there is no evidence on the record of entries of subject merchandise into the United States during the POR by Angang or Baosteel. *See* Memorandum to the File dated April 12, 2006. Therefore, we are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR.

Scope of the Review

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels,

and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this review, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under review is dispositive.

Period of Review

The POR is November 1, 2004 through October 31, 2005.

Preliminary Rescission of Review

Because neither Angang nor Baosteel made shipments to the United States of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding this review of the antidumping duty order on certain hot-rolled carbon steel flat products from the PRC for the period of November 1, 2004, to October 31, 2005. If the rescission is confirmed in our final results, the cash deposit rate for Angang and Baosteel will continue to be the rate established in the most recently completed segment of this proceeding.

Interested parties may submit comments for consideration in the Department's final results not later than 30 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on interested parties on the Department's service list in accordance with 19 CFR 351.303(f). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results, and will publish these results in the **Federal Register**.

This notice is published in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 26, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–6672 Filed 5–2–06; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan; Final Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On February 13, 2006, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the preliminary rescission of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Japan. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Rescission of Antidumping Duty Administrative Review*, 71 FR 7522 (February 13, 2006) (*Preliminary Rescission*). The period of review (POR) is July 1, 2004, to June 30, 2005. We are rescinding this review because there were no entries of SSSSC for consumption in the United States during the POR that are subject to review.

DATES: *Effective Date:* May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers Kawasaki Steel Corporation (Kawasaki) and its alleged successor-in-interest, JFE Steel Corporation (JFE).[1] On February 13, 2006, the Department published in the **Federal Register** the preliminary rescission of the administrative review of SSSSC from Japan. *See Preliminary Rescission.* We invited parties to comment on our preliminary rescission of this administrative review, however we received no such comments from interested parties.

After examining the information on the record, we continue to find that JFE did not have any entries of subject merchandise during this POR. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this administrative review. For further discussion, see the "Rescission of Review" section of this notice, below.

Scope of the Order

For purposes of this order, the products covered are certain SSSSC. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in

[1] While the Department initiated this administrative review with respect to merchandise manufactured and/or exported by Kawasaki as well as its alleged successor-in-interest, JFE, due to Kawasaki/JFE's no-shipment claim, the Department did not have the opportunity to conduct a successor-in-interest analysis in order to confirm whether, for antidumping purposes, JFE is the successor-in-interest to Kawasaki with respect to the subject merchandise. However, both the petitioners and respondent have consistently referred to JFE as the successor-in-interest to Kawasaki in their submissions to the Department with respect to this and the previous review. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005).

electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6]

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Period of Review

The POR is July 1, 2004, through June 30, 2005.

Rescission of Review

On October 5, 2005, JFE notified the Department that it did not have any shipments and/or entries of subject merchandise into the United States during the POR. As described in the preliminary results, we confirmed JFE's claim by examining U.S. Customs and Border Protection (CBP) import data and documentation, and comments placed on the record by JFE. Accordingly, we determined that the record contains no evidence that JFE had knowledge of the U.S. destination of a particular JFE-produced shipment of SSSSC during the POR that we observed during our review of the CBP import data. *See Preliminary Rescission*, 71 FR at 7524. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review of the antidumping duty order on stainless steel sheet and strip in coils from Japan for the period of July 1, 2004, through June 30, 2005. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005). We will instruct CBP to liquidate the entry in question at the "All-Others Rate," 40.18 percent, as it was made by an intermediary company (*e.g.*, a reseller) not covered in this review, a prior review, or the less-than-fair-value investigation. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The cash deposit rate for Kawasaki and JFE will continue to be the rate established in the most recently completed segment of this proceeding.

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 26, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–6674 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–501)

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey

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

SUMMARY: In response to a request by the respondent, Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and its affiliated export trading company, Tosyali Dis Ticaret A.S., (collectively, "Toscelik"), the Department of Commerce ("the Department") is conducting a new shipper review of the antidumping duty order on certain welded carbon steel pipe and tube ("welded pipe and tube") from Turkey. This review covers one producer/exporter of the subject merchandise, Toscelik. We preliminarily determine that Toscelik

did not make sales below normal value ("NV"). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties based on the difference between the export price ("EP") and the NV.

EFFECTIVE DATE: May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or George McMahon, at (202) 482–5075, or (202) 482–1167, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department published in the **Federal Register** the *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube from Turkey*, 51 FR 17784 (May 15, 1986). On May 2, 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 22631 (May 2, 2005). On May 31, 2005, in accordance with 19 CFR 351.214 and section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and of the antidumping order on welded carbon steel pipe and tube from Turkey, Toscelik requested a new shipper review.

On June 30, 2005, the Department published a notice of initiation of antidumping duty new shipper review for the period May 1, 2004, through April 30, 2005. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 1, 2004, through April 30, 2005*, 70 FR 39487 (June 30, 2005). On December 5, 2005, the Department extended the deadline for the preliminary results until no later than April 26, 2006. *See Certain Welded Carbon Steel Pipe and Tube From Turkey: Extension of the Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review*, 70 FR 72426 (December 5, 2005).

On July 5, 2005, the Department sent an antidumping duty administrative review questionnaire for Sections A–C to Toscelik.[1] The Department received Toscelik's Section A–C questionnaire response on August 29, 2005. On September 19, 2005, domestic interested parties[2] submitted an allegation that Toscelik's home market sales were made at prices below the cost of production ("COP"). The Department analyzed the information referenced in petitioners' letter of September 19, 2005, and determined that the COP allegation was company–specific, employed a reasonable methodology, provided evidence of below–cost sales, and included models which are representative of the broader range of pipe and tube sold by Toscelik. Therefore, we determined that the petitioners' COP allegation provided a reasonable basis to initiate a new shipper COP review. *See* Memorandum from LaVonne Clark to Neal Halper entitled "Petitioners' Allegation of Sales Below the COP for Toscelik Profil ve Sac Endustrisi A.S." ("COP Memo"), dated September 28, 2005, on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 ("CRU").

As a result, the Department issued a Section D questionnaire to Toscelik on September 28, 2005. The Department granted an extension to Toscelik and subsequently received Toscelik's Section D questionnaire response on November 9, 2005. The Department subsequently issued three supplemental questionnaires regarding Sections A–C of the Department's initial questionnaire to Toscelik on October 7, 2005, January 6, 2006, and February 10, 2006, respectively. The Department also issued two supplemental questionnaires regarding Section D of the Department's initial questionnaire on November 30, 2005, and January 19, 2006, respectively. The Department received Toscelik's three supplemental questionnaire responses for Sections A–C on November 4, 2005, February 6, 2006, and February 21, 2006, respectively. The Department received Toscelik's two supplemental questionnaire responses for Section D on December 7, 2005, and February 2, 2006, respectively. The Department conducted a verification of Toscelik's cost of production from March 6 through March 10, 2006, and a verification of Toscelik's sales from March 13 through March 17, 2006.

[1] The questionnaire consists of sections A (general information), B (sales in the home market or to third countries), C (sales to the United States), D (cost of production/constructed value), and E (cost of further manufacturing or assembly performed in the United States).

[2] The domestic interested parties are Allied Tube and Conduit Corp., IPSCO Tubulars, Inc., Sharon Tube Company and Wheatland Tube Company.

Scope of the Order

The products covered by this order include circular welded non–alloy steel pipes and tubes, of circular cross–section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold–drawn or cold–rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified the information provided by Toscelik. We used standard verification procedures, including an examination of the relevant sales and financial records. Our verification results are detailed in the company–specific verification report placed in the case file in the CRU. *See* Toscelik's Sales Verification Report and Toscelik's Cost Verification Report, dated April 26, 2006, and Calculation Memorandum, dated April 26, 2006, in the CRU.

Product Comparisons

We compared the EP to the NV, as described in the *Export Price* and

Normal Value sections of this notice. In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison market that were identical with respect to the following characteristics: (1) Grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; and (5) end finish. When there were no sales of identical merchandise in the home market to compare with the U.S. sale, we compared the U.S. sale with the most similar merchandise based on the characteristics listed above in the order of priority listed.

Export Price

Toscelik sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the record facts of this review. Therefore, in accordance with section 772(a) of the Act, we applied the Department's EP methodology for all of Toscelik's sales.

We calculated EP using, as starting price, the packed, delivered price to the unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we made the following deductions from the starting price (gross unit price), where appropriate: foreign inland freight from the mill to warehouse to port, foreign brokerage and handling, international freight, marine insurance, and other related charges. In addition, in accordance with section 772(c)(1)(B) of the Act, we added duty drawback to the starting price, having found preliminarily that such an adjustment was warranted under the standard two–prong test. *See Allied Tube and Conduit Corp. v. United States*, 374 F. Supp 2d 1257 (CIT May 12, 2005).

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Toscelik's volume of home–market sales of the foreign like product to its respective volume of the U.S. sale of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Toscelik's aggregate volume of home–market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that Toscelik's home market was viable. We calculated NV as noted in the "Calculation of NV Based on Comparison Market Prices" and "Calculation of NV Based on Constructed Value" sections of this notice.

B. Cost of Production ("COP") Analysis

As referenced in the background section, the Department conducted an analysis of the domestic interested parties' allegation that Toscelik's home market sales were made below the COP. We found that there were reasonable grounds to believe or suspect that Toscelik's sales of the foreign like product in the HM were made at prices below their respective COP. Accordingly, pursuant to section 773(b)(1) of the Act, we initiated a new shipper COP review to determine whether Toscelik's sales were made at prices below their COP. *See* COP Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Toscelik's costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses ("SG&A") and the cost of all expenses incidental to packing and preparing the foreign like product for shipment. We relied on the COP data submitted by Toscelik except for the following adjustments. We adjusted Toscelik's fixed overhead ("FOH") costs to differentiate each product's depreciation expenses based on the equipment and machinery used to manufacture the product (*i.e.*, the hydro–static testing, galvanizing, and threading processes). For each reported product, we determined the applicable manufacturing processes (*e.g.*, galvanizing process is applicable to all galvanized products) and adjusted that product's FOH accordingly. We also increased the reported product–specific cost of manufacturing ("COM") (*i.e.*, materials and fabrication) to account for an inflation adjustment made to finished goods inventory at the end of fiscal year ("FY") 2004. We calculated this adjustment independently of the FOH adjustment. Finally, we revised Toscelik's reported general and administrative ("G&A") expense ratio to exclude the G&A expenses of Toscelik's affiliated resellers and include other ordinary expenses and losses incurred by Toscelik in FY 2004. We then applied this ratio to the product–specific COM plus packing to determine the product–specific G&A expenses.

2. Test of Comparison Market Sales Prices

We compared the weighted–average COP figures to home–market sales of the foreign like product as required by section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product–specific basis, we compared the COP to the home–market prices, less any applicable movement charges, rebates, discounts, packing, and direct selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we do not disregard any below–cost sales of that product because we determine that the below–cost sales were not made in "substantial quantities." We found that, for certain products, more than 20 percent of Toscelik's home–market sales were sold at prices below the COP. Further, we found that the prices for these sales did not permit the recovery of all costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of NV Based on Comparison Market Prices

For Toscelik, for those comparison products for which there were sales at prices above the COP, we based NV on home–market prices. We were able to match the U.S. sale to contemporaneous sales, made in the ordinary course of trade, of a similar foreign like product, based on the product matching characteristics. For Toscelik, we calculated NV based on ex–works mill/warehouse to unaffiliated customers, or prices to affiliated customers, which were determined to be at arm's length (see discussion below regarding these sales). We made deductions, where appropriate, from the starting price for discounts, rebates, inland freight, and pre–sale warehouse expense. Additionally, we added billing adjustments because these adjustments were reported as negative values in Toscelik's home market database. In accordance with section 773(a)(6) of the Act, we deducted home–market packing costs and added U.S. packing costs.

Arm's–Length Sales

We included in our analysis Toscelik's home–market sales to affiliated customers only where we determined that such sales were made at

arm's–length prices, *i.e.*, at prices comparable to prices at which Toscelik sold identical merchandise to their unaffiliated customers. Toscelik's sales to affiliates constituted less than five percent of overall home–market sales. To test whether the sales to affiliates were made at arm's–length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), at 829–831 (*see* H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade ("LOT") as U.S. sales, either EP or CEP. When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting–price of sales in the home market. To determine whether home–market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment pursuant to section 773(a)(7)(A) of the Act.

In implementing these principles, we examined information from Toscelik regarding the marketing stages involved in the reported home–market and EP sales, including a description of the selling activities performed for each channel of distribution. In the home market, Toscelik reported one LOT and two channels of distribution. In the U.S. market, Toscelik reported one LOT and one channel of distribution. We found that there is very little distinction in the selling functions performed for each channel of distribution, and therefore, we determine there is one LOT for the home market and the U.S. market.

For home–market sales, we found that Toscelik Profil ve Sac A.S. ("Toscelik Profil"), the producer of subject merchandise, sells directly to distributors and Tosyali Metal Ticaret A.S. ("Tosyali Metal," Toscelik Profil's domestic trading partner), sells to retailers and end–users. In both instances, the sales are made mill–direct, ex–works without the use of a selling agent. In some cases, Tosyali Metal arranged for freight; however, the purchaser took possession of the merchandise upon loading in all cases. There were no additional services undertaken by Toscelik Profil.

Tosyali Dis Ticaret A.S.'s ("Tosyali Foreign Trade Co.") one U.S. sale was made at only one LOT. Tosyali Foreign Trade Co. handles the direct communication with the customer, organizes logistics and the exportation of the merchandise. The merchandise for export is moved from Toscelik Profil's production facility to the port for loading and Tosyali Foreign Trade Co. arranged for ocean freight. Therefore, Tosyali Foreign Trade Co. does not take physical possession of exported pipes. Toscelik's one sale to the U.S. was made on a cost and freight ("CFR") basis[3] without the use of a selling agent. According to the terms of this sale, the seller is responsible for ocean freight, but not for inland freight in the country of destination. There were no other sales activities undertaken by Tosyali Foreign Trade Co.

Because Toscelik's sales functions in each market were nearly identical and do not vary by customer category, we have determined that the LOT in each market is the same and, therefore, have made no LOT adjustments in comparing its U.S. and home–market sales.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine that a fluctuation exists, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice.

Date of Sale

Toscelik reported the date of sale as the invoice date, which is generated for its sale to the United States. During the sales verification of Toscelik, the Department reviewed the U.S. sales processes with company officials to establish that Toscelik's reporting of invoice date as the date of sale was appropriate. Toscelik sells from inventory in the home market and its U.S. sale was produced to order. We reviewed sample order fax confirmations and invoices, which support Toscelik's report of the sales date based on invoice date in the home market. We confirmed that the invoice date is the date when Toscelik's sales are registered into its accounting system.[4]

However, we note that for some observations in the home market database, the invoice date is later than the ship date. Therefore, in order to correct the reporting, we programmed the date of sale based on the shipment date rather than the invoice date. The Department uses shipment date as date of sale where shipment date occurred prior to the invoice date, as it is the Department's practice to use the date of shipment as the date of sale where the date of shipment precedes invoice date. *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 623 (January 6, 2004). *See also Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying Decision Memorandum at Comment 3.

In addition, the Department confirms that the invoice date reflects the date of sale for Toscelik's sale to the United States. At verification, the Department

[3] The International Chamber of Commerce's ("ICC") Incoterms defines the shipping contract term, "CFR," as "cost and freight" and indicates that the seller must pay the cost and freight necessary to bring the goods to the named port of destination. *See* http://www.iccwbo.org/incoterms/preambles/pdf/CFR.pdf.

[4] *See* Verification Report of the Sales Response of Toscelik Profil ve Sac A.S., Tosyali Metal Ticaret A.S., and Tosyali Dis Ticaret A.S. (collectively, Toscelik) in the Antidumping Review of Certain Welded Pipe and Tube from Turkey, dated April 26, 2006.

confirmed that the final quantity amount of the U.S. sale was not known until Turkish Customs weighed the shipment.[5] Therefore, the final terms of the U.S. sale were not finalized until the shipment was officially weighed and invoiced upon shipment to the customer.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 2004, through April 30, 2005:

Manufacturer/Exporter	Margin (percent)
Toscelik	0.00 percent

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* section 351.224(b) of the Department's regulations. Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all entries of subject merchandise by those importers. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total calculated entered value of examined sales. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Toscelik of certain welded carbon steel pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash–deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date as provided for by sections 751(a)(1) and 751 (a)(2)(C) of the Act:

- for subject merchandise manufactured and exported by Toscelik, the cash deposit rate shall be 0.00 percent;
- for subject merchandise exported by Toscelik but not manufactured by Toscelik, the cash–deposit rate will continue to be the "All Others" rate or the rate applicable to the manufacturer, if so established;
- the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding;
- if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of this proceeding in which that manufacturer participated;
- if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.74 percent, the All Others rate established in the less–than-fair–value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

We are issuing and publishing these preliminary results of new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: April 26, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–6676 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–S

[5] *See Id.* at 9-10.

DEPARTMENT OF COMMERCE

International Trade Administration

University of Connecticut, et al., Notice of Consolidated Decision on Applications, for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 06–007. Applicant: University of Connecticut, Storrs, CT 06269. Instrument: Electron Microscope, Model Technai G² Spirit BioTWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 71 FR 18082, April 10, 2006. Order Date: April 15, 2005.

Docket Number: 06–009. Applicant: The New York Structural Biology Laboratory, New York, NY 10027. Instrument: Electron Microscope, Model JEM–2100F. Manufacturer: JEOL Ltd., Japan.Intended Use: See notice at 71 FR 18082, April 10, 2006. Order Date: May 26, 2005.

Docket Number: 06–010. Applicant: Emory University Hospital, Atlanta, GA 30322. Instrument: Electron Microscope,

Model Morgagni 268. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 71 FR 18082, April 10, 2006. Order Date: September 1 2005.
Docket Number: 06–011 Applicant: President and Fellows of Harvard College, Cambridge, MA 02138. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 71 FR 18082, April 10, 2006. Order Date: June 17, 2005.
Docket Number: 06–013. Applicant: Ames Laboratory - U.S. Department of Energy, Ames, Iowa 50011–3020. Instrument: Electron Microscope, Model Technai G² F20 X–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 71 FR 18082, April 10, 2006. Order Date: September 7, 2005.
Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–6675 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC

Docket Number: 06–015. Applicant: University of Kentucky, Department of Chemistry, 235 Chem–Phys. Bldg., Lexington, KY 40506–0055. Instrument: Optical Parametric Oscillator System. Manufacturer: GWU Lasertechnik, Germany. Intended Use: The instrument is intended to be used to study small silicon, germanium, phosphorus and boron containing molecules in the gas phase using the technique of laser–induced fluorescence to develop methods for identifying and characterizing these molecules and to determine their molecular energy levels and geometries and to quantify these reactive molecules in laboratory and industrial environments. Application accepted by Commissioner of Customs: March 27, 2006.

Docket Number: 06–016. Applicant: University of Maryland, Materials Science and Engineering Department, Building 225, Lab 1246, College Park, MD 20742. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to characterize nanomaterials and nanocomposites at the atomic level. These include semiconductor nanostructures, polymeric materials, metal nanoparticles, ferroelectric/ferromagnetic oxide nanocomposites and semiconductor nanowires. Properties of materials examined include crystal structure and quality of material, structural defects, and morphology using techniques of electron diffraction, high resolution lattice imaging, bright/dark field imaging and obtaining electron diffraction patterns and images of areas as small as a few nanometers in diameter. The instrument will also be used in courses and for conducting individual graduate research projects. Application accepted by Commissioner of Customs: April 4, 2006.

Docket Number: 06–017. Applicant: University of Michigan, Materials Science and Engineering Dept., 3062 H.H. Dow Bldg., 2300 Hayward Street, Ann Arbor, MI 48109–2136. Instrument: Ultrasonic Fatigue Testing Equipment. Manufacturer: BOKU Institute of Physics, Austria. Intended Use: The instrument is intended to be used to study ultra–high cyclic fatigue behavior of materials in the gigacycle regime where little data is currently available. Measurements for understanding crack growth behavior in various materials will be obtained for aiding in the prediction of lifetime behavior with cyclic loading frequencies to 20KHz. It will also be used to characterize new materials being developed to perform under high cyclic loading conditions, such as next generation superalloys used in aircraft and power generating turbines. Application accepted by Commissioner of Customs: April 10, 2006.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–6677 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate Of Review

ACTION: Notice of revocation of Export Trade Certificate of Review Application No. 03–00004.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to NYVZ Import & Export Inc. on November 10, 2003. Because this Certificate Holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to NYVZ Import & Export Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on November 10, 2003 to NYVZ Import & Export Inc.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (Section 308 of the Act, 15 U.S.C. 4018, section 325.14(a) of the Regulations, 15 CFR 325.14(a)).

The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a

complete Annual Report may be the Basis for Revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)). On December 16, 2004, the Secretary of Commerce sent to NYVZ Import & Export Inc., a letter containing Annual Report questions stating that its annual report was due on January 31, 2005. A reminder was sent on November 8, 2005 with a due date of December 23, 2005. The Secretary has received no written response from NYVZ Import & Export Inc., to any of these letters. On March 24, 2006, and in accordance with Section 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Secretary of Commerce sent a letter by Certified Mail to notify NYVZ Import & Export Inc., that the Secretary was formally initiating the process to revoke its Certificate for failure to file an annual report. NYVZ Import & Export Inc., has not responded within the 30 day deadline, April 17, 2006. Pursuant to Section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Secretary considers the failure of NYVZ Import & Export Inc., to respond to be an admission of the statements contained in the notification letter. The Secretary has determined to revoke the Certificate issued to NYVZ Import & Export Inc., for its failure to file an annual report. The Secretary has sent a letter, dated April 26, 2006 to notify the NYVZ Import & Export Inc., of its final determination.

The Revocation is effective thirty (30) days from the date of publication of this notice, see 15 CFR 325.10 (c) (4). Any person aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register**, see 325.11 of the Regulations, 15 CFR 325.11.

Dated: April 24, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–6592 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review Application No. 00–00001.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to North America Export Trading, LLC., on June 8, 2000. Because this Certificate Holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to North America Export Trading, LLC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a Toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on June 8, 2000 to North America Export Trading, LLC.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (section 308 of the Act, 15 U.S.C. 4018, section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review (sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete Annual Report may be the Basis for Revocation (sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)). On May 28, 2005, the Secretary of Commerce sent to North America Export Trading, LLC., a letter containing Annual Report questions stating that its annual report was due on July 23, 2005. A reminder was sent on November 8, 2005 with a due date of December 23, 2005. The Secretary has received no written response from North America Export Trading, LLC., to any of these letters. On March 17, 2006, and in accordance with section 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Secretary of Commerce sent a letter by Certified Mail to notify North America Export Trading, LLC., that the Secretary was formally initiating the process to revoke its Certificate for failure to file an annual report. The Secretary received notification that the letter was received by North America Export Trading, LLC., on March 23, 2006. Pursuant to section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Secretary considers the failure of North America Export Trading, LLC., to respond to be an admission of the statements contained in the notification letter. The Secretary has determined to revoke the Certificate issued to North America Export Trading, LLC., for its failure to file an annual report. The Secretary has sent a letter, dated April 28, 2006 to notify the North America Export Trading, LLC., of its final determination.

The Revocation is effective thirty (30) days from the date of publication of this notice (325.10(c))(4) of the Regulations, 15 CFR 325.10(c)). Any person aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register** "(325.11 of the Regulations, 15 CFR 325.11)."

Dated: April 28, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–6690 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review, Application No. 84–00014.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Aires Group, Ltd., on July 10, 1984. Because this Certificate Holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Aires Group, Ltd.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a Toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III ("the Regulations") are found at 15 CFR Part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on July 10, 1984 to Aires Group, Ltd.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (Section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review

(§§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete Annual Report may be the Basis for Revocation (§§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)). On June 30, 2005, the Secretary of Commerce sent to Aires Group, Ltd., a letter containing Annual Report questions stating that its annual report was due on August 25, 2005. A reminder was sent on October 21, 2005 with a due date of April 17, 2006. The Secretary has received no written response from Aires Group, Ltd., to any of these letters. On March 17, 2006, and in accordance with § 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Secretary of Commerce sent a letter by Certified Mail to notify Aires Group, Ltd., that the Secretary was formally initiating the process to revoke its Certificate for failure to file an annual report. The Secretary received notification that the letter was received by Aires Group, Ltd., on March 22, 2006. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Secretary considers the failure of Aires Group, Ltd., to respond to be an admission of the statements contained in the notification letter. The Secretary has determined to revoke the Certificate issued to Aires Group, Ltd., for its failure to file an annual report. The Secretary has sent a letter, dated April 28, 2006 to notify the Aires Group, Ltd., of its final determination.

The Revocation is effective thirty (30) days from the date of publication of this notice (§ 325.10(c)(4) of the Regulations, 15 CFR 325.10(c)). Any person aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register** "(§ 325.11 of the Regulations, 15 CFR 325.11)."

Dated: April 28, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–6711 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

EFFECTIVE DATE: May 3, 2006.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between January 1, 2006, and March 31, 2006. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of March 31, 2006. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0498.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent "Notice of Scope Rulings" was published on February 2, 2006. *See* 71 FR 5646. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between January 1, 2006, and March 31, 2006, inclusive. It also lists any scope or anticircumvention inquiries pending as of March 31, 2006, as well as scope rulings inadvertently omitted from prior published lists. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between January 1, 2006 and March 31, 2006:

Canada

A–122–838, C–122–839: Certain Softwood Lumber Products from Canada

Requestor: Coalition for Fair Lumber Imports Executive Committee; lumber products meeting the written description of the merchandise that may be entering under HTSUS 4409.10.05, including products continually shaped along the ends are within the scope of the orders; March 3, 2006

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Eighteen Karat International Product Sourcing, Inc.; its 12 "orchid" candles are not included within the scope of the antidumping duty order; January 10, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kohl's Department Stores, Inc.; its chicken shaped candle is not included within the scope of the antidumping duty order; January 10, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Design Ideas, Ltd.; its "Lounge Light" petroleum wax candles equipped with a color–changing light emitting diode (LED) and battery, and manufactured in the People's Republic of China (PRC), are within the scope of the antidumping duty order, and its "Lumanae" petroleum wax candles equipped with a color–changing LED and battery, and manufactured in Malaysia, are not included within the scope of the antidumping duty order; March 21, 2006.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Central Purchasing, LLC.; an accessory cart that is specifically designed to fit and carry a "Breaker Hammer," and is imported separately from the Breaker Hammer, is not included within the scope of the antidumping duty order; February 1, 2006.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Central Purchasing, LLC.; its two "welding carts" are not included within the scope of the antidumping duty order; February 15, 2006.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Vertex International, Inc.; certain components of its Garden Cart, if imported separately, are not included within the scope of the order; March 8, 2006.

Anticircumvention Determinations Completed Between January 1, 2006 and March 31, 2006:

None.

Anticircumvention Inquiries Terminated Between January 1, 2006 and March 31, 2006:

None.

Scope Inquiries Terminated Between January 1, 2006 and March 31, 2006:

People's Republic of China

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Cape Craftsmen; whether various cabinets/commodes are within the scope of the antidumping duty order; requested October 28, 2005; terminated February 10, 2006.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: L. Powell Company; whether certain jewelry armoires without felt or felt–like lining on the door are within the scope of the antidumping duty order; requested November 30, 2005; terminated January 31, 2006.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Whitewood Industries; whether certain wooden jewelry armoires lined with felt of felt–like material are within the scope of the antidumping duty order; requested December 5, 2005; terminated February 10, 2006.

Scope Inquiries Pending as of March 31, 2006:

Canada

A–122–838, C–122–839: Certain Softwood Lumber Products from Canada

Requestor: Montana Reclaimed Lumber Co.; whether antique softwood lumber reclaimed from demolition projects are within the scope of the orders; requested January 10, 2006.

Italy

A–475–059: Pressure Sensitive Plastic Tape from Italy

Requestor: Ritrama, Inc.; whether certain varieties of plastic tape are within the scope of the antidumping duty order; requested December 13, 2005; initiated January 30, 2006.

People's Republic of China

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Central Purchasing, LLC; whether its gooseneck claw wrecking bar is within the scope of the bars and wedges antidumping duty order; requested March 13, 2006.

A–570–832: Pure Magnesium from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country and exported to the United States using pure magnesium ingots originally produced in the PRC is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Mac Industries (Shanghai) Co., Ltd., Jiaxing Yinmao International Treading Co., Ltd., and Fujian Zenithen Consumer Products Co., Ltd.; whether their "moon chair" is within the scope of the antidumping duty order; requested August 18, 2005; initiated November 29, 2005.

A–570–878: Saccharin from the People's Republic of China

Requestor: PMC Specialities Group, Inc.; whether certain saccharin products originating in the PRC and further–processed in Israel are within the scope of the antidumping duty order; requested August 12, 2005; initiated October 26, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Dorel Asia; whether infant (baby) changing tables and toddler beds are within the scope of the antidumping duty order; requested February 15, 2005; initiated November 14, 2005.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Gleason Industrial Products, Inc. and Precision Products, Inc.; whether the "Black and Decker Workmate 525" and "Black and Decker Workmate 500" are within the scope of the antidumping duty order; requested February 7, 2006.

A–570–896: Magnesium Metal from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country, and exported to the United States using pure magnesium ingots originally produced in the PRC, is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Piazza Seafood World LLC; whether certain basa and tra fillets from Cambodia which are a product of Vietnam are not included within the antidumping duty order; requested May 12, 2004; initiated October 22, 2004.

Anticircumvention Inquiries Pending as of March 31, 2006:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered later–developed merchandise which is now circumventing the antidumping duty order; requested October 8, 2004; initiated February 25, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered a minor alteration to the subject merchandise for purposes of circumventing the antidumping duty order; requested October 12, 2004; initiated February 25, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of candles from the PRC without wicks, into which wicks are then inserted after importation, can be considered "merchandise completed or assembled in the United States" and are circumventing the antidumping duty order; requested December 14, 2005.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether adding a cross–brace to folding metal tables from the PRC to join two legs into pairs can be considered minor alterations to merchandise, which is now circumventing the antidumping duty order (the scope defines the legs of folding metal tables as "legs that mechanically fold independently of one another"); requested October 31, 2005.

Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Catfish Farmers of America and certain individual U.S. catfish processors; whether imports of frozen fish fillets from Cambodia made from live fish sourced from Vietnam, and falling within the scope of the order, can be considered "merchandise completed or assembled in other foreign countries" and are circumventing the antidumping duty order; requested August 20, 2004; initiated October 22, 2004.

Scope Rulings Inadvertently Omitted from Prior Published Lists:

None.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: April 27, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–6673 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 7, 2006. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Discussions on the Nonprofit Pilot Program, Baldrige Collaborative Marketing and Research Activities, Applicant Input for the Award Process and NIST Director's Funding Competition, a Program Update and Issues from June 6 Judges' Meeting.

DATES: The meeting will convene June 7, 2006, at 8:30 a.m. and adjourn at 3 p.m. on June 7, 2006.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Monday, June 5, 2006, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is (301) 975–2361.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: April 25, 2006.

William Jeffrey,

Director.

[FR Doc. E6–6702 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042406E]

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the following two documents: the Draft Yakima Subbasin Salmon Recovery Plan developed by the Yakima Subbasin Planning Board (YSPB) (the YSPB Plan) for the portion of the Middle Columbia River steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS) that is within the Yakima subbasin management unit, and a Supplement to the YSPB Plan prepared by NMFS (the Supplement). NMFS is soliciting review and comment on the Draft YSPB Plan and the Supplement from the public and all interested parties.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific time on July 3, 2006.

ADDRESSES: Please send written comments and materials to Carol Joyce, National Marine Fisheries Service, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: *YakimaSalmonPlan.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Yakima Salmon Plan. Comments may also be submitted via facsimile (fax) to 503–872–2737.

Persons wishing to review the YSPB Plan and/or Supplement can obtain an electronic copy (i.e., CD-ROM) from Carol Joyce by calling 503–230–5408 or by e-mailing a request to *carol.joyce@noaa.gov* with the subject line "CD-ROM Request for Yakima Steelhead Plan". Electronic copies of the YSPB Plan are also available online on the Yakima Subbasin Fish and Wildlife Planning Board Web site, *http://www.co.yakima.wa.us/YakSubbasin/default.htm*. A description of previous public and scientific review, including scientific peer review, can be found in the NMFS Supplement to the YSPB Plan.

FOR FURTHER INFORMATION CONTACT: Lynn Hatcher, NMFS Salmon Recovery Coordinator at 509–962–8911 ext. 223, or Elizabeth Gaar, NMFS Salmon Recovery Division at 503–230–5434.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). An "evolutionarily significant unit" (ESU) of Pacific salmon (Waples 1991) and a "distinct population segment" (DPS) of steelhead (71 FR 834, January 5, 2006) are considered to be "species", as defined in Section 3 of the ESA. The ESA requires that recovery plans incorporate: (1) Site-specific management actions necessary to achieve the plan's goals; (2) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon and steelhead ESA-listed species to the point that they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. Therefore, the agency supports and participates in locally led collaborative

efforts to develop recovery plans involving local communities, state, tribal, and Federal entities, and other stakeholders.

On October 26, 2005, the Yakima Subbasin Fish and Wildlife Planning Board (YSPB) presented its locally developed recovery plan (YSPB Plan) to NMFS. The YSPB comprises representatives from Yakima County, Benton County, Yakama Nation, and thirteen cities within the subbasin. A variety of partners representing Federal agencies, Washington State agencies, regional organizations, special-purpose districts, consultants, and members of the public participated in the planning process.

The draft YSPB Plan addresses a portion of the Middle Columbia River Steelhead DPS within the Yakima management unit (a geographic unit that NMFS has defined for recovery planning purposes). Recently, NMFS revised its species determinations for West Coast steelhead under the ESA, delineating a steelhead-only DPS. The steelhead DPS does not include rainbow trout, which are under the jurisdiction of the U. S. Fish and Wildlife Service (USFWS). The Middle Columbia River Steelhead ESU was listed as threatened on March 25, 1999 (64 FR 14517). NMFS listed the Middle Columbia River Steelhead DPS as threatened on January 5, 2006 (71 FR 834). The January 5, 2006, **Federal Register** notice contains a more complete explanation of this listing decision.

After review of the YSPB Plan, NMFS has added a Supplement that describes how the draft YSPB Plan contributes to ESA requirements for recovery plans, including qualifications and additional actions that NMFS believes are necessary to support recovery. The Supplement describes NMFS' intent to endorse the YSPB Plan and to use it as an interim regional recovery plan for one of four Middle Columbia management units that make up the range of the Middle Columbia River Steelhead DPS. The YSPB Plan will thereafter be combined with other local and regional plans to construct an overall, DPS-level plan that meets ESA section 4(f) requirements. The YSPB Plan will be an integral component of the full Middle Columbia River Steelhead DPS plan expected to be completed in 2006. The YSPB Plan, including the Supplement, is now available for public review and comment. As noted above, the Plan is available online at the Yakima Subbasin Fish and Wildlife Planning Board website, *www.co.yakima.wa.us/YakSubbasin/default.htm*, and both the Plan and the Supplement are available from NMFS (see **ADDRESSES**. NMFS and the YSPB will consider all comments and information presented during the public comment period (see DATES).

By endorsing a locally developed recovery plan, NMFS is making a commitment to implement the actions in the plan for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar implementation commitments from state agencies and local governments. NMFS expects the final YSPB Plan to help it and other Federal agencies take a consistent approach to future section 7 consultations. For example, a final plan will provide greater biological context for the effects that a proposed action may have on a listed ESU/DPS. This context will be enhanced by adding recovery plan science to the "best available information" for section 7 consultations. Such information includes viability criteria for an ESU/DPS and its independent populations, better understanding of and information on limiting factors and threats facing the ESU/DPS, better information on priority areas for addressing specific limiting factors, and better geographic context for where the ESU/DPS can tolerate varying levels of risk.

ESU/DPS Addressed and Planning Area

This Plan is intended for implementation within the Yakima subbasin, which includes only a portion of the Middle Columbia River steelhead (*O. mykiss*) DPS, listed as threatened on March 25, 1999 (64 FR 14517) and January 5, 2006 (71 FR 834) . The range of the Middle Columbia River Steelhead DPS includes the Columbia River basin and tributaries upstream from the Wind River to and including the Yakima River (but excluding the Snake River) *www.nwfsc.noaa.gov/trt/maps/map__stlhmcr.pdf*. This DPS contains four major population groups (MPGs): (1) The Cascades Eastern Slope Tributaries MPG, which consists of populations in both Washington and Oregon; (2) John Day River, Oregon; (3) Walla Walla and Umatilla Rivers, Oregon and Washington; and (4) Yakima River Group, Washington (*http://www.nwfsc.noaa.gov/trt/updated__population__delineation.pdf*, p. 8, Table 1). The Yakima subbasin contains only 20 percent of the acreage and 4 of the 17 fish populations that make up the DPS. The four Yakima subbasin steelhead populations are Satus Creek, Toppenish Creek, Naches River, and the Upper Yakima River. These populations are grouped because they share genetic, geographic, and habitat characteristics within the DPS.

Because most state and local boundaries are not drawn on the basis of watersheds or ecosystems, the various groups and organizations formed for recovery planning do not necessarily correspond to ESU/DPS areas. Therefore, in order to develop ESU/DPS-wide recovery plans that are built from local recovery efforts, NMFS defined ≥management units≥ that roughly follow jurisdictional boundaries but, taken together, encompass the geography of entire ESU/DPSs. For Mid-Columbia River steelhead, there are four management units: (1) Northeast Oregon; (2) Yakima; (3) Columbia Gorge (Klickitat/Rock Creek/White Salmon); and (4) southeast Washington (Walla Walla and Touchet). The Yakima Subbasin Salmon Recovery Plan is the plan for the Yakima management unit.

In 2006, the separate management unit plans will be "rolled up" or consolidated into ESU/DPS level recovery plans. The final ESU/DPS level recovery plans will incorporate the management unit plans and endorse the recommendations and decisions (for example, decisions on site-specific habitat actions) that are most appropriately left to the local recovery planners and implementers. The ESU/DPS-level plans will also more completely address actions for the hatchery, harvest, and hydropower sectors.

The YSPB Plan

The YSPB Plan incorporates the NMFS viable salmonid population , (VSP) framework as a basis for biological status assessments and recovery goals for Middle Columbia River steelhead. The YSPB Plan also incorporates the work of the Interior Columbia Technical Recovery Team (ICTRT) appointed by NMFS, which provided recommendations on biological criteria for ESU and population viability. The ICTRT set forth scientific conditions that, if met, would indicate a high probability of persistence into the future for Middle Columbia River steelhead. In the Supplement, NMFS indicates its support for the YSPB Plan's recommendations for biological criteria on an interim basis until biological criteria are developed in 2006 through the DPS-roll up process. The current status of the four major populations in the Yakima subbasin was derived through local assessments, in consultation with the ICTRT and state and tribal co-managers.

In general, based on updated status evaluations considering the four VSP parameters of abundance, population growth rate, genetic and life history diversity, and spatial structure, the YSPB Plan concludes that none of the four remaining steelhead populations is currently viable; the Satus and Toppenish populations should be considered to be at moderate risk of extinction, the Naches at moderate to high risk, and the Upper Yakima at high risk. Overall abundance has declined substantially from historical levels, and many populations are small enough that genetic and demographic risks are likely to be relatively high.

The YSPB Plan provides a set of recovery actions to implement in the Yakima subbasin. It identifies threats to the Middle Columbia River Steelhead DPS, includes actions intended to address all the manageable threats within the Yakima management unit, and includes recovery goals and measurable criteria consistent with the ESA. The YSPB Plan's initial approach is to attempt to reduce all manageable threats within the Yakima management unit and to improve the status of all four Yakima steelhead populations. As monitoring and evaluation improve our understanding of the effectiveness of various actions and their benefits throughout the life cycle of salmon and steelhead, adjustments may be made through the adaptive management framework described in the YSPB Plan.

The YSPB Plan discusses social, economic, policy, and management factors that have contributed to the ESA listing: Agricultural practices, dams, residential development, and other sources of habitat degradation; excessive fishing; predation; and others.

The YSPB Plan identifies the following key threats to the DPS and recovery actions to reduce them:

1. *Habitat:* Human activities have altered and/or curtailed habitat-forming processes and limited the habitat suitable for steelhead in the Yakima subbasin. Although, more recently, land and water management regulations and practices have generally improved, storage dams, diversions, roads and railways, agriculture (including livestock grazing), residential development, and forest management continue to threaten steelhead and their habitat in the subbasin. The results continue to be deleterious changes in flow, water temperature, sedimentation, floodplain dynamics, riparian function, and other factors.

2. *Harvest:* While over-harvest probably contributed to the decline in steelhead status, in-basin and out-of-basin harvests currently are less of a threat here than other factors. The Yakima River and its tributaries have been closed to steelhead fishing since 1994. Current harvest management objectives emphasize survival and recovery of wild steelhead populations. For example, staging areas for pre-spawning steelhead near the mouths of Toppenish and Satus Creeks are closed for coho and fall Chinook salmon during fall salmon fisheries. Out-of-subbasin harvest effects, including incidental mortality in mixed-stock mainstem Columbia River recreational and commercial fisheries, will be addressed in 2006 in the context of the rest of the management units and other out-of-subbasin effects.

3. *Hydroelectric operations:* Although hydroelectric power is produced only on a small scale at three facilities in the Yakima subbasin, their operations cause problems for steelhead, including reduced streamflows in the river reaches between the diversions and power plant outfalls and, in combination with activities at irrigation canals, large flow fluctuations.

4. *Additional factors:* The YSPB Plan reviews the following additional factors that affect Yakima subbasin steelhead: global climate change, hydroelectric production downstream in the mainstem Columbia, inadequacy of existing regulatory mechanisms, fluctuating ocean cycles, and predation. These additional factors further support recovery actions to protect and restore local habitat conditions as a buffer against larger-scale changes. The YSPB Plan does not propose actions regarding global climate change or the Columbia hydropower system because these are considered and/or managed in other venues. Steelhead migrating to and from the Yakima subbasin pass four Columbia River hydroelectric dams: Bonneville, The Dalles, John Day, and McNary. The YSPB Plan notes that in May 2005 the Federal district court for Oregon declared the 2004 Federal Columbia River Power System (FCRPS) Biological Opinion to be invalid, and at the time of the plan's writing, actions to mitigate the effects of the Federal hydropower facilities were not fully defined. Mainstem hydropower and other out-of-basin actions will be addressed during the DPS-level rollup with the other management units in 2006.

Hatcheries are not considered a threat to steelhead in the Yakima subbasin. Steelhead from several sources outside the subbasin were introduced in the past, but steelhead are no longer stocked here. In the mid-1980s, co-managers produced fish from wild Yakima broodstock, but discontinued wild broodstock collection after 1989 because of a low smolt-to-adult survival rate and problems differentiating steelhead populations. Currently, a conservation kelt reconditioning program captures post-spawning steelhead and transfers them to a culture facility to be "reconditioned" (to increase the likelihood that they will make the ocean-to-freshwater journey to spawn more than once during their life spans). So far, research suggests that effects of this program on steelhead population genetic and life history diversity are minor.

5. *Integration:* The YSPB Plan states that recovery will depend on integrating actions that address habitat, harvest, and hydroelectric operations, but also emphasizes that recovery actions affecting steelhead have to be taken at both the subbasin scale and population scales. The YSPB Plan calls for advancing the work on recovery actions at both the subbasin and the population scale in the first years of plan implementation.

The YSPB Plan identifies actions needed to achieve recovery by addressing limiting factors and threats to the species. The YSPB Plan also incorporates an adaptive management framework by which approaches and actions will be adjusted over time as conditions change and information is gained as a result of monitoring and evaluation. The YSPB Plan anticipates that future actions will be influenced by additional analysis of costs and effectiveness of recovery actions to maximize efficiency.

The goal is to ensure long-term persistence of viable populations of naturally produced steelhead distributed across their native range. To be consistent with the YSPB Plan's goal, listed populations must meet specific abundance, productivity, spatial structure, and diversity objectives and criteria.

The implementation schedule covers actions that are ongoing, short-term (those that can be implemented within 5 years), and long-term (those that can be implemented within 15 years). The YSPB Plan commits to developing specific time frames for implementation of long-term actions in 2006. The YSPB Plan states that it may take several decades to recover the Yakima portion of the Middle Columbia River Steelhead DPS.

The next step outlined in the Supplement is to obtain implementation schedules from each of the responsible entities describing when and how recovery actions will occur and how much they are estimated to cost. The YSPB, with assistance from NMFS, will

work to get these implementation activities underway in 2006. Given that salmon recovery efforts have been underway in the Yakima subbasin since the 1980s, much of the internal framework (policy, scientific, public support, and funding) needed to implement these actions is either in place or can be established quickly once the plan is adopted. Implementation schedules and estimated costs will be incorporated into the YSPB Plan.

Public Comments Solicited

NMFS solicits written comments on the draft YSPB Plan, consisting of both the Yakima Plan and the Supplement. The Supplement states NMFS' assessment of the YSPB Plan's relationship to ESA requirements for recovery plans. The Supplement also explains the agency's intent to use the revised YSPB Plan to guide and prioritize recovery actions and to ultimately incorporate the YSPB Plan into a final Federal ESA recovery plan for the Middle Columbia River Steelhead DPS. All comments received by the date specified above will be considered prior to NMFS' decision whether to endorse the revised YSPB Plan as an interim regional recovery plan and incorporate it into the DPS-level plan. Additionally, NMFS will provide a summary of the comments and responses through its regional web site and will provide a news release for the public announcing the availability of the response to comments. NMFS seeks comments particularly in the following areas: (1) The analysis of limiting factors and threats; (2) strategies and actions at the subbasin and population scale; (3) the criteria for removing the DPS from the Federal list of endangered and threatened wildlife and plants; (4) meeting the ESA requirement for estimates of time and cost to implement recovery actions by soliciting implementation schedules (see discussion in the Supplement); and (5) the process of developing ESU-wide recovery plans using management unit plans.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 27, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–6707 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020306A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas off Alaska

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received two applications from Shell Offshore, Inc. and WesternGeco, Inc. (Shell) for Incidental Harassment Authorizations (IHAs) to take small numbers of marine mammals, by harassment, incidental to conducting a marine geophysical program, including deep seismic surveys, on oil and gas lease blocks located on Outer Continental Shelf (OCS) waters in the mid- and eastern-Beaufort Sea and on pre-lease areas in the Northern Chukchi Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a single IHA to Shell to take, by Level B harassment, small numbers of several species of marine mammals between July and November, 2006 incidental to conducting seismic surveys.

DATES: Comments and information must be received no later than June 2, 2006.

ADDRESSES: Comments on the application should be addressed to the Chief of the Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *PR1.020306A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application (containing a list of the references used in this document) may be obtained by writing to this address or by telephoning the contact listed here and are also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*.

A copy of the Minerals Management Service's (MMS) Programmatic Environmental Assessment (PEA) is available on-line at: *http://www.mms.gov/alaska/ref/pea_be.htm*.

Documents cited in this document, that are not available through standard public library access, may be viewed, by appointment, during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.≥

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine

mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 16, 2005, NMFS received two applications from Shell for the taking, by Level B harassment, of several species of marine mammals incidental to conducting a marine seismic survey program during 2006 in the mid- and eastern-Beaufort and northern Chukchi seas. The deep seismic survey component of the program will be conducted from WesternGeco's vessel the *M/V Gilavar*. Detailed specifications on this seismic survey vessel are provided in Shell's application (Attachment A - Seismic Survey, Overview/Description). These specifications include: (1) complete descriptions of the number and lengths of the streamers which form the airgun and hydrophone arrays; (2) airgun size and sound propagation properties; and (3) additional detailed data on the *M/V Gilavar*'s characteristics. In summary, the *M/V Gilavar* will tow two source arrays, comprising three identical subarrays each, which will be fired alternately as the ship sails downline in the survey area. *The M/V Gilavar* will tow up to 6 hydrophone streamer cables up to 5.4 kilometers (km) (3.4 mi) long. With this configuration each pass of the *Gilavar* can record 12 subsurface lines spanning a swath of up to 360 meters (m; 1181 ft). The seismic data acquisition vessel will be supported by the *M/V Alex Gordon*, which will serve to resupply and re-fuel the *M/V Gilavar*. The *M/V Alex Gordon* is also capable of ice management should that be required. The *M/V Alex Gordon* will not deploy seismic acquisition gear.

Plan for Seismic Operations

It is planned that the *M/V Gilavar* will be in the Chukchi Sea in early July to begin deploying the acquisition equipment. Seismic acquisition is planned to begin on or about July 10, 2006. The approximate areas of operations are shown in Appendix 4 in Shell's IHA application. Acquisition will continue in the Chukchi Sea until ice conditions permit a transit into the Beaufort Sea around early August. Seismic acquisition is planned to continue in the Beaufort at one of three 3–D areas until early October depending on ice conditions. These 3–D areas are shown in Appendix 5 in Shell's application. For each of the 3–D areas, the M/V Gilavar will traverse the area multiple times until data on the area of interest has been recorded. At the conclusion of seismic acquisition in the Beaufort Sea, the *M/V Gilavar* will return to the Chukchi Sea and resume recording data there until all seismic lines are completed or weather prevents data collection.

The proposed Beaufort Sea deep seismic, site clearance, shallow hazard surveys and geotechnical activities are proposed to commence in August and continue until weather precludes further seismic work. The timing is scheduled to avoid any conflict with the Beaufort Sea subsistence hunting conducted by the Alaska Eskimo Whaling Commission's (AEWC) villages.

In summary, the proposed Chukchi deep seismic survey will occur in two phases. Phase 1 will commence sometime after June 15, 2006, as sea ice coverage conditions allow and will continue through July to early August, 2006. Phase 2 of the Chukchi deep seismic survey will occur upon completion of the Beaufort Sea survey sometime after mid-October and continue until such time as sea ice and weather conditions preclude further work, probably sometime in mid- to late-November, 2006. Shell plans to run approximately 5556 km (3452 mi) of surveys in the Chukchi Sea and a similar survey length in the Beaufort Sea.

Alternatively, if ice conditions preclude seismic operations in the Beaufort Sea, Shell proposes to continue its seismic program in the Chukchi Sea through mid- to late-November, 2006, or approximately 5.5 months. This scenario takes into account that approximately twice as many seismic line miles would be completed during this time in the Chukchi Sea. Under this scenario approximately 6000 nm (6905 stat mi; 11,112 km) of seismic line miles could be completed in the Chukchi Sea.

A detailed description of the work proposed by Shell for 2006 is contained in the two applications which are available for review (see **ADDRESSES**).

Description of Marine 3–D Seismic Data Acquisition

In the seismic method, reflected sound energy produces graphic images of seafloor and sub-seafloor features. The seismic system consists of sources and detectors, the positions of which must be accurately measured at all times. The sound signal comes from arrays of towed energy sources. These energy sources store compressed air which is released on command from the towing vessel. The released air forms a bubble which expands and contracts in a predictable fashion, emitting sound waves as it does so. Individual sources are configured into arrays. These arrays have an output signal, which is more desirable than that of a single bubble, and also serve to focus the sound output primarily in the downward direction, which is useful for the seismic method. This array effect also minimizes the sound emitted in the horizontal direction.

The downward propagating sound travels to the seafloor and into the geologic strata below the seafloor. Changes in the acoustic properties between the various rock layers result in a portion of the sound being reflected back toward the surface at each layer. This reflected energy is received by detectors called hydrophones, which are housed within submerged streamer cables which are towed behind the seismic vessel. Data from these hydrophones are recorded to produce seismic records or profiles. Seismic profiles often resemble geologic cross-sections along the course traveled by the survey vessel.

Description of WesternGeco's Air-Gun Array

Shell proposes to use WesternGeco's 3147 in^3 Bolt-Gun Array for its 3–D seismic survey operations in the Chukchi and Beaufort Seas. WesternGeco's source arrays are composed of 3 identically tuned Bolt-gun sub-arrays operating at an air pressure of 2,000 psi. In general, the signature produced by an array composed of multiple sub-arrays has the same shape as that produced by a single sub-array while the overall acoustic output of the array is determined by the number of sub-arrays employed.

The gun arrangement for each of the three 1049–in^3 sub-array is detailed in Shell's application. As indicated in the application's diagram, each sub-array is composed of six tuning elements; two 2–gun clusters and four single guns. The standard configuration of a source array for 3D surveys consists of one or more 1049–in^3 sub-arrays. When more than one sub-array is used, as here, the strings are lined up parallel to each other with either 8 m or 10 m (26 or 33 ft) cross-line separation between them. This separation was chosen so as to minimize the areal dimensions of the array in order to approximate point source radiation characteristics for frequencies in the nominal seismic processing band. For the 3147 in^3 array the overall dimensions of the array are 15 m (49 ft) long by 16 m (52.5 ft) wide.

Shell's application provides illustrations of the time series and amplitude spectrum for the far-field signature and the computed acoustic emission pattern for the vertical inline and crossline planes for the 3147 in3 array with guns at a depth of 6 m (20

ft). The signature for this array was first computed using GSAP, WesternGeco's in house signature modelling software. Based on this model, Shell estimates the sound level output radii (root-mean-squared (rms)) for a 3147 in3 source array at a depth of 6 m (20 ft):

160 dB (rms) :: < 650 m/2133 ft
170 dB (rms) :: < 425 m/1394 ft
180 dB (rms) :: < 225 m/738 ft
190 dB (rms) :: < 120 m/394 ft.

Subsequent to submitting its application, Shell contracted with JASCO to model sound source characteristics using a different model. The JASCO parabolic equation model is believed by Shell and NMFS to be superior in these waters because it accounts for bathymetry effects, water properties, and the geoacoustic properties of seabed layers. The JASCO-modeled radii are based on the worst case model predictions. For this model, the proposed 180–dB and 190–dB radii are 1.5 km (0.9 mi) and 0.5 km (0.3mi), respectively. This model will be used by Shell and NMFS to estimate sound level isopleths and radii for rms sound level thresholds between 120 and 190 dB at six proposed survey locations for the proposed airgun arrays. In addition, these modeled radii estimates will be multiplied by a safety margin of 1.5 to obtain conservative exclusion radii for marine mammal safety until empirical sound field verification measurements are completed within the first few days of seismic shooting.

An explanation for the indicated sound pressure levels (SPLs) is provided later in this document (see Impacts to Marine Mammals).

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Additional information can be found in the MMS PEA. Reviewers are encouraged to read these earlier documents for additional information.

Site Clearance Surveys

In addition to deep seismic surveys in the Beaufort Sea, Shell also plans to conduct site clearance and shallow hazards surveys of potential exploratory drilling locations within Shell's lease areas as required by MMS regulations. The site clearance surveys are confined to very small specific areas within defined OCS blocks. Shell is currently in the process of selecting site clearance/shallow hazards and geotechnical contractors and vessels for the site clearance/shallow hazards surveys, and geotechnical borings. As yet unidentified vessels will conduct these surveys contemporaneously with the deep seismic survey program. Very small and limited geophysical survey energy sources will be employed to measure bathymetry, topography, geo-hazards and other seabed characteristics. The actual locations of site clearance and shallow hazard surveys have not been definitively set as of the date of Shell's application. That information will be supplied to NMFS and MMS as it becomes available, but well before the commencement of operations. The vessels conducting the site clearance and shallow hazard surveys, and geotechnical borings will also operate in accordance with the provisions of a Conflict Avoidance Agreement (CAA), between the seismic industry and the AEWC and the Whaling Captains Associations regarding times and areas in order to avoid any possible conflict with the bowhead subsistence whale hunts by the Kaktovik and Nuiqsut.

Offshore site clearance surveys use various geophysical methods and tools to acquire graphic records of seafloor and sub-seafloor geologic conditions. The data acquired and the type of investigations outlined in this document are performed routinely for most exploratory drilling and production platforms, submarine pipelines, port facilities, and other offshore projects. High-resolution geophysical data such as two- dimensional, high-resolution multi-channel seismic, medium penetration seismic, subbottom profiler, side scan sonar, multibeam bathymetry, magnetometer and possibly piston core soil sampling are typical types of data acquired. These data are interpreted to define geologic and geotechnical conditions at the site and to assess the potential engineering significance of these conditions. The following section provides a brief description of those instruments used for site clearance that may impact marine mammals. Information on the data acquisition methodology planned by Shell can be found in the Shell application.

Geophysical Tools for Site Clearance

High-Resolution seismic profiling

Reflected sound energy, often called acoustic or seismic energy, produces graphic images of seafloor and sub-seafloor features. These systems transmit the acoustic energy from various sources called transducers that are attached to the hull of the vessel or towed astern. Part of this energy is reflected from the seafloor and from geologic strata below the seafloor. This reflected energy is received by the hydrophone or streamer and is recorded to produce seismic records or profiles. Seismic profiles often resemble geologic cross-sections along the course traveled by the survey vessel.

In most Beaufort Sea site surveys, Shell will operate several high-resolution profiling systems simultaneously to obtain detailed records of seafloor and near seafloor conditions. A typical survey would include data acquisition using a shallow penetration profiler or subbottom profiler (1 - 12.0 kHz, typically 3.5 kHz), medium penetration system or boomer/ sparker/ airgun (400–800 Hz) and a deep penetrating hi-res multi-channel seismic system (20–300 Hz) not to be confused with the deep seismic used for hydrocarbon exploration. These profiling systems complement each other since each system achieves different degrees of resolution and depths of sub-seafloor penetrations.

Side Scan Sonar

Unlike seismic profiling systems, which produce a vertical profile along the vessel's path, side scan sonar systems provide graphic records that show two-dimensional (map) views of seafloor topography and of objects on the seafloor. The sonar images provide a swath display/record covering an area on the seafloor up to several hundred feet on both sides of the survey trackline. The side scan sonar transmits very high-frequency acoustic signals (100 - 410 kHz) and records the reflected energy from the seafloor. Signals reflected from the seafloor are displayed on a continuous record produce by a two-channel recorder. Reflected signals normally appear as dark areas on the record whereas shadows behind objects appear as light or white areas. The intensity and distribution of reflections displayed on the sonar image depend on the composition and surface texture of the reflecting features, on their size, and on their orientation with respect to the transducers in the towfish. Line spacing and display range are designed to ensure 100 percent coverage of the proposed survey area in the prime survey line direction, with additional tie-lines acquired in an orthogonal direction.

Side scan sonar data are useful for mapping areas of boulders, rock outcrops, and other areas of rough seafloor, and for determining the location and trends of seafloor scarps and ice gouges. These data are also used to locate shipwrecks, pipelines, and other objects on the seafloor.

Multi-beam Bathymetry

Multi-beam bathymetric systems are either hull mounted or towed astern of the survey vessel. The system transmits acoustic signals (200–500 kHz) from multiple projectors propagating to either side of the vessel at angles that vary from vertical to near horizontal. The locations of the soundings cover a swath whose width may be equal to many times the waterdepth. By adjusting the spacing of the survey tracklines such that adjacent swaths are overlapping, Shell obtains depth information for 100 percent of the bottom in the survey area. The time it takes to receive the signals as well as signal intensity, position, and other characteristics for echoes received across the swath are used to calculate depth of each individual beam transmitted across the swath.

Acoustic systems similar to the ones proposed for use by Shell have been described in detail by NMFS previously (see 66 FR 40996, August 6, 2001; 70 FR 13466, March 21, 2005). NMFS encourages readers to refer to these documents for additional information on these systems.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort and Chukchi sea ecosystems and their associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 2006, 1996 and 1992) and does not need to be repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), killer whales (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*), bearded seals (*Erignathus barbatus*), walrus (*Odobenus rosmarus*) and polar bears (*Ursus maritimus*). These latter two species are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are not discussed further in this document. Descriptions of the biology and distribution of the marine mammal species under NMFS' jurisdiction can be found in Shell's application, MMS' PEA, and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Hill *et al.*, 1999). Information on these species can be found in the NMFS Stock Assessment Reports. The Alaska Stock Assessment Report is available at: *http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/sar2003akfinal.pdf*. Updated species reports are available at: *http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf*. Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft may provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

Shell (2005) states that the only anticipated impacts to marine mammals associated with noise propagation from vessel movement, seismic airgun operations, and seabed profiling and coring work would be the temporary and short term displacement of seals and whales from within ensonified zones produced by such noise sources. In the case of bowhead whales, that displacement might well take the form of a deflection of the swim paths of migrating bowheads away from (seaward of) received noise levels greater than 160 db (Richardson *et al.*, 1999). The cited and other studies conducted to test the hypothesis of the deflection response of bowheads have determined that bowheads return to the swim paths they were following at relatively short distances after their exposure to the received sounds. Shell believes that there is no evidence that bowheads so exposed have incurred injury to their auditory mechanisms. Additionally, Shell cites Richardson and Thomson [eds]. (2002) that there is no conclusive evidence that exposure to sounds exceeding 160 db have displaced bowheads from feeding activity.

NMFS notes that results from the 1996–1998 BP and Western Geophysical seismic monitoring programs in the Beaufort Sea indicate that most fall migrating bowheads deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation, with the exception of a few closer sightings when there was an island or very shallow water between the seismic operations and the whales (Miller *et al.*, 1998, 1999). The available data do not provide an unequivocal estimate of the distance (and received

sound levels) at which approaching bowheads begin to deflect, but this may be on the order of 35 km (21.7 mi). It is also uncertain how far beyond (west of) the seismic operation the seaward deflection persists (Miller *et al.*, 1999). Although very few bowheads approached within 20 km (12.4 mi) of the operating seismic vessel, the number of bowheads sighted within that area returned to normal within 12–24 hours after the airgun operations ended (Miller *et al.*, 1999).

Although NMFS believes that some limited masking of low-frequency sounds (e.g., whale calls) is a possibility during seismic surveys, the intermittent nature of seismic source pulses (1 second in duration every 16 to 24 seconds (i.e., less than 7 percent duty cycle)) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Greene *et al.*, 1999, Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (Western Geophysical, 2000).

Hearing damage is not expected to occur during the Shell seismic survey project. It is not positively known whether the hearing systems of marine mammals very close to an airgun would be at risk of temporary or permanent hearing impairment, but TTS is a theoretical possibility for animals within a few hundred meters of the source (Richardson *et al.*, 1995). However, planned monitoring and mitigation measures (described later in this document) are designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, as mentioned previously, bowhead whales avoid an area many kilometers in radius around ongoing seismic operations, precluding any possibility of hearing damage.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

The following summaries are provided by NMFS to facilitate understanding of our knowledge of impulsive noise impacts on the principal marine mammal species that are expected to be affected.

Bowhead Whales

Seismic pulses are known to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of a few kilometers, including changes in surfacing, respiration and dive cycles, and may sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997). Studies conducted prior to 1996 (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In these studies, bowheads exposed to seismic pulses from vessels more than 7.5 km (4.7 mi) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (Western Geophysical, 2000). In three studies of bowhead whales and one of gray whales during this period, surfacing-dive cycles were unusually rapid in the presence of seismic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowheads 6 km to at least 73 km (3.7 to 45.3 mi) from seismic vessels. However, in the pre–1996 studies, active avoidance usually was not apparent unless the seismic vessel was closer than about 6 to 8 km (3.7 to 5.0 mi)(Western Geophysical, 2000).

Results from the 1996–1998 BP and Western Geophysical seismic program monitoring in the Beaufort Sea indicate that most migrating bowheads deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation, with the exception of a few closer sightings when there was an island or very shallow water between the seismic operations and the whales (Miller *et al.*, 1998, 1999). The available data do not provide an unequivocal estimate of the distance at which approaching bowheads begin to deflect, but this may be on the order of 35 km (21.7 mi). It is also uncertain how far beyond (west of) the seismic operation the seaward deflection persists (Miller *et al.*, 1999). Although very few bowheads approached within 20 km (12.4 mi) of the operating seismic vessel, the number of bowheads sighted within that area returned to normal within 12–24 hours after the airgun operations ended (Miller *et al.*, 1999).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than suggested by pre–1996 scientific studies (Rexford, 1996) previously mentioned in this document. Also, whalers believe that avoidance effects can extend out to distances on the order of 30 miles (48.3 km), and that bowheads exposed to seismic also are "skittish" and more difficult to approach. The "skittish" behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those documented for bowheads during the 1980s. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent of the migrating gray whales showed avoidance when the average received pulse level was 170 dB (re 1 μPa). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140–160 dB. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1.2 mi) from shore. However, when the source was placed offshore (4 km (2.5 mi) from shore) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark, 1998).

Beluga

The beluga is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Belugas have poor hearing thresholds at frequencies below 200 Hz, where most of the energy from airgun arrays is concentrated. Their thresholds at these

frequencies (as measured in a captive situation), are 125 dB re 1 µPa or more depending upon frequency (Johnson *et al.*, 1989). Although not expected to be significantly affected by the noise, given the high source levels of seismic pulses, airgun sounds sometimes may be audible to beluga at distances of 100 km (62.1 mi)(Richardson and Wursig, 1997), and perhaps further if actual low-frequency hearing thresholds in the open sea are better than those measured in captivity (Western Geophysical, 2000). The reaction distance for beluga, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belugas than that of bowheads for low-frequency sounds (Western Geophysical, 2000).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat, down to at least 1 kHz, and ranges between 60 and 85 dB (re 1 microPa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 microPa @ 1 m) at 100 Hz (Kastak and Schusterman, 1998).

While no detailed studies of reactions of seals from open-water seismic exploration have been published (Richardson *et al.*, 1991, 1995), some data are available on the reactions of seals to various types of impulsive sounds (see LGL and Greeneridge, 1997, 1998, 1999a; Thompson *et al.* 1998). These references indicate that it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time.

Numbers of Marine Mammals Expected to Be Exposed to Seismic Noise

The methodology used by Shell to estimate incidental take by Level B harassment, at sound pressure levels at 160 dB or above, by seismic and the numbers of marine mammals that might be affected during the proposed seismic acquisition area in the Chukchi and Beaufort seas are presented in the application. Subsequent to submission of that application, Shell decided to provide more conservative estimates of potential marine mammal exposures by using the JASCO model. Therefore, Tables 1 and 2 provide exposure calculations for both sets of calculations. NMFS proposes to use the more conservative estimates of noise exposure to determine impacts to marine mammals.

Table 1. Beaufort Sea Revised Noise Exposure Estimates ≥160 dB

	Average Density	Maximum Density	Original Estimate-Average Density	Original Estimate-Maximum Density	Revised Estimate-Average Density	Revised Estimate-Maximum Density
Cetaceans						
bowhead whales	0.0064	0.0256	46	185	395	1579
gray whale	0.0045	0.0179	33	129	278	1104
beluga	0.0034	0.0135	25	98	210	833
Pinnipeds						
ringed seal	0.251	0.444	1185	2097	7335	12976
spotted seal	0.0001	0.0005	0	2	3	15
bearded seal	0.0128	0.0226	60	107	374	660

Table 2. Revised Noise Exposure Estimates at ≥160 dB in the Chukchi Sea

	Average Density	Maximum Density	Original Estimate-Average Density	Original Estimate-Maximum Density	Revised Estimate-Average Density	Revised Estimate-Maximum Density	Revised Estimate-Scenario 2 Average	Revised Estimate-Chukchi Scenario 2 Maximum
Cetaceans								
bowhead whales	0.0064	0.0256	46	185	403	1613	806	3226
gray whale	0.0045	0.0179	33	129	284	1128	568	2256
beluga	0.0034	0.0135	25	98	214	851	428	1702
killer whale	0	0	0	5	10	10	20	20
harbor porpoise	0	0.0002	0	5	10	13	26	26
Pinnipeds								
ringed seal	0.251	0.444	1185	2097	6805	12038	13610	24076
spotted seal	0.0001	0.0005	0	2	3	14	6	28
bearded seal	0.0128	0.0226	60	107	347	613	694	1226

The density estimates for the species covered under this IHA are based on the estimates developed by LGL (2005). The LGL density estimates are based on the original data from Moore *et al.* (2000) on summering bowhead, gray, and beluga

whales in the Beaufort and Chukchi Seas, and relevant studies on ringed seal estimates, including Stirling *et al.* (1982) and Kingsley (1986).

In its application, Shell provides estimates of the number of potential "exposures" to sound levels greater than 160 dB re 1 microPa (rms) and greater than 170 dB. Shell states that while the 160–dB criterion is applied for estimating Level B harassment of all species of cetaceans and pinnipeds, Shell believes that a 170–dB criterion should be considered appropriate for estimating Level B harassment of delphinid cetaceans and pinnipeds, which tend to be less responsive, whereas the 160–dB criterion is considered appropriate for other cetaceans (LGL, 2005). However, NMFS has noted in the past that there is no empirical evidence to indicate that some delphinid species do not respond at the lower level (i.e., 160 dB). As a result, NMFS proposes to use the 160–dB isopleth to estimate the numbers of marine mammals that may be taken by Level B harassment.

The estimates in Tables 1 and 2 are based on marine mammal exposures to 160 dB (and greater) from either approximately 5,556 km (3452 mi) of seismic surveys in three distinct areas of the eastern- and mid-Beaufort Sea and a similar level of effort in the Chukchi Sea or approximately 11,112 km (6905 mi) only in the Chukchi Sea if seismic work in the Beaufort Sea is not undertaken. These latter calculations are provided in the last column of Table 2.

There will be no site clearance work performed for the seismic activities in the Chukchi Sea, therefore, potential taking estimates only include noise disturbance from the use of airguns. It is assumed that, during simultaneous operations of those additional sound sources and the airgun(s), any marine mammals close enough to be affected by the sonars or pinger would already be affected by the airgun(s).

Exposure Calculations for Cetaceans and Pinnipeds

The number of exposures of a particular species to sound levels between 160 dB and 180 dB re 1 microPa (rms) was calculated by multiplying: (1) the expected species density (i.e., average and maximum), as shown in Tables 1 and 2; (2) the anticipated total line-kilometers of operations with the three 1,049–in^3 subarrays (*i.e.*, 5556 km (3452 mi)); and (3) the cross-track distances within which received sound levels are predicted to be between 160 and 180 dB (Figure 6–1 and Table 6–3 in the Shell application).

Chukchi Sea

Shell estimates that the average and maximum numbers of bowhead whales that may be exposed to noise levels of 160 dB or greater are 808 and 3226, respectively. However, according to Shell, the proposed seismic activities would occur when bowheads are widely distributed and would be expected to occur in very low numbers within the seismic activity area. Therefore, based on the 160–dB threshold criterion, the number of bowhead whales that may be exposed to sounds at or greater than 160 dB re 1 microPa (rms) represent a small percent of the estimated population within the Beaufort and Chukchi Seas.

Gray and beluga whales also have the potential for exposure, particularly near Area 3. The average and maximum estimates of the number of exposures at or greater than 160 dB are revised as 284 and 1128 for gray whales, 214 and 851 for beluga whales, 10 for killer whales, and 10 and 13 for harbor porpoises.

While no reliable abundance numbers currently exist for ringed, spotted, and bearded seals for the Chukchi Sea, however, the potential number of exposures would be a very small fraction of earlier abundance estimates as shown in Table 2.

For both cetaceans and pinnipeds likely to be encountered within the Chukchi and Beaufort Sea activity areas, the short-term exposures to airgun sounds are not expected to result in any long-term negative consequences for the individuals or their populations. Furthermore, the estimated number of animals potentially exposed and requested under an IHA, will be likely be much less for some species (e.g., bowhead whale) because of the period of seismic acquisition, and the survey and mitigation plan which contains efforts to further avoid take.

Beaufort Sea

As indicated in Table 1 in this document, the estimated average and maximum numbers for bowhead whales at 160 dB or greater are 395 and 1579, respectively. However, as stated earlier, proposed activities would occur mainly when bowheads are not present in the area or in very low numbers.

Gray and beluga whales also have the potential for exposure, particularly near seismic survey area 3. The average and maximum estimates of the number of exposures for gray whales are 278 and 1104, and 210 and 833 for beluga whales.

Ringed seals would be the most prevalent marine mammal species encountered at each of the three proposed seismic acquisition areas, and would account for most of the marine mammals that might be exposed to seismic sounds equal to or greater than 160 dB. Potential exposure estimates for pinnipeds in the Beaufort Sea are shown in Table 1. However, as Moulton and Lawson (2002) indicated that most pinnipeds exposed to seismic sounds lower than 170 dB do not visibly react, pinnipeds are not likely to react to seismic sounds unless they are greater than 170 dB re 1 microPa (rms). As a result, NMFS believes that these exposure estimates are very conservative. Spotted and bearded seals may be encountered in much small numbers than ringed seals, but also have the potential for some minor exposure.

Finally, if Shell does not conduct seismic survey work in the Beaufort Sea in 2006, and implements scenario 2 as mentioned previously, Shell estimates that additional sound exposures would occur in the Chukchi Sea. These estimates are provided in the last column of Table 2.

Potential Impact of the Activity on the Affected Species or Stocks

According to Shell, the only anticipated impacts to marine mammals associated with noise propagation from vessel movement, seismic airgun operations and seabed profiling and coring work (in the Beaufort Sea) would be the temporary and short term displacement of seals and whales from within ensonified zones produced by such noise sources. Any impacts on the whale and seal populations of the Chukchi Sea seismic acquisition activity area are believed to be short term and transitory arising from the temporary displacement of individuals or small groups from locations they may occupy at the times they are exposed to seismic sounds at the 160–190 db received levels. In the case of bowhead whales that displacement might well take the form of a deflection of the swim paths of migrating bowheads away from (seaward of) received noise levels less than 160 db (Richardson *et al.*, 1999). The cited and other studies conducted to test the hypothesis of the deflection response of bowheads have determined that bowheads return to the swim paths they were following at relatively short distances after their exposure to the received sounds. There is no evidence that bowheads so exposed have incurred injury to their auditory mechanisms. Additionally, there is no conclusive evidence that exposure to sounds exceeding 160 db have displaced bowheads from feeding activity (Richardson and Thomson [eds], 2002). As noted previously, it is highly unlikely that animals will be exposed to

sounds of such intensity and duration as to physically damage their auditory mechanisms.

There is no evidence that seals are more than temporarily displaced from ensonified zones and no evidence that seals have experienced physical damage to their auditory mechanisms even within ensonified zones.

Potential Impact On Habitat

Shell states that the proposed seismic activities will not result in any permanent impact on habitats used by marine mammals, or to their prey sources. Seismic activities will occur during the time of year when bowhead whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area (mid- to late-June through July and again from mid-October through November). The northeastern-most of the recurring feeding areas is in the northeastern Chukchi Sea southwest of Barrow. Any effects would be temporary and of short duration at any one place. The primary potential impacts to marine mammals associated with elevated sound levels from the proposed airguns were discussed previously in this document.

A broad discussion on the various types of potential effects of exposure to seismic on fish and invertebrates can be found in LGL (2005; University of Alaska-Fairbanks Seismic Survey across Arctic Ocean at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*), and includes a summary of direct mortality (pathological/ physiological) and indirect (behavioral) effects.

Mortality to fish, fish eggs and larvae from seismic energy sources would be expected within a few meters (0.5 to 3 m (1.6 to 9.8 ft)) from the seismic source. Direct mortality within 48 hours has been observed in cod and plaice that were subjected to seismic pulses two meters from the source (Matishov, 1992), however other studies did not report any fish kills from seismic source exposure (La Bella *et al.*, 1996; IMG, 2002; Hassel *et al.*, 2003). To date, fish mortalities associated with normal seismic operations are thought to be slight. Saetre and Ona (1996) modeled a worst-case mathematical approach on the effects of seismic energy on fish eggs and larvae, and concluded that mortality rates caused by exposure to seismic are so low compared to natural mortality that issues relating to stock recruitment should be regarded as insignificant.

Limited studies on physiological effects on marine fish and invertebrates to acoustic stress have been conducted. No significant increases in physiological stress from seismic energy were detected for various fish, squid, and cuttlefish (McCauley *et al.*, 2000) or in male snow crabs (Christian *et al.*, 2003). Behavioral changes in fish associated with seismic exposures are expected to be minor at best. Because only a small portion of the available foraging habitat would be subjected to seismic pulses at a given time, fish would be expected to return to the area of disturbance anywhere from 15–30 minutes (McCauley *et al.*, 2000) to several days (Engas *et al.*, 1996).

Available data indicate that mortality and behavioral changes do occur within very close range to the seismic source, however, the proposed seismic acquisition activities in the Chukchi and Beaufort seas are predicted by Shell to have a negligible effect to the prey resource of the various life stages of fish and invertebrates available to marine mammals occurring during the project's duration.

The total footprint of the proposed seismic survey area covers approximately 378,000 acres in the Chukchi Sea and 717,000 acres in the Beaufort Sea. The effects of the planned seismic activity at each of the seismic locations on marine mammal habitats and food resources are expected to be negligible, as described. It is estimated that only a small portion of the animals utilizing the areas of the proposed activities would be temporarily displaced.

During the period of seismic acquisition in the Chukchi Sea (mid-June through July, and again in early- to mid-October through November, 2006), most marine mammals would be dispersed throughout the area. The peak of the west- and south-bound bowhead whale migration through the Chukchi Sea typically occurs in October, and efforts to reduce potential impacts to subsistence hunting during this time will be addressed with the actual start of the migration and with the whaling communities. The timing of seismic activities in the Chukchi Sea will take place when the whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area. Starting in late August bowheads may travel in proximity to the aforementioned activity area and hear sounds from vessel traffic and seismic activities, of which some might be displaced seaward by the planned activities. The numbers of cetaceans and pinnipeds subject to displacement are small in relation to abundance estimates for the mammals covered under this proposed IHA.

In addition, feeding does not appear to be an important activity by bowheads migrating through the Chukchi Sea or the eastern and central part of the Alaskan Beaufort Sea in most years (Shell, 2005). Sightings of bowhead whales occur in the summer near Barrow (Moore and DeMaster, 2000) and there are suggestions that certain areas near Barrow are important feeding grounds. In addition, a few bowheads can be found in the Chukchi and Bering Seas during the summer and Rugh *et al.* (2003) suggest that this may be an expansion of the western Arctic stock, although more research is needed. In the absence of important feeding areas, the potential diversion of a small number of bowheads away from seismic activities is not expected to have any significant or long-term consequences for individual bowheads or their population. As a result, Shell believes the proposed activities are not expected to have any habitat-related effects that would produce long-term effects to marine mammals or their habitat due to the limited extent of the acquisition areas and timing of the activities.

Effects of Seismic Noise and Other Activities on the Availability of Marine Mammals for Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principal concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope and Western Alaskan communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. Hunters related how whales also appear "angry" due to seismic noise, making whaling more dangerous.

In the Chukchi Sea, Shell seismic work should not have significant adverse impacts on the availability of the whale species for subsistence uses. The whale species normally taken by Inupiat hunters are the bowhead and belugas. Shell's Chukchi seismic operations will not begin until after July 1, 2006 at which time the majority of bowheads will have migrated to their summer feeding areas in Canada. In the event any bowheads remain in the northeastern Chukchi Sea after July 1, they are not normally hunted after this date until the return migration occurs

around late September when a fall hunt by Barrow whalers takes place. In the past few years, a small number of bowheads have also been taken by coastal villages along the Chukchi coast. Seismic operations for phase two of the Chukchi program will be timed and located so as to avoid any possible conflict with the Barrow fall whaling, and specific provisions governing the timing and location matters addressed here will be incorporated in the CAA established between Shell and WesternGeco, the AEWC, and the Barrow Whaling Captains Association.

Beluga whales may also be taken sporadically for subsistence needs by coastal villages, but traditionally are taken in small numbers very near the coast. As the seismic surveys will be conducted at least 12 miles (25 km) offshore, impacts to subsistence uses of bowheads are not anticipated. However, Shell plans to establish "communication stations" in the villages to monitoring impacts. Gray whales, which will be abundant in the northern Chukchi Sea from spring through autumn, are not taken by subsistence hunters.

The various pinniped species, including walrus, are all taken by subsistence hunters of the Chukchi villages (Barrow, Wainwright, Pt Lay, Pt Hope). The planned seismic operations will not adversely affect the usual open-water locations of these species and no haul-out areas will be encountered (with the possible exception of the polar ice front used by walrus, which is under the jurisdiction of the USFWS). However, most seismic operations will take place sufficiently distant from nearshore traditional beluga, seal, and walrus hunting areas such that no unmitigable adverse impacts are anticipated.

In the Beaufort Sea, there could be an adverse impact on the Inupiat bowhead subsistence hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would necessarily be forced to travel greater distances to intercept westward migrating whales thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads. This potential impact will be mitigated by application of the procedures established in the CAA between the seismic operators and the AEWC and the whaling captains' associations of Kaktovik, Nuiqsut and Barrow. The times and locations of seismic and other noise producing sources will be curtailed during times of active scouting and whaling within the traditional subsistence hunting areas of the three potentially affected communities. (Shell, 2005).

Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a plan of cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. Shell's POC notes that negotiations were initiated beginning in summer of 2005 with the AEWC to create a CAA between Shell and WesternGeco for 2006, and the subsistence hunting communities of Barrow, Nuiqsut, and Kaktovik. The CAA will cover both the proposed Beaufort Sea seismic program (including deep seismic, site clearance, shallow hazard surveys and a geotechnical seabed coring program) and the Chukchi Sea deep seismic survey. Meetings between Shell and the AEWC began in October, 2005 with representatives of the North Slope Borough also present in Fairbanks during the annual meeting of the Alaska Federation of Natives. Additional meetings were held this spring.

Shell anticipates signing the CAA sometime this spring. The CAA will incorporate all appropriate measures and procedures regarding the timing and areas of Shell's planned activities (i.e., times and places where seismic operations will be curtailed or moved in order to avoid potential conflicts with active subsistence whaling and sealing); communications system between operator's vessels and whaling and hunting crews (i.e., the communications center will be located in Deadhorse with links to Kaktovik, Nuiqsut, Cross Island, and Barrow); provision for marine mammal observers/Inupiat communicators aboard all project vessels; conflict resolution procedures; and provisions for rendering emergency assistance to subsistence hunting crews.

If requested, post-season meetings will also be held to assess the effectiveness of the 2006 CAA, to address how well conflicts (if any) were resolved; and to receive recommendations on any changes (if any) might be needed in the implementation of future CAAs. It is anticipated that a final draft of the 2006 CAA for the Beaufort and Chukchi Seas will be available for consideration and review by NMFS and the MMS by late spring.

Proposed Mitigation Measures

Shell has proposed five main mitigation measures: (1) The timing and locations for active seismic acquisition work will be scheduled to curtail operations when whaling captains inform the operator that they are scouting or hunting within traditional hunting areas; (2) the configuration of airguns in a manner that directs energy primarily down to the seabed thus decreasing the range of horizontal spreading of seismic noise; (3) the use of a seismic energy source which is as small as possible while still accomplishing the geophysical objectives; (4) the use of ramp-up and soft start methods of initiating seismic operations which is intended to alert any marine mammals either within or approaching an operating airgun array so that they may swim away from the source; and (5) the curtailment of active seismic work when the marine mammal observers (MMOs) visually sight (from shipboard or aerially) the presence of marine mammals within identified ensonified zones. Details of the proposed mitigation measures follow:

Seasonal Restrictions: Shell has proposed to take all practicable measures to complete seismic operations as early as possible and to vacate areas within close proximity of subsistence bowhead hunting areas during periods of hunting activity. During periods of hunting activity, seismic operations will be moved to areas remote from hunting operations or ceased for a period. From August 15 until the end of the bowhead hunting season (or until the end of seismic operations in the Beaufort Sea) special monitoring and mitigation/mitigation measures will be adopted (*i.e.*, aerial surveys). Given the potential for diversion offshore, re-initiation of seismic operations within identified hunting areas will proceed only after the affected village(s) has acquired at least two whales or ceased hunting activities and only with close coordination with representatives of the whaling captains. All reasonable efforts will be made to avoid disruption of the hunt or deflection of migrating bowheads in hunting areas.

Aerial Surveys: Shell proposes to conduct aerial surveys of the Beaufort Sea regional distribution and abundance of marine mammals with special attention to bowhead whales in 2006 prior to the initiation of the seismic survey starts and periodically during and after the survey. The objectives of the Beaufort Sea aerial surveys are to:

(a) Provide real-time or near real-time information that can be used (if appropriate) to alter the survey's starting point and survey line sequence based on the actual distribution of whales in the

area immediately prior to and during surveys (see below),

(b) Document the numbers of whales in the general area and, at least theoretically, exposed to noise from seismic survey and their responses to the surveys (if detectable), and

(c) Conduct aerial surveys only when they can be carried out in a safe manner and during periods of good visibility where there is sufficient probability of detecting bowhead whales and other marine mammals.

Beginning at least 3 days prior to the beginning of seismic surveys in the Beaufort Sea, aerial surveys will be conducted on a daily basis, when practicable given weather and visibility conditions.

Aerial surveys conducted during the bowhead whaling season will be coordinated with whaling efforts, such that airplanes operating in close proximity to whalers can take action, e.g. flying at higher altitudes, to reduce the potential to impact the hunt.

Generally, the flight plan and coverage of the aerial survey will be conducted following established standards and methodologies, as described above, with particular reference to MMS Bowhead Whale Aerial Survey Program (BWASP) procedures. Specific details of the flight pattern and coverage will be fully developed in an aerial flight operations plan but will be subject to operation changes as needed to provide effective coverage during field operations.

Airgun Arrays: For the proposed seismic survey, Shell proposes to:

(a) Configure the airgun array to maximize the proportion of the energy that is directed downward and to minimize horizontal sound propagation. In particular, closely spaced airguns whose overall radiation pattern is nearly omni-directional will be avoided. The size of the airgun arrays, as measured by the source level, will not be any larger than required to meet the technical objectives for the seismic survey.

(b) Utilize pre-initiation modeling, based upon anticipated sound propagation characteristics of the array, to establish anticipated impact zones of 180 dB and 190 dB.

(c) Conduct field sound propagation assessments at the initiation of the field season and 180 dB and 190 dB zones adjusted accordingly.

Ramp-up (soft-start): For the proposed seismic survey, Shell proposes to implement the following 'soft start' procedures:

(a) The seismic operator will ramp-up airguns slowly over a period of 20 minutes each time shooting begins or whenever the, shut-down period has been greater than 10 minutes. 'Soft starts' will follow every interruption of the airgun array firing that is greater than 10 minutes, most importantly if the survey is discontinued until marine mammals leave'the safety zone. The seismic operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun array reaches full power.

(b) During periods of turn around and transit between seismic transects, one airgun will remain operational. Through use of this approach, seismic operations can resume upon entry to a new transect without full ramp up. While it is routine to ramp up from a single gun firing to full array operation, operation of a single gun allows starting during poor visibility and ramp up without a period of static visual observation.

(c) If shut down occurs, ramp-up will begin only following a minimum of a 30–min period of observation of the prescribed safety zone to assure that no marine mammals are present. However, if the MMOs were on-duty prior to the shut-down, and continued their observations during the shut-down, then an additional 30–min period of observation prior to ramp-up is not necessary. Ramp-up procedures will be followed until full operating intensity is achieved.

Safety Zones: For the proposed seismic survey, Shell proposes to implement the following measures:

(a) Initial safety zones will be established prior to the survey based on available data and modelling concerning sound output and on the assumption that seismic pulses at broadband received levels above 190 dB re 1 microPa (rms over duration of pulse) for pinnipeds, or above 180 dB re 1 microPa rms for cetaceans, should be avoided whenever possible because those levels might affect hearing abilities at least temporarily. The sound levels are based on frequencies between 10 Hz and 120 Hz, the typical peak spectrum of sound emitted for seismic surveys.

(b) The safety distances will be verified (and if necessary adjusted) during the first week of the seismic survey, based on direct measurements via calibrated hydrophones of the received levels of underwater sound versus distance and direction from the airgun array. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to adjust safety distance. The same acoustic data will be useful in interpreting observations of marine mammals during analysis of sighting data after the programs completion (see below).

Biological Observers: For the proposed seismic survey, Shell proposes to implement the following measures:

(a) Trained marine mammal observers on the seismic ship will be on watch for marine mammals during all daylight hours when seismic operations are in progress. This will require at least three and preferably four observers on the vessel, given that observer efficiency deteriorates after approximately 4 hours, and that having two observers on watch simultaneously increases the probability of sighting the marine mammals present near the vessel. In selecting seismic vessels for the program, Shell has accounted for the requirement to accommodate 3 to 4 marine mammal observers on each vessel.

(b) The purpose of the observers on the seismic vessel will primarily be to document the occurrence and responses of marine mammals visible from the vessel, and to initiate airgun shutdown requirements whenever a marine mammal is observed within the safety zone. Furthermore, the observers will attempt to confirm the absence of marine mammals in the safety zones prior to 'soft start'.

(c) When a marine mammal is sighted within, or approaching, the safety zone around the airgun array, the observers will notify the seismic contractor who will shut down the airguns. After completion of the survey, a technical report and a scientific research paper will be prepared to summarize the observations, results, and conclusions of the marine mammal monitoring program.

Operations at Night and in Poor Visibility: For the proposed seismic programs in the Beaufort and Chukchi seas, Shell proposes the following measures:

(a) When operating under conditions of reduced visibility attributable to darkness or to adverse weather conditions, infra-red or night-vision binoculars will be available for use. It is recognized, however, that their effectiveness for this application is very limited even in clear night time conditions.

(b) Seismic activities will not be initiated during darkness or during conditions when visibility is reduced to less than the radius of the safety zone. Shell proposes that if a single small airgun remains firing during a shut-down, the rest of the array can be ramped up during darkness or in periods of low visibility. Seismic operations may continue under conditions of darkness or reduced visibility unless, in the judgement of the senior MMO, densities of endangered cetaceans in the general area are high

enough to warrant concern that an endangered cetacean is likely to enter the safety zone undetected. In that case, observers will advise the ship's captain or his designee to halt airgun operations or to move to a part of the survey area where visibility is adequate or where the likelihood of encountering an endangered cetacean is low based on aerial and vessel based surveys that would be part of the real-time monitoring program.

Mitigation for Subsistence Needs

Although not discussed in detail by Shell, NMFS must make a determination that an activity would not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. While this includes both cetaceans and pinnipeds, the primary impact by seismic activities on subsistence hunting is expected to be impacts from noise on bowhead whales during its westward fall feeding and migration period in the Beaufort Sea. NMFS has defined unmitigable adverse impact as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103). Discussions between the AEWC, the whaling captains and Shell continue at this time and results of those discussions will be reported in the final IHA notice.

A signed CAA allows NMFS to make a determination that the activity will not have an unmitigable adverse impact on the subsistence use of marine mammals. If one or both parties fail to sign the CAA, then NMFS will make the necessary determinations that the activity will or will not have an unmitigable adverse impact on subsistence use of marine mammals and NMFS may require that the IHA contain additional mitigation measures in order for this decision to be made.

Proposed Monitoring

As part of its application, Shell provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort and Chukchi seas. Shell proposes to conduct the following monitoring:

Vessel-based Visual Monitoring

Shell proposes that one or two marine mammal observers aboard the operating seismic vessel will search for and observe marine mammals whenever seismic operations are in progress and for at least 30 minutes before the planned start of seismic transmissions or whenever the seismic array's operations have been suspended for more than 10 minutes. These observers will scan the area immediately around the vessels with reticle binoculars during the daytime. Laser rangefinding equipment will be available to assist with distance estimation. After mid-August, when the duration of darkness increases, image intensifiers will be used by observers and additional light sources may be used to illuminate the safety zone.

A total of four observers (three trained biologists and one Inupiat observer/communicator) will be based aboard the seismic vessel. The use of four observers allows two observers to be on duty simultaneously for up to 50 percent of the active airgun hours. The use of two observers increases the probability of detecting marine mammals, and two observers will be required to be on duty whenever the seismic array is ramped up. Individual watches will be limited to no more than 4 consecutive hours to avoid observer fatigue (and no more than 12 hours on watch per 24 hour day). When mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Proposed Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

Shell proposes to conduct aerial surveys bi-weekly from the middle to the end of August, and daily (when possible due to weather) after September 1st in the Beaufort Sea. At this time Shell does not propose to conduct aerial surveys in the Chukchi Sea. Aerial surveys in the Beaufort Sea are proposed to continue for three days after the cessation of seismic operations.

Aerial surveys are typically conducted by teams of four observers (a pilot, two dedicated observers, and an observer/data recorder) in twin-engine airplanes. Observations are made at an altitude of 900 to 1,500 ft (274 to 457 m)and a ground speed of 120 knots (120 nm/hr; 138 statute mi (mi)/hr; 222 km/hr). Similar to previous Beaufort Sea aerial surveys, the survey plane will traverse a survey grid, centered on the seismic operations, which extends 50 to 75 km (31 to 46.6 mi) both east and west of the seismic operations and to 75 km (46.6 mi) offshore. Shell suggests that periodic flights that range further to the east may be utilized prior to the onset of migration to provide an early warning of the approach of migrating bowhead whales.

However, NMFS proposes that if seismic work is suspended during the bowhead subsistence hunting season, but resumes later in the autumn, aerial surveys will commence (or resume) when the seismic work resumes. In addition, MMS expects to conduct its broad-scale BWASP aerial survey work from approximately August 31st until the end of the bowhead migration in October. NMFS believes that this combined aerial survey data will provide good information to estimate the number of bowheads taken by Level B harassment.

The primary objective of the aerial surveys will be to document the occurrence, distribution, and movements of bowhead, as well as beluga and gray, whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen, although survey altitude will be too high for systematic surveys of seals.

Passive Acoustic Monitoring

Shell is considering the possibility of using a towed hydrophone array or other passive acoustic technique to detect and perhaps locate marine mammals during this seismic project. Towed hydrophones that are part of the seismic array have the ability to detect marine mammals within close proximity of the array but generally do not provide accurate location information. Hydrophone technology utilizing fixed position hydrophones has been useful in locating bowhead whales through their vocalizations around the fixed BP NorthStar facility (Richardson, 2005), however, the proposed seismic operation will be far ranging and would require either an extensive array of fixed sonobuoys, or multiple "listening" vessels. The presence of "listening" vessels within the seismic project area would add significantly to the number of noise sources present and broaden the potential impact area.

The use of aerial monitoring has demonstrated that bowheads avoid areas where active seismic operations are being conducted and is effective at documenting the extent of this impact.

Aerial surveys can also provide early, near-real time, reconnaissance information as to presence or approach of marine mammals to areas of seismic operation. According to Shell, the use of real-time acoustic monitoring would, therefore, not add significantly to the information available to seismic operators but would add significantly to the complexity and potential area of impact of the project. As a result, while Shell's original application did not propose to use passive acoustical monitoring during either the Beaufort or Chukchi Sea seismic operations, the value of implementing a passive acoustic program was discussed at the recent Anchorage meeting. Accordingly, Shell is presently reviewing its earlier determination. NMFS scientists believe that incorporating either a towed passive array from the seismic vessel or one of the support vessels or installing a passive net array along the Chukchi Sea coast would add valuable information on the marine mammals in the area.

Additional Proposed Mitigation and Monitoring Measures

As part of NMFS' week-long open-water peer review meeting in Anchorage, on April 19–20, 2006, participants had a discussion on appropriate mitigation and monitoring measures for Arctic Ocean seismic activities in 2006. In addition to previously mentioned mitigation and monitoring measures proposed by Shell, the workshop participants recommended several monitoring measures to increase our knowledge of marine mammal distribution and abundance in the Chukchi Sea. These included use of passive acoustics, either towed from a vessel or set out in a series of arrays along the Chukchi Sea coast. As of the publication date of this notice, Shell is studying these recommendations and will inform NMFS prior to the close of the comment period on this document on any additional monitoring that would be conducted.

In addition, NMFS proposes to impose additional mitigation and monitoring measures, such as expanded safety zones for bowhead and gray whales, and having those zones monitored effectively, in order to remain within the scope of the PEA and to increase the likelihood for NMFS and MMS to make a Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA).

Research

Shell proposes to develop and implement a research component to its marine mammal monitoring program that would further improve the understanding of bowhead whale deflection related to industrial sound sources, most specifically the operation of seismic operations. A detailed study plan is being developed that will utilize data from aerial surveys, possibly combined with acoustic monitoring. That research plan will include:

Vessel-based Surveys: Three MMOs will conduct observations onboard a dedicated vessel conducting three individual 2–3 day surveys early in the seismic season, in the middle of the season and late in the season, as well as opportunistic surveys while the vessel is being used for crew changes/supply runs. The survey will systematically cover broad areas of the Chukchi planning area in order to obtain adequate coverage across multiple habitat types (subject to vessel operational limitations near ice pack). The surveys will provide: (1) quantitative data on distribution and densities for each marine mammal species by habitat (depth and ice); (2) sighting data to compute densities during seismic and non seismic periods; (3) density information during non-seismic periods to be used to estimate numbers of marine mammals that would have been exposed to various sound levels (160, 180, 190 dB re 1 microPa), if they had not moved away from the seismic vessel; and (4) sighting and density information from operating seismic vessel will provide data on numbers that did not avoid the vessel and were exposed to the same sound levels.

Reporting

Shell proposes to submit a report to NMFS approximately 90 days after completion of the 2006 season and a final technical report approximately 240 days after completion of the 2006 season. The 90–day report will: (1) present the results of the 2006 shipboard marine mammal monitoring; (2) estimate exposure of marine mammals to industry sounds; (3) provide data on marine mammal sightings (e.g., species, numbers, locations, age/size/gender, environmental correlates); (4) analyze the effects of seismic operations (e.g., on sighting rates, sighting distances, behaviors, movement patterns); (5) provide summaries of power downs, shut downs, and ramp up delays; (6) provide an analysis of factors influencing detectability of marine mammals; and (7) provide summaries on communications with hunters and potential effects on subsistence activities.

NMFS proposes that the Final Technical Report will contain a cumulative analysis of the data and information of the 90–day report with similar data and information from other seismic activities in the Beaufort and Chukchi seas in 2006.

Endangered Species Act (ESA)

Under section 7 of the ESA, the MMS has begun consultation on the proposed seismic survey activities in the Beaufort and Chukchi seas during 2006. NMFS will also consult on the issuance of the IHA under section 101(a)(5)(D) of the MMPA to Shell for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

NEPA

The MMS has prepared a Draft PEA for the 2006 Arctic Outer Continental Shelf (OCS) Seismic Surveys. NMFS is a cooperating agency in the preparation of the Draft PEA. NMFS is reviewing this PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of Arctic Ocean OCS seismic surveys in 2006. A copy of the MMS Draft PEA for this activity is available upon request and is available online (see **ADDRESSES**).

Preliminary Conclusions

Summary

Based on the information provided in Shell's application and the MMS PEA, NMFS has preliminarily determined that the impact of Shell conducting seismic surveys in the northern Chukchi Sea and eastern and central Beaufort Sea in 2006 will have no more than a negligible impact on marine mammals and that there will not be any unmitigable adverse impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented and a CAA is implemented.

Potential Impacts on Marine Mammals

NMFS has preliminarily determined that the relatively short-term impact of conducting seismic surveys in the U.S. Chukchi and Beaufort seas may result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of seismic operations (as shown in Table 4–1 in the applications), which will vary annually due to variable ice conditions and other factors, the number of potential harassment takings is estimated to be small (see Tables 1 and 2 in this document).

In addition, no take by death or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures proposed for Shell's IHA. This preliminary determination is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the seismic array, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely at SPLs as low as 180 dB re 1 microPa;(at least in delphinids); (3) the fact that injurious levels would be very close to the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night close to the seismic vessel. Finally, no known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals are known to occur within or near the planned areas of operations during the season of operations.

Potential Impacts on Subsistence Uses of Marine Mammals

Preliminarily, NMFS believes that the proposed seismic activity by Shell in the northern Chukchi Sea and central and eastern Beaufort Sea in 2006, in combination with other seismic and oil and gas programs in these areas, will not have an unmitigable adverse impact on the subsistence uses of bowhead whales and other marine mammals. This preliminary determination is supported by the following: (1) Seismic activities in the Chukchi Sea will not begin until after July 10 by which time the spring bowhead hunt is expected to have ended; (2) NMFS' understanding that the fall bowhead whale hunt in the Beaufort Sea will be governed by a CAA between Shell and the AEWC and village whaling captains; (3) although unknown at this time to NMFS, the CAA conditions will significantly reduce impacts on subsistence hunters; (4) while it is possible that accessibility to belugas during the spring subsistence beluga hunt could be impaired by the survey, it is unlikely because very little of the proposed survey is within 25 km (15.5 mi) of the Chukchi coast, meaning the vessel will usually be well offshore and away from areas where seismic surveys would influence beluga hunting by communities; and (5) because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals where natives would harvest these seals, it should not conflict with harvest activities.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Shell for conducting a seismic survey in the northern Chukchi Sea and central and eastern Beaufort Sea in 2006, provided the previously proposed mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: April 28, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–4172 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042506E]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice; receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

SUMMARY: NMFS received a request from The Boeing Company (Boeing) for a reauthorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize Boeing to take, by Level B harassment, small numbers of several species of pinnipeds at south VAFB beginning in June 2006.

DATES: Comments and information must be received no later than June 2, 2006.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.042506E@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, (301) 713–2289, ext. 166 or Monica DeAngelis, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must determine whether to issue the authorization with appropriate conditions.

Summary of Request

On February 28, 2006 NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to Boeing on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), May 20, 2004 (69 FR 29696, May 25, 2004), and May 23, 2005 (70 FR 30697, May 27, 2005) each for a 1–year period. No work and, therefore, no monitoring was conducted under the 2005 IHA. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year. The *Delta Mariner* is a 312–ft (95.1–m) long, 84–ft (25.6–m) wide steel hull ocean-going vessel capable of operating at a 8–ft (2.4–m) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core (CBC) from the Delta Mariner requires use of an elevating platform transporter (EPT), an additional source of noise with sound levels measured at approximately 85 dB A-weighted (re 20 microPascals at 1–m) 20 ft (6.1 m) from the engine exhaust when the engine is running mid-speed (Acentech, 1998). Procedures require two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62–70 dB A-weighted at 200 ft (60.9 m) away, and 84–112 dB A-weighted at 25 ft (7.6 m) away. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total time of *Delta Mariner* docking and cargo movement activities is estimated at approximately between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing approximately 3,000 to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43 to 81 dB A-weighted at 250 ft (76.2 m). Dredge operations, from set-up to tear-down, would continue 24–hours a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2006 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Habitat and Marine Mammals Affected by the Activity

Pacific Harbor Seals

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 31,600 seals. Since 1990 there has been no net population growth along the mainland or the Channel Islands. The decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity (Carretta *et al.*, 2004). The total population of harbor seals on VAFB is now estimated to be 1,099 (maximum of 515 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2003).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period) and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur in 2004 or 2005. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1 mi (1.6 km) north of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs

from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

California Sea Lions

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schpoling in the area, Boeing included sea lions in their request.

California sea lions range from British Columbia to Mexico. The most recent population estimates for the California sea lions range from 237,000 to 244,000 individuals (Caretta *et al.*, 2004). Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003).

Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves *et al.*, 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted subadult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal and although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Other Marine Mammals

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). NMFS Stock Assessments can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would be approximately 72 dBA at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dBA at 25 ft (7.6 m) away and 62 to 70 dBA at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA and NMFS implementing regulations, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both

the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water of hundreds of animals, may rise to the level of Level A harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site on average is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19 and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application, NMFS 2005 Environmental Assessment (EA) and ENSR International's 2001 Final EA.

Numbers of Marine Mammals Expected to be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2005–2006, NMFS estimates that a maximum of 767 to 1570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4 - 5.0 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 240,000. These numbers are small relative to this population size (less than 0.1 percent). Up to 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment out of a total estimated population of 101,000. These numbers are small relative to this population size (less than 0.01 percent).

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about one ton. The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for pinnipeds in California waters, and thus, there are no anticipated effects on subsistence needs.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may

introduce quieter techniques and equipment.

Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document, as well as the take estimates.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Endangered Species Act

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act

In 2001, the USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, NMFS prepared an EA supplementing the information contained in the USAF EA and issued a Finding of No Significant Impact on the issuance of an IHA for Boeing's harbor activities in accordance with section 6.01 of the National Oceanic and Atmospheric Administration Administrative Order (NAO) 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). The proposed activity is within the scope of NMFS'2005 EA and FONSI.

Preliminary Conclusions

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1–year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation would result in the Level B Harassment only of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by harbor seals and California sea lions to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since these species haul out in such small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by Level B harassment is estimated to be small. In addition, no take by injury or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends readers review NMFS' responses to those comments on this activity submitted previously (see 67 FR 63151, May 23, 2002, 68 FR 36540, June 18, 2003, 69 FR 29696, May 25, 2004, and 70 FR 30697, May 27, 2005).

Dated: April 27, 2006.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–6717 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042706D]

Marine Mammals; File No. 763–1845

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Smithsonian National Zoological Park (SNZP), 3001 Connecticut Avenue NW, Washington, DC 20008 (John Berry, Responsible Party), has applied in due form for a permit to conduct research on Weddell seals (Leptonychotes weddelliis) and import and re-export marine mammal specimens for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 2, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources,

NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 763–1845.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The SNZP proposes to test the hypothesis that food intake is important to the energetics of lactation in Weddell seals in McMurdo Sound, Antarctica, over a 2–year period. Researchers would repeatedly capture two groups of up to 50 mother-pup pairs each (Treatment and Control) for weighing, administering isotopes, collecting blood and milk samples, and application/removal of time-depth recorders and radio transmitters. Thus, researchers would determine water turnover, maternal energy expenditure, changes in body composition, milk nutrient transfer, maternal and pup diving behavior, and the onset of feeding by mothers and pups. Researchers would compare the Treatment group to the minimally handled Control group, captured only twice (at the beginning and end of lactation), for collection of samples, weighing, and isotope administration. Ontogeny of foraging would be monitored in pups from both experimental groups (Postweaning group). Up to 80 mother-pup pairs (Cross-sectional group) would be captured once per season to examine incidence of feeding during lactation. The applicant proposes to salvage tissue samples from seals that die naturally. Samples collected from Weddell seals and opportunistic samples from non-endangered marine mammals obtained legally by others would be imported into the U.S. and re-exported for scientific analysis. The applicant has requested a 5–year permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–6718 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Madrid Protocol.

Form Number(s): PTO–2131, PTO–2132, PTO–2133.

Agency Approval Number: 0651–0051.

Type of Request: Revision of a currently approved collection.

Burden: 1,008 hours annually.

Number of Respondents: 4,308 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately two minutes to one hour (0.03 to 1.0 hours) to complete the information in this collection, including the time to gather the necessary information, prepare the forms or documents, and submit the completed request.

Needs and Uses: The Madrid Protocol is an international treaty that allows a trademark owner to seek registration in any of the participating countries by filing a single international application. The public uses this collection to submit applications for international registration and related requests to the USPTO under the Madrid Protocol. This collection contains electronic forms for filing the Application for International Registration (PTO–2131), Subsequent Designation (PTO–2132), and Response to a Notice of Irregularity (PTO–2133) online through the USPTO web site. The USPTO is adding one petition to this collection, the Petition to Review Refusal to Certify an International Application. No form is provided for this petition.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include "0651–0051 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 2, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: April 26, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–6652 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

April 27, 2006

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection.

EFFECTIVE DATE: May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the U.S. Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 17, 2003, as amended, between the Governments of the United States and the Socialist Republic of Vietnam, establishes limits for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Socialist Republic of Vietnam. The current limits for certain categories are being adjusted for swing, carryover, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov). See 70 FR 75156 (December 19, 2005).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 27, 2006.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 2005, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2006 and extends through December 31, 2006.

Effective on May 3, 2006, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	129,081 kilograms.
301	774,662 kilograms.
332	367,867 dozen pairs.
333	32,952 dozen.
334/335	855,621 dozen.
338/339	17,152,108 dozen.
340/640	2,551,109 dozen.
341/641	988,947 dozen.
342/642	751,476 dozen.
345	187,356 dozen.
347/348	9,502,098 dozen.
351/651	649,276 dozen.
352/652	2,293,613 dozen.
359–C/659–C [2]	221,700 kilograms.
359-S/659-S [3]	681,737 kilograms.
434	20,113 dozen.
435	49,627 dozen.
440	2,845 dozen.
447	61,253 dozen.
448	37,694 dozen.
620	8,263,944 square meters.
632	200,466 dozen pairs.
638/639	1,550,005 dozen.
645/646	112,945 dozen.
647/648	2,442,899 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2005.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–6681 Filed 5–2–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USA–2005–0034]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, Form, and OMB Number: Candidate Procedures; USMA Forms 21–16, 21–23, 21–25, 21–26, 5–520, 5–518, 481, 546, 5–2, 5–26, 5–515, 480–1, 520, 261, 21–8, 21–14, 5–497; OMB Control Number 0702–0061.

Type of Request: Extension.

Number of Respondents: 92,525.

Responses per Respondent: 1.

Annual Responses: 92.525.

Average Burden per Response: 15 minutes average.

Annual Burden Hours: 19,434.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4138 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USA–2005–0035]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, Form, and OMB Number: Signature and Tally Record; DD Form 1907; OMB Control Number 0702–0027.

Type of Request: Extension.

Number of Respondents: 130.

Responses per Respondent: 577.

Annual Responses: 75,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 3,750.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin, and at specified stages until delivery at destination. A copy of the STR, along with other transportation documentation is forwarded by the carrier to the appropriate finance center for payment.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/EDS/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4139 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USA–2005–0036]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, Form, and OMB Number: Pre-Candidate Procedures; USMA Forms 375, 723, 450, 21–12, 21–27; OMB Control Number 0702–0060.

Type of Request: Extension.

Number of Respondents: 64,700.

Responses per Respondent: 1

Annual Responses: 64,700.

Average Burden per Response: 9 minutes average.

Annual Burden Hours: 3,203.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

Your may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD.Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4140 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USA–2005–0037]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, For, and OMB Number: Offered Candidate Procedures; USMA Forms 534, 5–499, 5–490, 2–66, 847, 5–489, 5–519, 8–2, 6–154, 5–515, 5–516, 480–1, 5–26; OMB Control Number 0702–0062.

Type of Request: Extension.

Number of Respondents: 16,600.

Response per Respondent: 1.

Annual Responses: 16,600.

Average Burden per Response: 5 minutes average.

Annual Burden Hours: 1,383.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4141 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. USA–2006–0001]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, Form, and OMB Number: U.S. Army ROTC 4-Year College Scholarship Application; CC Form 114–R; OMB Control Number 0702–0073.

Type of Request: Extension.

Number of Respondents: 11,000.

Responses per Respondent: 1.

Annual Responses: 11,000.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 8,250.

Needs and Uses: The Army ROTC Program produces approximately 80 percent of the newly commissioned officers for the U.S. Army. The Army ROTC scholarship is an incentive to attract men and women to pursue educational degrees in the academic disciplines required by the Army.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 1100, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4142 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0071]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2006.

Title, Form and OMB Number: Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552; DD Form 149; OMB Control Number 0704–0003.

Type of Request: Extension.

Number of Respondents: 28,000.

Responses per Respondent: 1.

Annual Responses: 28,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 14,000.

Needs and Uses: This information collection requirement is necessary for all Service personnel (current and former Service members) to apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records under Title 10, United States Code section 1552. The BCMRs of the Services are the highest administrative boards and appellate review authorities in the Services for the resolution of military personnel disputes. The Service Secretaries, acting through the BCMRs, have broad powers and are duty bound to correct records if an error or injustice exists. The range of issues includes, but is not limited to, awards, clemency petitions (of courts-martial sentences), disabilities, evaluation reports, home of record, memoranda of reprimands, promotions, retirements, separations, survivor benefit plans, and titling decisions by law enforcement authorities.

Information collection is needed to provide current and former Service members with a method through which to request correction of a military record, and to provide the Services with the basic data needed to process the request.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title 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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 06–4143 Filed 5–2–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 2, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Electronic Debit Payment Option for Student Loans.

Frequency: On Occasion.

Affected Public: Individuals or household; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 1,900. *Burden Hours:* 258.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking or savings accounts.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2995. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6655 Filed 5–2–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of renewal of the computer matching program between the U.S. Department of Education and the U.S. Department of Veterans Affairs.

SUMMARY: Pursuant to the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,* notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (the recipient agency) and the U.S. Department of Veterans Affairs (VA) (the source agency). After the ED and VA Data Integrity Boards approve a new computer matching agreement, the computer matching program will begin on the effective date as specified in the agreement and as indicated in paragraph 5, below.

In accordance with the Privacy Act of 1974, (5 U.S.C. 552a), as amended, the OMB *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988* (54 FR 25818, June 19, 1989), and OMB Circular No. A–130, Appendix I (65 FR 77677, December 12, 2000), the following information is provided:

1. Names of Participating Agencies

The U.S. Department of Education and the U.S. Department of Veterans Affairs.

2. Purpose of the Match

The purpose of this matching program between ED and VA is to verify the veteran's status of applicants for financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA), who claim to be veterans.

The Secretary of Education is authorized by the HEA to administer the Title IV programs and to enforce the terms and conditions of the HEA.

Section 480(c)(1) of the HEA defines the term "veteran" to mean "any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable." (20 U.S.C. 1087vv(c)(1)). Under section 480(d)(3) of the HEA, an applicant who is a veteran (as defined in section 480(c)(1)) is considered an independent student for purposes of Title IV, HEA program assistance eligibility, and therefore does not have to provide parental income and asset information to apply for Title IV, HEA program assistance. (20 U.S.C. 1087vv(d)(3)).

3. Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 480(c) and (d)(3) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(3)) and 5 U.S.C. 552a. The VA is authorized to participate in the matching program under 38 U.S.C. 523.

4. Categories of Records and Individuals Covered by the Match

ED will provide the Social Security Number and other identifying information of each applicant who indicates that he or she is a veteran. This information will be extracted from the Federal Student Aid Application File system of records (18–11–01), pursuant to routine use no. 16, as corrected by 66 FR 18758 (April 11, 2001). The ED data will be matched against the Veterans and Beneficiaries Identification and Records Location Subsystem–VA (38VA21), consistent with routine use no. 21, as added by 66 FR 30049–50 (June 4, 2001).

5. Effective Dates of the Matching Program

The matching program will become effective on (1) June 24, 2006, the day after the expiration of the current computer matching agreement (CMA); (2) thirty (30) days after this notice of the matching program has been published in the **Federal Register**; or (3) forty (40) days after a report concerning the matching program has been transmitted to the OMB and the Congress, whichever date occurs last. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between ED and VA, should contact Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, 63H2 Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to the Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 28, 2006.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E6–6694 Filed 5–2–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed modifications to data collection Form EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey," and request for comments.

SUMMARY: The EIA is soliciting comments on the proposed revisions and extension through November 30, 2007 to the Form EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey."

DATES: Comments must be filed by July 3, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Fred Mayes. To ensure receipt of the comments by the due date, submission by FAX (202) 287–1964 or e-mail *Fred.Mayes@eia.doe.gov* is recommended. The mailing address is U.S. Department of Energy, Energy Information Administration, EI–52, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Fred Mayes may be contacted by telephone at (202) 287–1750.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Fred Mayes at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of

1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on proposed collections of energy information conducted by or in conjunction with the EIA. Any comments that are received help the EIA to finalize data requests that maximize the utility of the information collected, and to assess the impact of collection burden on the public. The EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Form EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey," collects information about the manufacture and distribution of geothermal heat pumps and the status of the industry. The survey information is disseminated in electronic products and electronic data files. For details on EIA's renewables information program, please visit EIA's Web site at *http://www.eia.doe.gov/fuelrenewable.html.*

II. Current Actions

The EIA will request OBM approval of: (a) A 14-month extension, through November 30, 2007, and (b) modifications to Form EIA–902 described below. The proposed changes EIA is requesting reflect the increasing emergence of the renewable industry as a whole and the geothermal energy industry in particular. The changes proposed herein would be effective for EIA's calendar year 2007 data collection (2006 data) but would expire on November 30, 2007. The reason for this shortened interim clearance proposal is so that EIA can synchronize the forms clearance schedule for three of its renewable energy data collections. Specifically, EIA desires to consolidate the expiration date of Form EIA–902 with the expiration dates of Form EIA–63A, "Annual Solar Thermal Collector Manufacturers Survey," and Form EIA–63B, "Annual Photovoltaic Module/Cell Manufacturers Survey." Synchronizing the expiration date of these three forms, which all collect information from manufactures of renewable energy equipment, will permit EIA to conduct a more comprehensive review of its data needs for this market sector and develop a unified data collection approach which would lead to more efficient survey processing by EIA.

EIA recognizes that its information collections must continue to adapt as the industry changes. It is especially critical to Federal policymakers and State governments, who increasingly rely on the data to understand and respond to the current and emerging impacts of renewable industry developments on consumers nationally and in their particular State. In addition, as government energy policy moves towards market-based solutions, market data becomes even more important. The proposed form EIA–902 presented here incorporates discussions with trade associations of the geothermal energy industry.

EIA proposes the following changes to Form EIA–902: (1) Collect estimates of the coefficient of performance (COP) and the energy efficiency ratio (EER) for geothermal heat pumps by heat pump type; (2) collect the total rated capacity of geothermal heat pumps shipped (3.0) instead of the number of units shipped by destination; (3) collect the total rated capacity of domestic shipments by customer type (4.0) instead of the total number of geothermal heat pump shipments by customer type; (4) redefine the economic sectors to correspond to the standard sectors used by EIA; (5) collect total rated capacity of domestic shipments by economic sector (5.0) , instead of average rated capacity for all shipments ; and (6) add a FAX number to the information collected for the respondent contact. The form and instructions will be modified to show these changes.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to be an average 4.20 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, April 26, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–6667 Filed 5–2–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8164–8]

EPA Science Advisory Board Staff Office; Request for Nominations of Candidates for the EPA Clean Air Scientific Advisory Committee, the Advisory Council on Clean Air Compliance Analysis, and the Science Advisory Board

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Staff Office is soliciting nominations for consideration of membership on EPA's Clean Air Scientific Advisory Committee (CASAC), the Advisory Council on Clean Air Compliance Analysis (Council), the chartered Science Advisory Board (SAB or Board), and SAB Standing Committees.

DATES: Nominations should be submitted in time to arrive no later than June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nominators who are unable to submit nominations electronically as described below, may submit a paper copy by contacting Ms. Patricia L. Thomas, U.S. EPA SAB Staff Office (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: U.S. EPA SAB, Suite 3600, 1025 F Street, NW., Washington DC 20004), (202) 343–9974 (telephone), (202) 233–0643 (fax), or via e-mail at *thomas.patricial@epa.gov*. General inquiries regarding the work of the SAB, CASAC, and Council may be directed to Dr. Anthony F. Maciorowski, Associate Director for Science, U.S. EPA SAB Staff Office, (202) 343–9983 (telephone), or via e-mail at *maciorowski.anthony@epa.gov*.

Background

The SAB (42 U.S.C. 4365), CASAC (42 U.S.C. 7409) and Council (42 U.S.C. 7612) are chartered Federal Advisory Committees that report directly to the EPA Administrator. The mission of these federal advisory committees, as established by statute, is to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA actions. As Federal Advisory Committees, the CASAC, Council, and SAB conduct business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. C) and related regulations. Generally, CASAC, Council, and SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about these Federal Advisory Committees can be obtained on the SAB Web site at: *http://www.epa.gov/sab*.

Members of the CASAC, Council, SAB and their standing committees constitute a distinguished body of non-EPA scientists, engineers, economists, and social scientists who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a period of three years, with the possibility of appointment to a second three year term. These federal advisory committees provide advice, recommendations, and peer review on a wide variety of EPA science activities. This notice specifically requests nominations for the chartered CASAC, Council, and SAB, and SAB standing committees.

The chartered CASAC has responsibility to review and offer technical and scientific advice to the EPA Administrator on scientific aspects of national ambient air quality standards for criteria pollutants. The chartered Council has the responsibility to review and offer technical and scientific advice to the EPA Administrator on the impacts of the Clean Air Act on the public health, economy, and environment of the United States. The SAB standing committees provide independent scientific and technical advice to the EPA Administrator through the chartered Board. The SAB Drinking Water Committee provides advice on EPA's national drinking water criteria and standards program. The SAB Ecological Processes and Effects Committee provides advice on science to protect, sustain and restore the integrity of ecosystems. The SAB Environmental Economics Advisory Committee provides advice on methods and analyses related to economics, costs, and benefits of EPA environmental programs. The SAB Environmental Engineering Committee provides advice on environmental engineering, remediation, and control. The SAB Environmental Health Committee and the SAB Integrated Human Exposure Committee provides advice on the development and use of guidelines for human health effects, exposure assessment, and risk assessment. The Radiation Advisory Committee provides advice on radiation protection, radiation science, and radiation risk assessment. All the work of the SAB standing committees are under the direction of the Board. The Board reviews and approves SAB standing committee reports, and provides strategic advice to the EPA Administrator on a variety of EPA science and research issues and programs. Additional information about the CASAC, the Council, the SAB, and SAB standing committees may be found at the SAB Web site at: *http://www.epa.gov/sab*.

Expertise Sought

The SAB Staff Office is seeking nominations for nationally and internationally recognized non-EPA scientists, engineers, economists, and social scientists. Nominees are sought from a wide range of scientific and technical areas that are relevant to EPA research and science activities. General areas of expertise and the specific committees where such expertise is desired follow.

(a) *Exposure Assessment*—Specialized expertise in the characterization, quantitative analysis, sensor development and deployment, monitoring, and modeling of sources, emissions, environmental fate, transport, and distribution of physical, chemical, radiological, and biological stressors and mixtures in various environmental media (air, water, land, tissue, etc.). Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered CASAC, chartered SAB, the SAB Drinking Water Committee, the SAB Integrated Human Exposure Committee, and the SAB Radiation Advisory Committee.

(b) *Human Health Risk Assessment*—Specialized expertise in public health, environmental medicine, epidemiology, mammalian toxicology, microbiology, quantitative or statistical methods and models to estimate the potential health hazard and risk of physical, chemical, radiological, and biological stressors and mixtures in various environmental media (air, water, land, tissue, etc.). Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered CASAC, chartered Council, the chartered SAB, the SAB Drinking Water Committee, the SAB Environmental Health Committee, and the SAB Radiation Advisory Committee.

(c) *Ecological Assessment*—Specialized expertise in ecological condition assessment, conservation biology, landscape ecology, ecosystem modeling, ecotoxicology, quantitative or statistical methods and models to estimate the ecological hazard and risk to ecosystems, communities, populations, and species to physical,

chemical, radiological, and biological stressors and mixtures. Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered SAB, and the SAB Ecological Processes and Effects Committee.

(d) *Risk Mitigation and Control*—Specialized expertise in civil, chemical, environmental, or systems engineering for the protection of public health and the environment through sustainable and green approaches, environmental management systems, pollution prevention, waste reduction and reuse, and containment or control technologies for environmental stressors in all environmental media (*e.g.*, air, land, water). Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered SAB and the SAB Environmental Engineering Committee.

(g) *Environmental Economics Assessments*—Specialized expertise in cost-benefit analysis, uncertainty analysis, energy sector and electricity generation, modeling (*e.g.*, emissions fate and transport, emissions trading, economy-environment interactions), application of quantitative methods to environmental policy (*e.g.*, benefit-cost assessment, valuation, cost effective analysis, computable general equilibrium modeling), market mechanisms and incentives, or political economy of policy instrument choices. Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered Council, chartered SAB, and the SAB Environmental Economics Advisory Committee.

(f) *Behavioral and Decision Sciences Assessments*—Specialized expertise in risk communication, and analytical deliberative, collaborative, and predictive approaches to environmental decision-making. Depending upon their specific disciplinary expertise, nominees will be considered for appointment to the chartered Council and the chartered SAB.

How To Submit Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment to these chartered advisory committees and SAB standing committees. Individuals may self-nominate. Qualified nominees will demonstrate appropriate scientific education, training, and experience to evaluate basic and applied science issues addressed by these advisory committees. Successful nominees will have distinguished themselves professionally and be available to invest the time and effort in providing advice and recommendations on the development and application of science at EPA. Nominations should be submitted in electronic format (which is preferred over hard copy) through the Form for Nomination to Chartered Advisory Committees or SAB Subcommittees provided on the SAB Web site. The form can be accessed through the SAB Nomination Form link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab.* To be considered, all nominations should include the information requested on that form.

Nominators are asked to identify the specific committee or committees for which nominees would like to be considered. The nominating form requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Ms. Patricia L. Thomas as indicated above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form. The SAB Staff Office will acknowledge receipt of nominations.

Candidates will be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at the SAB Web site at: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.* This form should not be submitted as part of a nomination.

The SAB Staff Office seeks candidates who possess the necessary domains of knowledge, and relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) to adequately address scientific issues facing the Agency. The primary criteria to be used in evaluating potential nominees will be scientific and/or technical expertise, knowledge, and experience. Additional criteria that will be used to evaluate technically qualified nominees will include: The absence of financial conflicts of interest; scientific credibility and impartiality; availability and willingness to serve; and the ability to work constructively and effectively on committees. The selection of new members will also include consideration of the collective breadth and depth of scientific perspectives; a balance of scientific perspectives; continuity of knowledge and understanding of EPA missions and environmental programs, and diversity factors (*e.g.*, geographical areas and professional affiliations) for each of the chartered committees, SAB subcommittees.

Dated: April 27, 2006.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–6701 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0237; FRL–8061–6]

Geologics; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Geologics in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Geologics has been awarded multiple contracts to perform work for OPP, and access to this information will enable Geologics to fulfill the obligations of the contract.

DATES: Geologics will be given access to this information on or before May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* i. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0237. Publicly available docket materials are available electronically at *http://www.regulations.gov.*

ii. **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number ((703) 305–5805) and hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays) will remain the same after the move.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

1. Under Contract No.GS–10F–0452M, enter data for DMR-QA Studies 25 and 26.

2. Perform data entry analysis of DMR-QA Study 25 trends, provide suggestions and editorial comments to improve instructions and format of the DMR-QA notice, and

3. Enter data of Laboratory inspections and data audits conducted by the Laboratory Data Integrity Branch.

This contract involves no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, since pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Geologics, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Geologics is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Geologics until the requirements in this document have been fully satisfied. Records of information provided to Geologics will be maintained by EPA Project Officers for these contracts. All information supplied to Geologics by EPA for use in connection with these contracts will be returned to EPA when Geologics has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 25, 2006.

Robert A. Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc.E6–6611 Filed 5–2–06; 8:45 am]

[BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0048; FRL–8059–5]

Amitraz; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide amitraz, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a March 17, 2004 **Federal Register** Notice of Receipt of Requests from the amitraz registrant to voluntarily cancel all uses of its Ovasyn Insecticide/Miticide and Mitac W Insecticide product registrations. These are not the last amitraz products registered for use in the United States, but are the last amitraz products for the use sites of cotton and pears. In the March 17, 2004 Notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrant withdrew its requests within this period. The Agency received no comments regarding the cancellation of Ovasyn Insecticide/Miticide and Mitac W Insecticide. Further, the registrant did not withdraw its requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the amitraz products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–8041; e-mail address: *johnson.amaris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person

listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* i. EPA has established a docket for this action under Docket identification number (ID) EPA–HQ–OPP–2004–0048. Publicly available docket materials are available electronically at *http://www.regulations.gov.*

ii. **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries,will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number ((703) 305–5805) and hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays) will remain the same after the move.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by the registrant, of amitraz products Ovasyn Insecticide/Miticide and Mitac W Insecticide, registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in the following Table 1:

TABLE 1.—AMITRAZ PRODUCT CANCELLATIONS

EPA Registration No.	Product Name
264–625	Ovasyn Insecticide/ Miticide
264–636	Mitac W Insecticide

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1.

TABLE 2.—REGISTRANT OF CANCELLED AMITRAZ PRODUCTS

EPA Company No.	Company Name and Address
264	Bayer CrepScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the March 17, 2004 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of amitraz.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of amitraz registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the amitraz product registrations identified in Table 1 of Unit II are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which arecurrently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after the approval of the cancellation, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 20, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–6617 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0347; FRL–8060–2]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for the Residues of Propiconazole and Its Metabolites Containing the Dichlorobenzoic Acid (DCBA) Moiety in or on Various Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for the residues of the fungicide propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety in or on leafy vegetables (Subgroup 4B); cranberry; mint; almond, hulls; berries (Group 13); carrot, roots; legume vegetables (Group 6); foliage of legume vegetables (Group 7), forage and hay; onion, dry bulb and green; pistachios; tree nuts (Group 14); sorghum, grain/forage/stover; soybeans, forage/hay/seed; strawberry; grain cereal (Group 15, except corn, rice and sorghum), bran/forage/hay/straw; corn, forage/grain/stover/oil; sugar beet, dried pulp/molasses/ roots/tops; rice, aspirated grain fraction/bran/grain/hulls; and alfalfa, forage/hay.

DATES: Comments must be received on or before June 2, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0347 and pesticide petition numbers (PPs) 6E4788, 7E4860, 8E4931, 2F6371, and 5F4498 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

• **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0347. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under "Delivery" and "Important Note." The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the

submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

1. *PP 6E4788*. Interregional Research Project No. 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902, proposes to establish a tolerance for the residues of the fungicide propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety in or on food and feed commodities leafy vegetables (Subgroup 4B) at 5.0 parts per million (ppm); and

2. *PP 7E4860*. Cranberry at.1.0 ppm; and

3. *PP 8E4931*. Mint at.3.0 ppm.

4. *PP 2F6371*. Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to establish a tolerance for the residues of the fungicide propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety in or on food and feed commodities almond, hulls and onion, green at 8.0 ppm; berries (Group 13) and legume vegetables (Group 6) at 1.0 ppm; foliage of legume vegetables (Group 7)/ sorghum/soybean, forage and sugar beet, tops at 10.0 ppm; carrot, roots/ pistachios/nuts, tree (Group 14) at 0.2 ppm; foliage of legume vegetable (Group 7)/soybean, hay at 32.0 ppm; onion, dry bulb/corn, grain/sugar beet, roots at 0.3 ppm; sorghum, grain/grain cereal group (except corn, rice, and sorghum), bran at 2.5 ppm; sorghum, stover at 15.0 ppm; soybean, seed/grain, cereal group (except corn, rice, and sorghum), hay/ sugar beet, dried pulp at 2.0 ppm; strawberry at 1.5 ppm; grain, cereal group (except corn, rice, and sorghum) (Group 15), forage/sugar beet, molasses at 3.0 ppm; grain, cereal group (except corn, rice, and sorghum), straw at 13.0 ppm; grain, cereal group (except corn, rice, and sorghum)/corn, oil at 0.5 ppm; corn, forage at 4.0 ppm; corn, stover at 25.0 ppm; rice, bran and hulls at 28.0 ppm; rice, grain at 7.0 ppm; rice, straw at 18.0 ppm; and aspirated grain fraction at 17.0 ppm; and

5. *PP 5F4498*. Alfalfa, forage and hay at 0.1 ppm.

Analytical method AG-454A was developed for the determination of residues of propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety. This method has been accepted and published by EPA as the tolerance enforcement method for crops. The limit of quantitation (LOQ) for the method is 0.05 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 2006

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–6616 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0336; FRL–8058–4]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Suterra, LLC, to conditionally register the pesticide products Checkmate BAW Technical Pheromone containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. i. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0336. Publicly available docket materials are available electronically at *http://www.regulations.gov*.

ii. **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the Office of Pesticide Programs (OPP) Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number ((703) 305–5805) and hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays) will remain the same after the move.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support

registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the OPP Regulatory Public Docket (7502P), Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Dr., Arlington, VA, (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of (Z,E)-9,12-tetradecadien-1-yl acetate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of (Z,E)-9,12-tetradecadien-1-yl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of December 15, 2005 (70 FR 74316) (FRL–7749–7), which announced that Suterra, LLC, 213 S.W. Columbia Street, Bend, OR, 97702–1013, had submitted an application to conditionally register the pesticide product, Checkmate BAW Technical Pheromone, biochemical pheromone (attractant) for mating disruption of the Beet Armyworm Moth (*Spodoptera exigua*) (EPA File Symbol 56336–UT), containing (Z,E)-9,12-tetradecadien-1-yl acetate at 87.66% an active ingredient not included in any previously registered product.

The application(s) were conditionally approved on March 13, 2006, for an end-use product and a technical listed below:

1. Checkamate BAW Technical Pheromone. For manufacturing use only. EPA Reg. No. 56336–47.

2. Checkmate BAW-F. End use product for direct application to the Beet Armyworm Moth. EPA Reg. No. 56336–43.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 25, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–6613 Filed 5–2–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0327; FRL–8058–6]

Notice of Filing of Pesticide Petitions for Establishment and Amendment of Regulations for the Residues of Bifenazate in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for the residues of bifenazate (1-methylethyl 2-(4-methoxy [1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on fruit , stone (Group 12); pea (garden and edible podded); and vegetable, tuberous and corm (Subgroup 1C); and .proposes to amend 40 CFR 180.572 by deleting the existing peach and nectarine tolerances since they are included in the fruit, stone (Group 12) tolerance.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0327 and pesticide petition number (PP) 3E6762 and 5E6992, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.
- **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0327. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under "Delivery" and "Important Note." The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; phone number: 703-305-7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 3E6762. Interregional Research Project No. 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902, proposes to establish a tolerance for the residues of bifenazate (1-methylethyl 2-(4-methoxy [1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on food commodities fruit, stone (Group 12) at 2.0 parts per million (ppm); and proposes to amend 40 CFR 180.572 by deleting the existing peach and nectarine tolerances since they are included in the fruit, stone (Group 12) tolerance of 2.0 ppm;

Amendment to Existing Tolerances

PP 5E6992. Proposes bifenazate tolerances for pea, garden at 0.2 ppm; pea, edible podded at 4.0 ppm; and vegetable, tuberous and corm (Subgroup 1C) at 0.01 ppm. A practical analytical

method was developed for detecting and measuring residues of bifenazate in or on raw agricultural commodities. The method utilizes reverse phase high pressure liquid chromatography (HPLC) to separate bifenazate from matrix derived interferences, and oxidative coulometric electrochemical detection (OCED) for the identification and quantification of this analyte. Using this method, the limit of quantitation (LOQ) for bifenazate in stone and pome fruit, grapes, strawberries and cotton was 0.01 ppm. For hops, the LOQ was 0.05 ppm. The limit of detection for this methcd, which varies with matrix, is 0.005 ppm. The analytical method for bifenazate and its major metabolite, D3598, in animal samples was designed using the same principles invoked in the plant method with minor modifications. However, in animal samples, a separate aliquot of the extract was used to determine residues of A1530 and its sulfate (combined) in milk and meat samples (these metabolites appeared to be significant in goat metabolism studies). The extract was subjected to acid hydrolysis to convert the sulfate conjugate to A1530 before it was quantified by HPLC using fluorescence or OCED detectors.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–6615 Filed 5–2–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 26, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

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

Number of Respondents: 758.

Estimated Time per Response: 2–7 hours.

Frequency of Response: Annual Reporting Requirement.

Total Annual Burden: 6,822 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This data collection represents a small number of supplemental questions needed to complete the 2006 report on cable industry prices. The Commission received OMB approval for the Annual Survey of Cable Industry Prices on February 7, 2006. Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to effective competition and those not subject to effective competition. The data from these supplemental questions are needed to complete this report.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–6685 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–922]

Annual Adjustment of Revenue Thresholds

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the 2005 revenue threshold between Class A carriers and Class B carriers is increased to $129 million. The 2005 revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.668 billion.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released April 24, 2006. This notice announces the inflation-adjusted 2005 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes: (1) Distinguishing Class A carriers from Class B carriers; and (2) distinguishing larger Class A carriers from mid-sized carriers. The revenue threshold between Class A carriers and Class B carriers is increased to $129 million. The revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.668 billion. The revenue thresholds for 2005 were determined as follows:

	Mid-sized threshold	Larger Class A threshold
(1) GDP–CPI Base	86.68	102.40
(2) 2005 GDP–CPI	112.18	112.18
(3) Inflation Factor (line 2 ÷ 1)	1.2914	1.0954
(4) Original Revenue Threshold	$100 million	$7 billion.
(5) 2005 Revenue Threshold (line 3 * 4)	$129 million	$7.668 billion.

Federal Communications Commission

Tamara L. Preiss,

Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. E6–6700 Filed 5–2–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Sunshine Act Meeting; Open Commission Meeting; Wednesday, May 3, 2006

April 26, 2006.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, May 3, 2006, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology.	Title: Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04–295). Summary: The Commission will consider a Report and Order and Memorandum Opinion and Order regarding implementation of the Communications Assistance for Law Enforcement Act.
2	Consumer & Governmental Affairs.	Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123). Summary: The Commission will consider a Declaratory Ruling and Notice of Proposed Rulemaking regarding interoperability of Video Relay Service.
3	Consumer & Governmental Affairs.	Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123). Summary: The Commission will consider a Further Notice of Proposed Rulemaking to address fraudulent use of the Internet-based forms of Telecommunications Relay Service.
4	Wireline Competition	Title: Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA et al., Schools and Libraries Universal Service Support Mechanism (WC Docket No. 02–6). Summary: The Commission will consider an Order addressing requests for review of decisions of the Universal Service Administrator with respect to the Schools and Libraries Universal Service support mechanism.
5	Wireline Competition	Title: Request for Review of the Decision of the Universal Service Administrator by Lake Grove at Maple Valley, Inc., Lake Grove Schools, Wendall, MA, et al., Schools and Libraries Universal Service Support Mechanism (WC Docket No. 02–6). Summary: The Commission will consider an Order addressing requests for review of decisions of the Universal Service Administrator with respect to the Schools and Libraries Universal Service support mechanism.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible formats; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be Web cast with open captioning. Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 5 days advance notice. Include a description of the accommodation you will need including as much detail as you can. Also, include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–4166 Filed 4–28–06; 1:24 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary,

Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov).*

Agreement No.: 011527–011.
Title: East Coast Americas Service.
Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; and Mitsui O.S.K. Lines, Ltd.
Filing Party: Howard A. Levy, Esq.; 80 Wall Street; Suite 1117; New York, NY 10005–3602.
Synopsis: The amendment reflects the withdrawal of Zim Integrated Shipping Services, Ltd. from the agreement and removes Puerto Cabello, Venezuela, as a required port of call.

Agreement No.: 011602–008.
Title: Grand Alliance Agreement II.
Parties: Hapag-Lloyd Container Linie GmbH/CP Ships (UK) Limited/CP Ships USA LLC; Nippon Yusen Kaisha; and Orient Overseas Container Line, Inc./ Orient Overseas Container Line Limited/Orient Overseas Container Line (Europe) Limited.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.
Synopsis: The amendment increases the number and size of the vessels the parties are authorized to deploy under the agreement.

Agreement No.: 011705–006.
Title: Grand Alliance-CP Ships Atlantic Agreement.
Parties: Hapag-Lloyd Container Linie GmbH; Nippon Yusen Kaisha; Orient Overseas Container Line Limited/Orient Overseas Container Line, Inc./Orient Overseas Container Line (Europe) Limited; and CP Ships USA, LLC.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment removes P&O Nedlloyd Limited and P&O Nedlloyd BV as parties to the agreement.

Agreement No.: 011830–005.
Title: Indamex/APL Agreement.
Parties: American President Lines, Ltd./APL Co. PTE Ltd.; CMA CGM, S.A.; and CP Ships (UK) Limited.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.
Synopsis: The amendment adds Hapag-Lloyd Container Linie GmbH as a party; revises the authority section in accordance with the parties' new understanding; revises the duration and termination provisions; adds new articles; and renames and republishes the agreement.

Agreement No.: 011955.
Title: CMA CGM/CSCL/Hatsu Marine Cross Space Charter, Sailing and Cooperative Working Agreement—North Europe/USEC and U.S. Gulf and Mexico Loop.
Parties: CMA CGM S.A.; China Shipping Container Lines Co., Ltd./ China Shipping Container Lines (Hong Kong) Co., Ltd.; and Hatsu Marine Limited.
Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.
Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. Atlantic and Gulf Coast ports and ports in North Europe (Baltic Coast of Germany to Atlantic Coast of France) and on the Atlantic Coast of Mexico.

Agreement No.: 011956.
Title: IDX Vessel Sharing Agreement.
Parties: Emirates Shipping Line FZE; MacAndrews & Company Limited; Shipping Corporation of India Ltd.; and Zim Integrated Shipping Services, Ltd.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.
Synopsis: The agreement authorizes the parties to contribute vessels to and utilize space on a service between the U.S. Atlantic Coast and Italy, Spain, and the Indian Subcontinent.

By Order of the Federal Maritime Commission.

Dated: April 28, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–6683 Filed 5–2–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

King Freight (USA), Inc., 12412 Felson Place, Cerritos, CA 90703. Officers: Una Wang, Vice President (Qualifying Individual) Loong-Hsiun Chang, CEO/Director

Hub Freight USA Inc., 548 S. Cherry Street, Itasca, IL 60143. Officer: Robert A. Posta, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

YFE Worldwide Logistics Inc., 1901 East Linden Ave., Suite 11, 12 and 14, Linden, NJ 07036. Officer: Harry Sandovnik, President (Qualifying Individual)

Global Freightway (USA), Ltd., 840 W. 12th Street, Long Beach, CA 90813. Kenneth Bola Obatusin Sole Proprietor

Stella International, Inc., 961 Laurel Street, #200, San Carlos, CA 94070. Officers: Guy Perego, President (Qualifying Individual) Marla Perego, Secretary

Pan America Marine Services, 651 West Homestead Road, No. 3, Sunnyvale, CA 94087. Officer: Geme Yang, CEO (Qualifying Individual)

United Logistics Services, Inc., 11017 NW 122 Street, Suite 17, Medley, FL 33178. Officer: Julio Osorio, President (Qualifying Individual)

Nu-Born Express, Inc., 222 E. Redondo Beach Blvd., Suite H, Gardena, CA 90248. Officers: Carlos Sanchez, Treasurer (Qualifying Individual) Matthew Osman, President

Transport Team USA, Inc., 1050 Wall Street West, Suite 201, Lyndhurst, NJ 07071. Officer: Jose Antonio Alvarez, President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Genesis Freight Forwarding Services TX, Inc., dba Genesis Container Lines, 15905 Morales Road, Bldg. L, #300, ouston, TX 77032. Officers: Michael Andersen, Vice President (Qualifying Individual) Dugald F. Currie, President

Genesis Forwarding Services CA, Inc., dba Genesis Container Lines, 800 Hindry Avenue, Units B–D, nglewood, CA 90301. Officers: Michael Andersen, Vice President (Qualifying Individual) Dugald F. Currie, President

Genesis Forwarding Services IL, Inc., dba Genesis Container Lines, 2601–2605 Greenleaf, Elk Grove Village, IL 60604. Officers: Michael

Andersen, Vice President (Qualifying Individual) Dugald F. Currie, President

Genesis Forwarding Services NY, Inc., dba Genesis Container Lines, 145th Hook Creek Blvd., Valley Stream, NY 11581. Officers: Michael Andersen, Vice President (Qualifying Individual) Dugald F. Currie, President

Genesis Forwarding Services VA, Inc., dba Genesis Container Lines, 22650 Executive Drive, Suite 122, Sterling, VA 20166. Officers: Michael Andersen, Vice President (Qualifying Individual) Dugald F. Currie, President

Ghanem Forwarding LLC, 150 N. Main Street, Concord, NH 03301. Officer: Wael Y. Ghenem, General Manager (Qualifying Individual)

Dated: April 28, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–6696 Filed 5–2–06; 8:45 am]

BILLING CODE 6730–01–P

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 May 17, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Larry C. Henson, Barbara K. Henson. Trustee of the Barbara K. Henson Living Trust, Michael R. Henson, and the Barbara K. Henson Living Trust, all of Davenport, Iowa, and acting as a group; to acquire voting shares of River Valley Bancorp, Inc., Davenport, Iowa, and thereby indirectly acquire voting shares of Freedom Bank, Sterling, Illinois, Valley Bank, Fort Lauderdale, Florida, and Valley Bank, Moline, Illinois.

Board of Governors of the Federal Reserve System, April 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–6631 Filed 5–2–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Sterling Financial Corporation, Spokane, Washington; to acquire 100 percent of the voting shares of Lynnwood Financial Group, and thereby indirectly acquire voting shares of Golf Savings Bank and Golf Escrow Corporation, all of Mountlake Terrace, Washington, and thereby engage in operating a savings association and providing real estate settlement services, pursuant to section 225.28(b)(4) and (2)(viii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–6632 Filed 5–2–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement and Hold a Public Scoping Meeting for the Master Site Plan, Denver Federal Center in Lakewood, CO

AGENCY: Public Building Service, GSA.

ACTION: Notice of intent.

SUMMARY: The General Services Administration (GSA) announces its intention to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) of 1969 to assess the potential environmental effects of the proposed action and its alternatives described in the Master Site Plan to enable GSA to make an informed analysis and conclusion leading to the preparation of a Final Master Site Plan and Final EIS for the Denver Federal Center in Lakewood, Colorado.

The existing Master Site Plan was completed in 1997. Since that time, potential development and redevelopment opportunities and the changing real estate market make the 1997 Master Site Plan outdated. The analysis will include a review of all existing buildings on site, all existing and planned infrastructure systems and improvements, necessary capital investment needs and all vacant land. A primary focus will be on short and long term planning for Federal agency needs and requirements. A No Action alternative will also be studied that will evaluate the consequences of not implementing an action alternative. This alternative is included to provide a basis for comparison to the action alternatives described above as required under NEPA regulations (40 CFR 1002.14(d)).

GSA invites individuals, organizations and agencies to submit comments concerning the scope of the EIS. The public scoping period starts with the publication of this notice in the **Federal Register** and will continue for forty five (45) days from the date of this notice. GSA will consider all comments received or postmarked by that date in defining the scope of the EIS. GSA expects to issue a Draft EIS by January

2007 at which time its availability will be announced in the **Federal Register** and local media. A public comment period will commence upon the publication of the Notice of Availability. The GSA will consider and respond to comments received on the Draft EIS in preparing the Final EIS.

ADDRESSES: Written comments or suggestions concerning the scope of the EIS should be sent to Joan DeGraff, Senior Project Manager, 1809 Blake Street, Suite 200, Denver, Colorado 80202, telephone number 303–308–3564.

FOR FURTHER INFORMATION CONTACT: Lisa Morpurgo by telephone at (303) 236.8000 ext. 5039 or by email at *dfcsiteplan@gsa.gov*.

SUPPLEMENTARY INFORMATION: A public scoping meeting will provide the public with an opportunity to present comments, as questions, and discuss concerns regarding the scope of the EIS for the Proposed Action with GSA representatives. GSA will hold a public scoping meeting at the Community Open House, Exhibit Hall 3, Jefferson County Fairgrounds, 15200 W. 6th Avenue on May 17, 2006 from 4 p.m. to 8 p.m.

Dated: April 27, 2006.

Lisa Dorsey Morpurgo,

Senior Project Manager, DFC Service Center, GSA, PBS, Rocky Mountain Region.

[FR Doc. E6–6715 Filed 5–2–06; 8:45 am]

BILLING CODE 6820–BK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Office of Women's Health.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, New collection;

Title of Information Collection: Body Works Toolkit Evaluation Survey;

Form/OMB No.: OS–0990–New;

Use: The purpose of this collection is to evaluate information on the effectiveness of both the Body Works toolkit and its train-the-trainer model. The Body Works evaluation will explore the effectiveness of the program by assessing outcomes such as healthy behavior changes among participating adults and their daughters; attitudinal changes, such as parents beliefs that they have an active role to play in their child's healthy development; and changes in the levels of parent or caregiver self-efficacy in supporting healthy eating and physical activity.

Frequency: Reporting, on occasion;

Affected Public: Business or other for-profit, not-for-profit institutions, Federal, State, local or tribal government;

Annual Number of Respondents: 459;

Total Annual Responses: 759;

Average Burden Per Response: 1 hour;

Total Annual Hours: 574.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.FunnColeman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Sherrette Funn-Coleman (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: April 25, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–6684 Filed 5–2–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0269; 30-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection;

Title of Information Collection: Complaint forms for discrimination and health information privacy complaints;

Form/OMB No.: OS–0990–0269;

Use: Individuals may file written complaints with the Office for Civil Rights when they believe they have been discriminated against by programs or entities that receive Federal financial assistance from the Health and Human Service or if they believe that their right to the privacy of protected health information has been violated.

Frequency: Recordkeeping, Reporting, on occasion;

Affected Public: Not-for-profit institutions and Individuals or households;

Annual Number of Respondents: 12,400;

Total Annual Responses: 12,400;

Average Burden Per Response: 45 minutes;

Total Annual Hours: 9,300;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone

number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days, and directed to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB (0990–0269), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: April 21, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–6688 Filed 5–2–06; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Office of Women's Health.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, New collection;

Title of Information Collection: National Women's Health Week (NWHW) Survey;

Form/OMB No.: OS–0990–New;

Use: The Office of Women's Health will evaluate how National Women's Health Week (NWHW) is implemented across the country, and to assess whether or not NWHW is reaching its program objectives, with an emphasis on messages, delivery mechanisms, levels of outreach and contact, and partnership strategies.

Frequency: Reporting, on occasion;

Affected Public: Business or other for-profit, not-for-profit institutions, Federal, State, local or tribal government;

Annual Number of Respondents: 1,400;

Total Annual Responses: 2,800;

Average Burden Per Response: 1 hour;

Total Annual Hours: 700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days, of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: April 21, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–6689 Filed 5–2–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop to Celebrate Food and Drug Administration Centennial: Past, Present, and Future of Regulated Food, Drugs, Nutritional Supplements, and Medical Devices; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District, in cooperation with the Chemical Heritage Foundation (CHF), is announcing a workshop on past, current, and future issues and challenges in FDA regulation as part of the celebration of FDA's 100-year anniversary. Topics for discussion include: Turning points in FDA history; the impact of changes in science and technology on FDA regulation, regulation in the globalized economy, consumer access to information in the regulatory environment; and a risk-based approach to regulation as a model for the future. The purpose of this 1-day workshop for consumers, industry, academia, and regulators is to promote dialogue among regulators and these stakeholders.

Date and Time: The public workshop will be held on Tuesday; May 16, 2006, from 9 a.m. to 5 p.m.

Location: The public workshop will be held at the Chemical Heritage Foundation, 315 Chestnut St., Philadelphia, PA 19106, 215–873–8214, FAX: 215–629–5249.

Contact: Marie Falcone, Food and Drug Administration, U.S. Customhouse, 200 Chestnut St., rm. 900, Philadelphia, PA 19106, 215–717–3703, FAX: 215–597–5798, e-mail: *Marie.Falcone@fda.hhs.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, fax number) and the registration fee of $20.00 payable to the Chemical Heritage Foundation, 315 Chestnut St., Philadelphia, PA 19106. To register via the Internet go to *http://www.chemheritage.org/events/fda/index.html*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) The registrar will also accept payment by major credit cards. The registration fee for FDA Philadelphia District employees is waived.

For more information on the meeting, or for questions about registration, contact the Chemical Heritage Foundation (CHF) at 215–873–8214, FAX: 215–629–5249, or via e-mail: *arthurd@chemheritage.org*.

Attendees are responsible for their own accommodations.

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marie Falcone (see *Contact*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The "FDA Past, Present, and Future of Regulating Food, Drugs, Medical Devices, and

Nutritional Supplements" workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by encouraging informed dialogue on the future direction of FDA regulation in the context of its historical accomplishments.

The workshop will also help to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which include working more closely with stakeholders and providing access to scientific and technical expertise. Finally, the workshop furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: April 28, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–4185 Filed 5–1–06; 10:37 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–06–8400]

Memorandum of Understanding Between the Food and Drug Administration, United States Department of Health and Human Services, the Animal and Plant Health Inspection Service, the United States Department of Agriculture, and The National Institutes of Health, United States Department of Health and Human Services Concerning Laboratory Animal Welfare

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The purpose of this Memorandum of Understanding (MOU) is to set forth an agreement between the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, and the National Institutes of Health, U.S. Department of Health and Human Services concerning Laboratory Animal Welfare and FDA (collectively "the Parties", or individually as a "Party") regarding the framework for reciprocal cooperation which will assist each agency in meeting its responsibilities in promoting proper laboratory animal care and welfare. This MOU replaces 225–83–8400.

DATES: The agreement became effective February 14, 2006.

FOR FURTHER INFORMATION CONTACT:

For FDA: Rodney T. Allnut, Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, HFC–230, rm. T26, 15800 Crabbs Branch, Rockville, MD 20855, 240–632–6848, FAX: 240–632–6861.

For USDA: Chester Gipson, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Rd., Unit 97, rm. 6A–16, Riverdale, MD 20737–1234, 301–734–4980, FAX: 301–734–4993.

For NIH: Carol Wigglesworth, Office of Laboratory Animal Welfare, Office of Extramural Research, National Institutes of Health, Rockwall I, suite 1050, MSC 7982, 6705 Rockledge Dr., Bethesda, MD 20892–7982, 301–496–7163, FAX: 301–402–2803.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: April 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING
AMONG
THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE
U.S. DEPARTMENT OF AGRICULTURE
AND
THE FOOD AND DRUG ADMINISTRATION
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
THE NATIONAL INSTITUTES OF HEALTH
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CONCERNING
LABORATORY ANIMAL WELFARE

I. PURPOSE

The participating agencies share a common concern for the care and welfare of laboratory animals used in research and testing. Each agency, operating under its own authority, has specific responsibilities for fostering proper animal care and welfare. This agreement sets forth a framework for reciprocal cooperation which will assist each agency in meeting its responsibilities in promoting proper laboratory animal care and welfare. Implementation of this agreement is intended to maintain and enhance agency effectiveness while avoiding duplication of efforts to achieve required standards for the care and use of laboratory animals.

II. AGENCY RESPONSIBILITIES

Animal and Plant Health Inspection Service, USDA

Primary responsibility for the Animal Welfare Act (AWA) is assigned to the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS). Implementing regulations of the AWA are established in the Code of Federal Regulations, Title 9, Chapter 1, Subchapter A, Parts 1, 2, and 3. The Department has regulatory responsibility to enforce the implementing regulations. The USDA regulations establish standards for the humane treatment of laboratory animals and a registration/licensing procedure for identifying institutions that breed, sell, transport, hold, and use such animals. Compliance with the USDA regulations is monitored by an active inspection program that provides for periodic inspections by veterinary medical officers or suitably trained paraprofessionals. Serious noncompliance is dealt with by procedures that range from civil penalties, to the issuance of "cease and desist" orders, to the confiscation of animals.

Food and Drug Administration, HHS

The Food and Drug Administration (FDA) is also involved in ensuring proper procedures for the care and use of laboratory animals. The source statute is the Federal Food, Drug, and Cosmetic Act as implemented by the Good Laboratory Practice Regulations (21 CFR Part 58). These regulations establish standards for the proper conduct of non-clinical laboratory studies that include animals. Compliance is assessed through an active program of periodic inspections carried out by trained field inspectors. Serious noncompliance is dealt with by procedures ranging from study rejection to laboratory disqualification.

National Institutes of Health, HHS

The Office of Laboratory Animal Welfare (OLAW), Office of Extramural Research, National Institutes of Health (NIH), is responsible for the implementation and general administration of the Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (PHS Policy). The PHS Policy implements the Health Research Extension Act of 1985 (Public Law 99-158), and is based on the U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training. Standards for institutional programs and facilities are described in the Guide for the Care and Use of Laboratory Animals. Institutions receiving PHS support must have an OLAW approved Animal Welfare Assurance that describes the institutional program and sets forth institutional compliance with PHS Policy. OLAW fosters compliance through the Assurance mechanism and a national education program, and monitors compliance by evaluating institutional reports of noncompliance. Institutions are required to correct confirmed noncompliance and institute appropriate measures to prevent repeated noncompliance. Potential sanctions for continued noncompliance appear in the NIH Grants Policy Statement, Part II, under authority derived from 45 CFR § 74.14 and 42 CFR § 52.9.

III. SHARED CONCERNS

USDA, FDA, and NIH share a common concern for the care and use of laboratory animals, although there are necessary operational differences among the animal welfare programs of the cooperating agencies. Congress acknowledged the need for transagency cooperation in the AWA by calling for the Secretary of Agriculture to consult and cooperate with other Federal departments and agencies concerned with the welfare of animals used in research, and to consult with the Secretary of Health and Human Services prior to the issuance of regulations.

Common program features include the promulgation of standards and policies aimed at promoting laboratory animal welfare, the maintenance of registries/inventories of institutions and facilities subject to agency policies and regulations, the periodic conduct of routine and "for cause" inspections or site visits, efforts designed to promote voluntary compliance, and the application of a range of sanctions when necessary.

Interagency cooperation provides an excellent opportunity to bolster individual agency efforts, achieve program benefits, and facilitate program operations. A mutually shared perspective on acceptable standards of laboratory animal care presents a consistent Federal approach and fosters compliance by regulated entities.

IV. SUBSTANCE OF AGREEMENT

The cooperating agencies agree to share information of mutual concern and interest regarding animal welfare. Specific agency responsibilities under this Memorandum of Understanding are detailed below.

A. The cooperating agencies agree to share information contained in their respective registries/inventories/listings of organizations that fall under their purview.

B. The cooperating agencies agree to provide one another with information concerning significant adverse findings regarding animal care and use at organizations investigated, inspected, or site-visited, and the actions taken by the agency in response to the findings.

C. The cooperating agencies agree to provide one another with information regarding evidence of serious noncompliance with required standards or policies for the care and use of laboratory animals at organizations that fall under the authority of the participating agencies.

D. The cooperating agencies agree, to the extent possible, to coordinate successive evaluations and to avoid redundant evaluations of the same entities.

E. The cooperating agencies agree to consult and coordinate with each other on regulatory or policy proposals and significant policy interpretations involving animal care and use under consideration by each agency.

F. The cooperating agencies agree to provide each other with resource persons for scientific and educational seminars, speeches, and workshops related to laboratory animal welfare.

G. The cooperating agencies agree to limit the dissemination of shared information received to internal agency officials that have a need to know. If a cooperating agency receives a Freedom of Information Act request for records provided by another agency, the recipient agency will refer the request to the agency that provided the records. The recipient agency shall promptly notify the agency that provided the information of any judicial order that compels the release of information.

V. STANDING COMMITTEE

To facilitate implementation of this agreement, the cooperating agencies each agree to designate a liaison officer to serve on a standing committee that will meet as needed, but no less than twice per year. Matters for consideration by the standing committee are to include a review of each agency's participation in this agreement, an assessment of the agreement's effectiveness, and modifications that might be necessary. As appropriate, the committee will address urgent issues and specific cases of serious noncompliance.

VII. LIAISON OFFICERS

For the Animal and Plant Health Inspection Service:

Chester Gipson, D.V.M.
Deputy Administrator
USDA, APHIS, AC
4700 River Road, Unit 97, Room 6A16
Riverdale, Maryland 20737-1234
Phone: 301-734-4980
Fax: 301-734-4993

For the Food and Drug Administration:

Rodney T. Allnutt
Consumer Safety Officer
Office of Enforcement, Office of Regulatory Affairs
U.S. Food and Drug Administration
Rockville, Maryland 20857
Phone: 240-632-6848
Fax: 240-632-6861

For the National Institutes of Health:

Carol Wigglesworth
Acting Director, Office of Laboratory Animal Welfare
Office of Extramural Research
National Institutes of Health
RKLI, Suite 1050, MSC 7982
6705 Rockledge Drive
Bethesda, MD 20892-7982
Phone: 301-496-7163
Fax: 301-402-2803

VIII. PERIOD OF AGREEMENT

This agreement becomes effective on the date of last signature and continues for 5 years. It may be modified by mutual written consent of the three parties. The agreement may be terminated by any party upon a 90-day advance written notice to the other parties. At the conclusion of 5 years the three parties will consider the development of a new agreement.

IX. ACCEPTANCE AND APPROVAL OF AUTHORIZING OFFICIALS

For the Animal and Plant Health Inspection Service, USDA:

Signature:

Name: W. Ron DeHaven, D.V.M.

Title: Administrator, Animal and Plant Health Inspection Service
U.S. Department of Agriculture

Date: Feb 14, 2006

For the Food and Drug Administration, HHS:

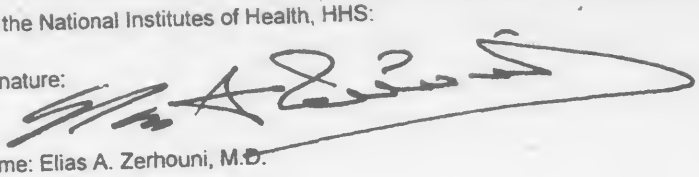
Signature:

Name: Andrew C. von Eschenbach, M.D.

Title: Acting Commissioner of Food and Drugs
U.S. Department of Health and Human Services

Date: 2/2/06

For the National Institutes of Health, HHS:

Signature: 

Name: Elias A. Zerhouni, M.D.

Title: Director, National Institutes of Health
U.S. Department of Health and Human Services

Date: 1/30/06

[FR Doc. 06–4184 Filed 5–2–06; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for AGRYLIN (anagrelide), ARGATROBAN (argatroban), CLOLAR (clofarabine), and MERIDIA (sibutramine). These summaries are being made available consistent with the Best Pharmaceuticals for Children Act (BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace Carmouze, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6489, Silver Spring, MD 20993–0002, 301–796–2200, e-mail: *grace.carmouze@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for AGRYLIN (anagrelide), ARGATROBAN (argatroban), CLOLAR (clofarabine), and MERIDIA (sibutramine). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet at *http://www.fda.gov/cder/pediatric/index.htm* summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for AGRYLIN (anagrelide), ARGATROBAN (argatroban), CLOLAR (clofarabine), and MERIDIA (sibutramine). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm.*

Dated: April 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–6706 Filed 5–2–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0385]

Guidance for Industry on Using Electronic Means to Distribute Certain Product Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled "Guidance for Industry: Using Electronic Means to Distribute Certain Product Information" dated March 2006. The final guidance explains that persons can distribute certain product information, such as for recalls and product safety, by electronic means. We encourage the use of electronic communications for conveying all such important product safety information. We are making clear in this guidance that manufacturers and others may disseminate communications by electronic means, including e-mail or other electronic methods.

DATES: Submit written or electronic comments on agency guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 301–827–3360. Submit written comments concerning the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 2005, we published a notice of availability for a draft guidance entitled "Guidance for Industry: Using Electronic Means to Distribute Certain Product Information" (70 FR 57300). The draft guidance requested comments by November 29, 2005. We received comments from individuals, associations, companies that provide safety and drug notices, and the pharmaceutical industry. We have reviewed these comments and have modified the guidance in response to those comments.

The timely dissemination of communications about recalls of FDA-regulated products, important drug safety information, and other important product safety information is essential for the protection of the public health. We encourage manufacturers to provide such information in a timely manner to distributors, doctors, and others. Over the years, we have worked with manufacturers and distributors to promote the use of electronic methods of communication and encourage the

use of innovative technologies to disseminate safety information, particularly when doing so can provide a public health benefit. We are making clear in the guidance that manufacturers and distributors may disseminate the communications discussed in §§ 7.49 and 200.5 (21 CFR 7.49 and 200.5) by various electronic methods, including e-mail. The guidance also applies to those instances, not addressed in any regulation, where we recommend that manufacturers and distributors voluntarily convey certain safety information about their products to members of the public.

The use of e-mail and other electronic communications has dramatically changed how we and the public convey information. Electronic communications have a number of advantages over paper-based communications. They can significantly shorten the time between an event and the public's knowledge of the event. When the event involves product safety, it is even more important that accurate safety information be transmitted rapidly. E-mail and other electronic communications can be more efficient and timelier than traditional mail. These communications involve considerably less cost to the sender than older, more traditional delivery services. Verification of receipt or delivery is less expensive and can be automatically accomplished through various means such as delivery or read receipt confirmation, or other electronic receipt acknowledgement mechanisms. Any necessary followup (such as when receipt of the e-mail is not acknowledged in some fashion) also can be accomplished electronically. If receipt of the electronic communication is not acknowledged appropriately by the recipient (as determined by the sender) or the electronic communication is undeliverable, the sender can resort to more traditional notification methods to ensure the communication is received.

We interpret the provisions of §§ 7.49 and 200.5 to allow the use of e-mail and other electronic communication methods, such as fax or text messaging, to accomplish any recall notification or distribution of important safety information. Section 7.49(b) provides that, "A recall communication can be accomplished by telegrams, mailgrams, or first class letters* * *" Given the use of the term "can," we read the three examples as being illustrative rather than the sole means of accomplishing recall communications. Electronic notification, with appropriate safeguards and the use of acknowledgement mechanisms, is a viable alternative to more traditional methods.

II. Comments/Responses

We received a number of comments on the guidance and have modified the guidance to address some of the comments. Other comments are outside the scope of the guidance and thus are not addressed in the guidance. We have made changes on our own initiative to provide clarity to certain statements and recommendations.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C 3501–3520). The collection of information in this guidance has been approved under OMB control number 0910–0249 which expires October 18, 2008.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/oc/guidance/electronic.html* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: April 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–6705 Filed 5–2–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Information Resources for Radiation Science.

Date: June 8, 2006.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division Of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovations in Cancer Sample Preparation.

Date: June 13, 2006.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd, Conference Room F, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892–8329, (301)–496–7421. *kerwinm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Discover and Development.

Date: June 19–21, 2006.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, RFA CA–06–014, "Tumor Microenvironment Network".

Date: August 2–4, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 26, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4145 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Loan Repayment Program SEP.

Date: May 25, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., Room 1084, MSC 4874, 1 Democracy Plaza, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, GCRC K23 SEP.

Date: June 1, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Guo Zhang, PhD, Scientific Review Administrator, National Center for Research Resources/OR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Rm. 1064, Bethesda, MD 20892–4874, 301–435–0812. *zhanggu@mail.nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: June 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Glowa, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6701 Democracy Boulevard, Room 1078—MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: April 25, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4146 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: May 11–12, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrrninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.

Date: June 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda. MD 20892, 301–496–0660, *sawczukzninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorder K.

Date: June 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt-Washington Center, 1000 H St., NW., Washington, DC 20001.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institutes of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: June 22–23, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: June 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd.,

Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 25, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4149 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: May 23, 2006.

Open: 8:30 a.m. to 12 p.m.

Agenda: This meeting will be open to the public to discuss administrative details relating to council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Extramural Program, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–594–2463, *kittc@niams.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4150 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mesenchymal Stem Cells.

Date: May 3, 2006.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Bioengineering, Technology and Surgical Sciences Study Section.

Date: May 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023: Bioengineering Research Partnerships.

Date: May 23, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: June 8–9, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: June 14–15, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Weihua Luo, PhD., M.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Chemo/Dietary Prevention Study Section.

Date: June 14–16, 2006

Time: 5 p.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Sally A. Mulhern, PhD., Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.; 93.306. Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 25, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4147 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship.

Date: May 3, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Prion Disease Regulation and Diagnostics.

Date: May 4, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454. *kostrikr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership.

Date: May 19, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, 301–435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: BMIT and MEDI Study Sections.

Date: May 21, 2006.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: June 12–13, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, (301) 435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies RO3s, R15s, R21s and Fellowships.

Date: June 16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.; 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 25, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4148 Filed 5–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Revocation of Certification of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes a list of laboratories in the **Federal Register** that are currently certified to meet standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

This notice informs the public that the following laboratory's certification was revoked effective February 8, 2006: Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, North Carolina 28732.

The letter describing the reasons for revoking Sciteck's certification is available on the Internet at *http://workplace.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Donna Bush, Division of Workplace Programs, SAMHSA/CSAP, Room

2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

Anna Marsh,

Director, Office of Program Services, SAMHSA.

[FR Doc. E6–6657 Filed 5–2–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Office of Hearings and Appeals.

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 June 2, 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 Sue Ellen Sloca, U.S. Department of the Interior, National Business Center, MS 1413 MIB, 1849 C St., NW., Washington, DC 20240, phone 202–208–6045, fax 202–219–2374, or electronically to *sue_ellen_sloca@nbc.gov*. Please mention that your comments concern "7 CFR Part 1; 43 CFR Part 45; 50 CFR Part 221; the Alternatives Process in Hydropower Licensing," OMB control #1094–0001.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request ("7 CFR Part 1; 43 CFR Part 45; 50 CFR Part 221; the Alternatives Process in Hydropower Licensing," OMB control #1094–0001), and explanatory information and related forms, contact Sue Ellen Sloca, U.S. Department of the Interior, National Business Center, MS 1413 MIB, 1849 C St., NW., Washington, DC 20240, phone 202–208–6045, fax 202–219–2374, or by electronic mail to *sue_ellen_sloca@nbc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Management and Budget (OMB) regulations at 5 CFR part 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 Hearings and Appeals has submitted to OMB for extension or re-approval.

On November 17, 2005, the Departments of Agriculture, Interior, and Commerce published regulations at 7 CFR part 1, 43 CFR part 45, and 50 CFR part 221, to implement section 241 of the Energy Policy Act of 2005 (EPAct), Public Law 109–58, which the President signed into law on August 8, 2005. Section 241 of the EPAct adds a new section 33 to the Federal Power Act (FPA) that allows the license applicant or any other party to the license proceeding to propose an alternative to a condition or prescription that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the FPA. This provision requires that the Departments of Agriculture, Interior and Commerce collect the information covered by 1094–0001.

The Secretary of the Department involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, (a) that the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and (b) that the alternative will either cost significantly less to implement or result in improved operation of the project works for electricity production.

In order to make this determination, the regulations require that all of the following information be collected: (1) A description of the alternative, in an equivalent level of detail to the bureau's preliminary condition or prescription; (2) an explanation of how the alternative: (i) If a condition, will provide for the adequate protection and utilization of the reservation; or (ii) if a prescription, will be no less protective than the fishway prescribed by the bureau; (3) an explanation of how the alternative, as compared to the preliminary condition or prescription, will: (i) Cost significantly less to implement; or (ii) result in improved operation of the project works for electricity production; (4) an explanation of how the alternative or revised alternative will affect: (i) Energy supply, distribution, cost, and use; (ii) flood control; (iii) navigation; (iv) water supply; (v) air quality; and (vi) other aspects of environmental quality; and (5) specific citations to any scientific studies, literature, and other documented information relied on to support the proposal.

This notice of proposed information collection is being published by the Office of Hearings and Appeals, Department of the Interior, on behalf of all three Departments, and the data provided below covers anticipated responses (alternative conditions/prescriptions and associated information) for all three Departments.

II. Data

(1) *Title:* 7 CFR Part 1; 43 CFR Part 45; 50 CFR Part 221; the Alternatives Process in Hydropower Licensing.

OMB Control Number: 1094–0001.

Current Expiration Date: May 31, 2006.

Type of Review: Information Collection Renewal.

Affected Entities: Business or for-profit entities.

Estimated annual number of respondents: 30.

Frequency of response: Once per alternative proposed.

(2) *Annual reporting and recordkeeping burden:*

Total annual reporting per response: 150 hours.

Total number of estimated responses: 250.

Total annual reporting: 37,500 hours.

(3) *Description of the need and use of the information:* The purpose of this information collection is to provide an opportunity for license parties to propose an alternative condition or prescription to that imposed by the Federal Government in the hydropower licensing process.

III. Request for Comments

The Departments invite comments on:

(a) Whether the collection of information is necessary for the proper

performance of the functions of the agencies, including whether the information will have practical utility;

(b) The accuracy of the agencies' 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: April 27, 2006.

Robert S. More,

Director, Office of Hearings and Appeals.

[FR Doc. E6–6630 Filed 5–2–06; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Bird Banding Laboratory Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: The third meeting of the Advisory Committee on the Bird Banding Laboratory (Committee) will take place June 13 and 14, 2006, at the Western Regional Office for Ducks Unlimited, 3074 Gold Canal Drive, Rancho Cordova, California 95670–6116. The meeting runs from 8:30 a.m. to 4:30 p.m. each day. The purpose of the Advisory Committee, which is co-chaired by the USGS and the U.S. Fish and Wildlife Service, is to represent the interests of the bird banding community, including both game and non-game birds, in advising the U.S. Department of the Interior, USGS, on current and future management of the Bird Banding Laboratory. The agenda for this meeting will focus on a full Committee review of the results of the work done since the last meeting by the writing subgroup. The subgroup was charged with developing draft one-page position papers on the following topics: (1) Bird banding permits; (2) data collection and storage; (3) data dissemination; (4) partnerships; and overarching issues. Subsequent to the review discussion, the Committee will finalize statements for each issue and begin developing recommendations for action.

The meeting is open to all members of the interested public, and time on the agenda has been reserved at the conclusion of each day's work for the Committee to receive verbal comments (limited to 5 minutes per person) from the public. To speak before the Committee, please register in advance with Mr. Daniel James (see contact information below), the USGS Designated Federal Official (DFO) for the Committee.

FOR FURTHER INFORMATION CONTACT: Daniel L. James, 12201 Sunrise Valley Drive, MS 301, Reston, Virginia 20192; 703–648–4253, e-mail; *dan_james@usgs.gov.*

Dated: April 27, 2006.

Susan D. Haseltine,

Associate Director for Biology.

[FR Doc. 06–4136 Filed 5–2–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 13113]

Public Land Order No. 7662; Partial Revocation of Public Land Order No. 5047; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Public Land Order insofar as it affects 200 acres of National Forest System lands withdrawn for the Clear Creek Recreation Area.

DATES: *Effective Date:* May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that these lands no longer need to be withdrawn and has requested the revocation. The lands will not be opened to mining until completion of an analysis to determine if any of the lands need special designation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 5047, which withdrew National Forest System lands for the Clear Creek Recreation Area, is hereby revoked insofar as it affects the following described lands:

Sawtooth National Forest

Salt Lake Meridian

T. 14 N., R. 13 W.,
Sec. 8, E½SE¼SE¼;
Sec. 9, S½S½ and S½NE¼SE¼.

The areas described aggregate 200 acres in Box Elder County.

Dated: April 17, 2006.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. E6–6686 Filed 5–2–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 80808]

Public Land Order No. 7649; Withdrawal of Public Land for the Moab Mill Site Remediation Project; Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** on November 15, 2005, withdrawing public land for the Moab Mill Site Remediation Project in Utah. The document contained an erroneous statement in the **SUMMARY** section.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, 435–259–2128.

Correction

In the **Federal Register** of November 15, 2005, in FR Doc. 05–22605, on page 69351, column 2, beginning with the word "to" on line 7 of the **SUMMARY**

section, delete the following phrase: "to conduct site characterization studies to determine a suitable location for disposal of uranium mill site tailings"

Kent Hoffman,

Deputy State Director, Division of Land and Minerals.

[FR Doc. E6–6682 Filed 5–2–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee—Notice of Renewal

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of renewal of the OCS Policy Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the OCS Policy Committee.

The OCS Policy Committee will provide advice to the Secretary, through the Director of the Minerals Management Service, related to the discretionary functions of the Bureau under the OCS Lands Act and related statutes. The Committee will review and comment on all aspects of leasing, exploration, development and protection of OCS resources and provide a forum to convey views representative of coastal states, local government, offshore mineral industries, environmental community, and other users of the offshore and the interested public.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant, Minerals Management Service, Offshore Minerals Management, Herndon, Virginia 20170–4817, telephone (703) 787–1213.

Certification

I hereby certify that the renewal of the OCS Policy Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*, 30 U.S.C. 1701 *et seq.*, and 30 U.S.C. 1001 *et seq.*

Dated: April 26, 2006.

P. Lynn Scarlett,

Acting Secretary of the Interior.

[FR Doc. 06–4133 Filed 5–2–06; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Review)]

Synthetic Indigo From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on May 2, 2005 (70 FR 22701) and determined on August 5, 2005 that it would conduct a full review (70 FR 48588, August 18, 2005). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 27, 2005 (70 FR 56489). The hearing was held in Washington, DC, on February 9, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 27, 2006. The views of the Commission are contained in USITC Publication 3846 (April 2006), entitled *Synthetic Indigo from China: Investigation No. 731–TA–851 (Review).*

By order of the Commission.

Issued: April 27, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–6698 Filed 5–2–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on April 24, 2006, the United States lodged a proposed partial Consent Decree ("Consent Decree") in the United States District Court for the Northern District of Alabama in the matter captioned *United States, et al.* v. *Alabama Power Company*, (Civil Action No. 2:01–cv–00152–VEH).

The Consent Decree would resolve the liability of Alabama Power Company ("APC") relating to the Fifth Claim for Relief included in the United States' Amended Complaint in this action, which the United States brought pursuant to Sections 113 and 167 of the Clean Air Act ("the Act"), 42 U.S.C. 7413, 7477. The United States' Fifth Claim for Relief concerned the construction of Units 3 and 4 at Alabama Power Company's James H. Miller, Jr. coal-fired electric power plant, located near the town of West Jefferson, in Jefferson County, Alabama ("Plant Miller"). The United States alleged in its Fifth Claim for Relief that APC violated the Prevention of Significant Deterioration ("PSD") requirements of the Act, 42 U.S.C. 7470–92, and regulations promulgated thereunder, including the State Implementation Plan ("SIP") approved under the Act for the State of Alabama, by failing to obtain a PSD permit from EPA for Plant Miller Unit 3, or the appropriate PSD permit for Plant Miller Unit 4, incorporating Best Available Control Technology ("BACT") requirements. The United States alleged that these PSD permit requirements became applicable, *inter alia*, by virtue of APC's failure to undertake and implement a continuous program of on-site construction and/or to complete construction of Plant Miller Units 3 and 4 within a reasonable time. In the alternative, the United States alleged that APC violated Section 111(e) of the Act by operating Plant Miller Units 3 and 4 without complying with an applicable standard of performance—40 CFR part 60, Subpart Da—promulgated by EPA pursuant to the New Source Performance Standards ("NSPS") provisions of the Act. The United States alleged that the NSPS Subpart Da regulations became applicable by virtue of APC's failure to commence a continuous program of on-site construction of the boilers for Plant Miller Units 3 and 4 until after September 19, 1978.

Plaintiff-Intervenor Alabama Environmental Council, Inc., which is also a party to the Consent Decree, alleged similar PSD violations concerning the Plant Miller Units 3 and 4 in its Ninth and Tenth Claims for Relief included in its complaint in intervention in this action.

Under the terms of the proposed Consent Decree, the civil claims for

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

relief concerning Plant Miller alleged by the United States and Alabama Environmental Council, Inc. in their respective complaints would be resolved, and APC would be required to (1) Commence continuous year-round operation of Selective Catalytic Reduction ("SCR") technology at each of Plant Miller Units 3 and 4 for control of nitrogen oxide ("NO_X") emissions on a year-round basis beginning in 2008, and thereafter achieve and maintain specified NO_X emission rates from those units; (2) install and begin year-round operation of Flue Gas Desulfurization ("FGD" or "scrubber") technology at each of Plant Miller Units 3 and 4 for control of sulfur dioxide ("SO_2") emissions by December 31, 2011, and thereafter maintain a specified SO_2 emission removal efficiency for those units; (3) achieve by December 31, 2006, and thereafter maintain a specified emission rate for particulate matter ("PM") emissions from Plant Miller Units 3 and 4; and (4) install and operate by December 31, 2008, and thereafter report to EPA data collected from, a mercury continuous emissions monitoring system ("Mercury CEMS") at Plant Miller Units 3 and 4. In addition, the Consent Decree would require APC to purchase and permanently retire $4.9 million worth of vintage 2007 SO_2 emissions allowances, restrict APC's right to transfer any surplus SO_2 emissions allowances it may generate from Plant Miller Units 3 and 4 after the year 2020, and require APC to pay a civil penalty of $100,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the above-described Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Alabama Power Company*, D.J. Ref. No. 90–5–2–1–06994.

During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4167 Filed 5–2–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 Through 9675

Notice is hereby given that on April 21, 2006, a proposed consent decree ("decree") in *CoZinCo, Inc.* v. *The United States Environmental Protection Agency, et al.*, Civil Action No. 98–K–1724 (Consolidated with 98–K–2110), was lodged with the United States District Court for the District of Colorado.

In this action the United States sought past and future response costs pursuant to sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. 9607(a) and 9613(g)(2), for groundwater contamination allegedly relating to CoZinCo's facility located on Operable Unit 3 of the Smeltertown Superfund Site ("Site") in Salida, Colorado. CoZinCo has pursued reimbursement claims under section 106(b) of CERCLA, 42 U.S.C. 9606(b), claims for attorneys fees, and a counterclaim under the Federal Tort Claims Act against the United States. The proposed consent decree would resolve all claims asserted, or which could be asserted, by CoZinCo against the United States at this Site in exchange for CoZinCo's payment of $100,000 to the Environmental Protection Agency.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *CoZinCo, Inc.* v. *The United States Environmental Protection Agency, et al.*, Civil Action No. 98–K–1724 (Consolidated with 98–K–2110), D.J. Ref. No. DJ #90–11–3–1522/A, 1522/2, & 90–11–6–05232.

The decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. a copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the consent Decree Library, please enclose a check in the amount of $5.00 payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4168 Filed 5–2–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 27, 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 calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov* or access the documents online at *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*. Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, 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: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Placement Verification and Follow-up of Job Corps Participants.

OMB Number: 1205–0426.

Frequency: On occasion; Other.

Affected Public: Individuals or Households.

Type of Response: Reporting.

Number of Respondents: 81,191.

Annual Responses: 81,191.

Average Response Time: 15 minutes.

Total Annual Burden Hours: 17,123.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): $179,989.

Description: This submission requests approval of three primary and two secondary data collection instruments that will be used to collect follow-up data on individuals who are no longer actively participating in Job Corps. The instruments are comprised of modules that include questions designed to obtain the following information: re-verification of initial job and/or school placements; employment and educational experiences; job search activities of those who are neither working nor in school; information about former participants' satisfaction with the services provided by Job Corps, and confirmation of contact information for purposes of further follow-up. The secondary instruments are used to secure placement verification from employers and educational institutions when the individuals cannot be contacted directly.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6–6663 Filed 5–2–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 23, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (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 each 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 Employment Standards Administration (ESA), 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: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Economic Survey Schedule.

OMB Number: 1215–0028.

Form Number: WH–1.

Frequency: Biennially.

Type of Response: Reporting.

Affected Public: Business or other for-profit and State, Local, or Tribal Government.

Number of Respondents: 67.

Annual Reponses: 67.

Average Response Time: 45 minutes.

Total Annual Burden Hours: 50.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, §§ 5, 6(a)(3) and 8 provide that covered, non-exempt employees in American Samoa may be paid at minimum wage rates established by a Special Industry Committee, in lieu of the general federal minimum wage specified in section 6(a)(1) of the Act. The FLSA requires the Committee to recommend to the Secretary of Labor the highest minimum wage rate—not to exceed the rate required under FLSA section 6(a)(1)—that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any industry in the U.S. outside of American Samoa. The Committee must consider competitive conditions as affected by transportation, living and production costs; the wages established by collective bargaining agreements in various industries; and wages paid by employers who voluntarily maintain minimum wage standards.

FLSA section 5(d) requires the Secretary of Labor to provide data on the matters the Committee will consider. Regulations 29 CFR 511.6 and 511.11 require that the Administrator of the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) prepare for the Committee an economic report containing data pertinent to establishing industry minimum wage rates in American Samoa.

The WHD uses Form WH–1, Economic Survey Schedule, to gather the information necessary to prepare the economic report. The WHD asks all FLSA-covered employers in American Samoa to provide data. Respondents covered by the FLSA in American Samoa may voluntarily provide data concerning business operations and employment on the form. This information is essential to enable the Administrator to prepare the economic report and provide the data cited above for the Committee to use in determining minimum wage rates for the various industries in American Samoa.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Statement of Recovery Forms.

OMB Number: 1215–0200.

Form Number: CA/EN–1108, SOL/EN–1108, and CA/EN–1122.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit and individuals or households.

Number of Respondents: 3,200.

Form No.	Average response time (hours)	Estimated annual responses	Estimated annual burden hours
CA/EN–1108	0.50	2,720	1,360
SOL/EN–1108	0.50	160	80
CA/EN–1122	0.25	320	80
Total		3,200	1,520

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,344.

Description: Under section 8131 a Federal employee can sustain a work-related injury, for which he or she is eligible for compensation under the Federal Employees' Compensation Act (FECA), under circumstance that create a legal liability in some third party to pay damages for the same injury. When this occurs, section 8131 of the FECA (5 U.S.C. 8131) authorizes the Secretary of Labor to either require the employee to assign his or her right of action to the United States or to prosecute the action. When the employee receives a payment for his or her damages, whether from a final court judgment on or a settlement of the action, section 8132 of the FECA (5 U.S.C. 8132) provides that the employee "shall refund to the United States the amount of compensation paid by the United States * * *" To enforce the United States' statutory right to this refund, the Office of Workers' Compensation Programs has promulgated regulations that require both the reporting of these types of payments (20 CFR 10.710) and the submission of the type of detailed information necessary to calculate the amount of the required refund (20 CFR 10.707(e)). The information collected by Form CA/EN–1122 is requested from the claimant if he or she received a payment for damages without hiring an attorney. Form CA/EN–1108 requests this information from the attorney if one was hired to bring suit against the third party. Form SOL/EN–1108 request the same information as the CA/EN–1108 if the claimant's attorney contacts the Office of the Solicitor (SOL) directly. These forms are used to obtain information about amounts received as the result of a final judgment in litigation, or a settlement of the litigation, brought against a third party who is liable for damage due to a compensable work-related injury.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–6664 Filed 5–2–06; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the extension of the "*BLS Occupational Safety and Health Statistics (OSHS) Cooperative Agreement Application Package.*" A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 3, 2006.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has delegated to the BLS the authority to collect, compile, and analyze statistical data on work-related injuries and illnesses, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The BLS requires financial reporting that will produce the information that is needed to monitor the financial activities of the BLS Occupational Safety and Health Statistics grantees.

II. Current Action

The BLS requests approval for a generic OSHS Cooperative Agreement from the Office of Management and Budget (OMB). This is not a new collection, but for the first time the BLS is soliciting comments on the application package—without its program work statements—as a generic Cooperative Agreement application. The work statements will be submitted separately to OMB for review of any minor year-to-year information collection burden changes they may contain. The Cooperative Agreement provides the basis for effectively managing the administrative and financial aspects of the program. The application package being submitted to OMB is representative of the package sent every year to State agencies and, as such, is considered to be a generic package. The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the State Grant Agencies (SGAs) and monitor their financial and programmatic performance and adherence to administrative requirements imposed by common regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

The burden estimates are based on actual experience of grantees completing the forms. Public comments on the accuracy of the burden estimates,

as well as suggestions for reducing the burden, are encouraged. Signatures that certify the authenticity of the information will continue to be required.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: BLS Occupational Safety and Health Statistics Cooperative Agreement Application Package.

OMB Number: 1220–0149.

Affected Public: State Governments.

Forms	Total respondents	Frequency	Average burden		Estimated total burden (hours)
			Per response (hours)	Annually (hours)	
BLS–OSHS Work Statements	56	1	2	2	112
BLS–OSHS2	56	4	1	4	224
Total	56	5	3	6	336

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 26th day of April 2006.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E6–6662 Filed 5–2–06; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0227]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 2, 2006.

FOR FURTHER INFORMATION CONTACT: For Further Information or a Copy of the Submission Contact: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6590 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0227."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0227" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Nation-wide Customer Satisfaction Surveys.

a. Survey of Healthcare Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1.

b. Survey of Healthcare Experiences of Patient's Ambulatory Care, VA Form 10–1465–3.

c. About your VA Prosthetics Care and Service, VA Form 10–0142b.

d. Survey on Your Home Based Primary Care (HBPC), VA Form 10–1465–9.

e. Customer Satisfaction Survey for Nutritional and Food Service, VA Form 10–5387.

OMB Control Number: 2900–0227.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 10–0142b, 10–1465–1, 10–1465–3, 10–1465–9, and 10–5387 will be used to survey customers regarding their satisfaction with VA's healthcare services. VA will use the data collected to identify areas where attention is needed and to improve its quality of health care services provided to veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 26, 2006, at page 4403–4404.

Affected Public: Individuals or households.

Estimated Annual Burden: 199,907 hours.

a. Survey of Healthcare Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—37,500.

b. Survey of Healthcare Experiences of Patient's Ambulatory Care, VA Form 10–1465–3—153,300.

c. About your VA Prosthetics Care and Service, VA Form 10–0142b—4,320.

d. Survey on Your Home Based Primary Care (HBPC), VA Form 10–1465–9—600.

e. Customer Satisfaction Survey for Nutritional and Food Service, VA Form 10–5387—4,187.

Estimated Average Burden Per Respondent:

a. Survey of Healthcare Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—30 minutes.

b. Survey of Healthcare Experiences of Patient's Ambulatory Care, VA Form 10–1465–3—30 minutes.

c. About your VA Prosthetics Care and Service, VA Form 10–0142b—24 minutes.

d. Survey on Your Home Based Primary Care (HBPC), VA Form 10–1465–9—15 minutes.

e. Customer Satisfaction Survey Nutritional and Food Service, VA Form 10–5387—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 439,400.

a. Survey of Healthcare Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—75,000.

b. Survey of Healthcare Experiences of Patient's Ambulatory Care, VA Form 10–1465–3—306,600.

c. About your VA Prosthetics Care and Service, VA Form 10–0142b—21,600.

d. Survey on Your Home Based Primary Care (HBPC), VA Form 10–1465–9—4,800.

e. Customer Satisfaction Survey Nutritional and Food Service, VA Form 10–5387—31,400.

Estimated Total Annual Responses: 520,400.

a. Survey of Healthcare Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—75,000.

b. Survey of Healthcare Experiences of Patient's Ambulatory Care, VA Form 10–1465–3—306,600.

c. About your VA Prosthetics Care and Service, VA Form 10–0142b—10,800.

d. Survey on Your Home Based Primary Care (HBPC), VA Form 10–1465–9—2,400.

e. Customer Satisfaction Survey Nutritional and Food Service, VA Form 10–5387—125,600.

Dated: April 24, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–6709 Filed 5–2–06; 8:45 am]

BILLING CODE 8320–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Executive Compensation Benchmark Amount

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to the heads of executive departments and agencies concerning the determination of the maximum benchmark compensation amount that will be allowable under government contracts during contractors FY 2006—$546,689. This determination is required under Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. The benchmark compensation amount applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Julia B. Wise, Office of Federal Procurement Policy, (202) 395–7561.

Clay Johnson III,

Acting Director.

Memorandum for the Heads of Executive Departments and Agencies

From: Clay Johnson III, Acting Director.

Subject: Determination of Executive Compensation Benchmark Amount, Pursuant to Section 39 of the Office of Federal Procurement Policy, (OFPP) Act (41 U.S.C. 435), as amended.

This memorandum sets forth the benchmark compensation amount as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the benchmark compensation amount is the median amount of the compensation provided for all senior executives of benchmark corporations for the most recent year for which data is available. The benchmark compensation amount established by Section 39 limits the allowability of compensation costs under government contracts. The benchmark compensation amount does not limit the compensation that an executive may otherwise receive. This amount is based on data from commercially available surveys of executive compensation that analyze the relevant data made available by the Securities and Exchange Commission. More specifically, as required by Section 39 of the OFPP Act, the data used is the median (50th percentile) amount of compensation accrued over a recent 12 month period for the top five highest paid executives of public-traded companies with annual sales over $50 million. After consultation with the Director of the Defense Contract Audit Agency, we have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractors' Fiscal Year 2006 is $546,689. This amount is for Fiscal Year 2006 and subsequent contractor fiscal years, unless and until revised by OMB. The benchmark compensation amount applies to contract costs incurred after January 1, 2006, under covered contracts of both the defense and civilian procurement agencies as specified in Section 39 of the OFPP Act (41 U.S.C. 435), as amended.

Questions concerning this memorandum may be addressed to Julia B. Wise, Office of Federal Procurement Policy, on (202) 395–7561.

[FR Doc. E6–6629 Filed 5–2–06; 8:45 am]

BILLING CODE 3110–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–08]

Notice of Quarterly Report (January 1, 2006—March 31, 2006)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter January 1, 2006 through March 31, 2006 with respect to either assistance provided under section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), or transfers of funds to other Federal agencies pursuant to section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612 (b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Madagascar Year: 2006 Quarter 2 Total Obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: $0 million				
Land Tenure Project	$37.803 mil	Increase Land Titling and Security.	$0	Legislative proposal ("loin de cadrage") reflecting the PNF submitted to Parliament and passed. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).
Finance Project	$35.888 mil	Increase Competition in the Financial Sector.	$0	Submission to Parliament and passage of new laws recommended by outside experts and relevant commissions. CPA Association (CSC) list of accountants registered. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Public awareness of new financial instruments (surveys). Report of credit and payment information to a central database. Number of holders of new denomination T-bill holdings, and T-bill issuance outside Antananarivo as measured by Central Bank report of redemption date. Volume of production covered by warehouse receipts in the zones. Volume of MFI lending in the zones. MFI portfolio-at-risk delinquency rate. Number of new bank accounts in the zones.
Agricultural Business Investment Project.	$17.683 mil	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$0	Number of rural producers receiving or soliciting information from ABCs about the opportunities. Zones identified and description of beneficiaries within each zone submitted. Number of cost-effective investment strategies developed. Number of plans prepared. Number of farmers and business employing technical assistance received.
Program Administration and Control, Monitoring and Evaluation.	$18.399 mil	.....	$0	
Program objective	**Obligated**	**Program goal**	**Disbursements**	**Measures**
Country: Honduras Year: 2006 Quarter 2 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $1,646 million				
Rural Development Project.	$72.195 mil	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees..	$283,000	Hours of technical assistance delivered to Program Farmers (thousands). Funds lent by MCA-Honduras to financial institutions (cumulative). Hours of technical assistance to financial institutions (cumulative). Lien Registry equipment installed. Kilometers of farm-to-market road upgraded (cumulative).

Program objective	Obligated	Program goal	Disbursements	Measures
Transportation Project	$125.700 mil ...	Reduce transportation costs between targeted production centers and national, regional and global markets..	$273,000	Kilometers of highway upgraded. Kilometers of secondary road upgraded. Number of weight stations built.
Program Administration and Control, Monitoring and Evaluation.	$17.105 mil	.....	$1.090 mil	

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Cape Verde Year: 2006 Quarter 2 Total Obligation: $110,078,000 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $0 million				
Watershed and Agricultural Support.	$10.848 mil	Increase agricultural production in three targeted watershed areas on three islands.	$0	Productivity: Horticulture (tons per hectare) Value-added for farms and agribusiness (millions of dollars)
Infrastructure Improvement.	$78.760 mil	Increase integration of the internal market and reduce transportation costs.	$0	Volume of goods shipped between Praia and other islands (tons). Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements (million dollars).
Private Sector Development.	$7.200 mil	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$0	Value added in priority sectors above current trends (escudos) Volume of private investment in priority sectors above current trends
Program Administration and Control, Monitoring and Evaluation.	$13.270 mil	.....	$0	

619 Transfer Funds

U.S. agency to which funds were transferred	Amount	Country	Description of program or project
N/A	N/A	N/A	N/A

*Note: Obligated amounts are cumulative from the time of signing a compact.

Dated: April 28, 2006.

Frances C. McNaught,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. E6–6665 Filed 5–2–06; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

(06–028).

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 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, PRA Officer, Office of the Chief Information Officer, JE000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

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 Code JE000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is used to assess the contribution of NASA Small Business Innovation Research (SBIR) technology to the National Economy in accordance with the Government Performance and Results Act (GPRA).

II. Method of Collection

The survey will be electronic and is available on NASA's SBIR Web site at *http://www.sbir.nasa.gov/SBIR/survey.html.* Electronic submission of the subject information is available to 100% of all surveyed firms.

III. Data

Title: NASA Small Business Innovation Research Commercial Metrics.

OMB Number: 2700—0095.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000/once every 3 years.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $11,000.

IV. Request 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: April 29, 2006.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E6–6699 Filed 5–2–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL NANOTECHNOLOGY COORDINATION OFFICE

Nanoscale Science, Engineering and Technology Subcommittee, National Science and Technology Council, Committee on Technology

ACTION: Notice of open meeting.

SUMMARY: This notice announces the Workshop on Public Participation in Nanotechnology sponsored by the Nanoscale Science, Engineering and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC) through the National Nanotechnology Coordination Office (NNCO). The workshop will begin a dialogue on public engagement in nanotechnology-related issues and decisions.

DATES AND ADDRESSES: The workshop will be held on Tuesday, May 30, 2006 from 8:30 a.m. to 5:30 p.m. and Wednesday, May 31, 2006 from 8:30 a.m. to 5 p.m. All sessions of the workshop will be held at the Westin Arlington Gateway Hotel, 801 North Glebe Road, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Cate Alexander, National Nanotechnology Coordination Office. Telephone: (703) 292–4399. E-mail: *calexand@nnco.nano.gov.*

SUPPLEMENTARY INFORMATION: The Nanoscale Science Engineering and Technology (NSET) Subcommittee coordinates planning, budgeting, program implementation and review to ensure a balanced and comprehensive National Nanotechnology Initiative (NNI). The NSET Subcommittee is composed of representatives from agencies participating in the NNI. The NNCO assists the NSET Subcommittee in coordinating the NNI.

The purpose of the workshop is to explore various methods of public participation and to provide feedback to the NNCO and NSET Subcommittee regarding which methods might be appropriate for public engagement in nanotechnology. Experts from the field of public participation, risk communications and science education, as well as researchers on societal implications and public perceptions will give presentations. Participants will be involved in discussions on related topics.

Public Participation: This meeting is open to the public, up to the limit set by hotel fire codes. Participants will be able to voice their opinions in open workshop discussions. Pre-registration is required for participation. For information regarding space availability and registration, contact Cate Alexander, National Nanotechnology Coordination Office. Telephone: (703) 292–4399. E-mail: *calexand@nnco.nano.gov.*

E. Clayton Teague,

Director, National Nanotechnology Coordination Office.

[FR Doc. E6–6666 Filed 5–2–06; 8:45 am]

BILLING CODE 3170–W6–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting; Sunshine Act

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: May 9–10, 2006.

May 9, 2006 7:45 a.m.–3:45 p.m.

Sessions:

7:45 a.m.–8:45 a.m. Open.
8:45 a.m.–9:30 a.m. Open.
9:30 a.m.–10:15 a.m. Open.
10:15 a.m.–10:45 a.m. Open.
10:45 a.m.–11:15 a.m. Open.
11:15 a.m.–11:45 a.m. Closed.
12:45 p.m.–2:30 p.m. Open.
2:30 p.m.–3:30 p.m. Open.
3:30 p.m.–3:45 p.m. Closed.

May 10, 2006 7:45 a.m.–3 p.m.

Sessions:

7:45 a.m.–8:15 a.m. Open.
8:15 a.m.–10:15 a.m. Open.
10:15 a.m.–11:45 a.m. Closed.
11:45 a.m.–12 noon Open.
12 p.m.–12:15 p.m. Closed.
1 p.m.–1:15 p.m. Executive Closed.
1:15 p.m.–1:30 p.m. Closed.
1:30 p.m.–3 p.m. Open.

PLACE: National Science Foundation, 4201 Wilson Blvd, Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

FOR FURTHER INFORMATION CONTACT: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Officer: Dr. Robert Webber, (703) 292–7000.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Tuesday, May 9, 2006

Open

Committee on Programs and Plans Subcommittee on Polar Issues (7:45 a.m.–8:45 a.m.) Room 1235.
- Approval of March 2006 Minutes.
- OPP Director's report.
- IPY Planning for an Arctic Observing Network.
- USAP and Non-Native Species in Antarctica.
- Report from NSB Members on Travel to Antarctic.

Committee on Programs and Plans Task Force on Hurricane Science and Engineering (8:45 a.m.–9:30 a.m.), Room 1235.
- Approval of March 2006 Minutes.
- Outcomes of Hurricane Science and Engineering Workshop at the Florida Institute for Human and Machine Cognition on April 18, 2006.
- Future Activities of the Task Force.

Committee on Education and Human Resources Subcommittee on Science and Engineering Indicators (9:30 a.m.–10:15 a.m.), Room 1235.
- Approval of March 2006 Minutes.
- Chairman's Remarks.
- Continued Discussion on the Evolution of Indicators.
- Miscellaneous Topics.

Committee on Programs and Plans Task Force on International Science (10:15 a.m.–10:45 a.m.), Room 1235.
- Approval of March 2006 Minutes.
- Update on May 11 Hearing and Roundtable Discussion.
- Discussion of Future Task Force Activities.

Committee on Audit and Oversight (10:45 a.m.–11:15 a.m.), Room 1235.
- Approval of March 2006 Minutes.
- OIG Semiannual Report and Management Response.
- Chief Financial Officer's Update.

Committee on Education and Human Resources (12:45 p.m.–2:30 p.m.), Room 1235.

- Approval of March 2006 Minutes.
- Professional Science Master's Program.
- NSF-EHR Program Evaluations.
- Subcommittee on Science and Engineering Indicators.
- Update by the *ad hoc* group on "Engineering Workforce Issues and Engineering Education: What Are the Linkages?"
- NSB items.

Committee on Strategy and Budget (2:30 p.m.–3:30 p.m.), Room 1235.

- Approval of March 2006 Minutes.
- Gender Equality for Science Departments, Implications of Title IX to NSF.
- Average Award Size, Duration, and Proposal Success Rate.
- NSF Strategic Plan FY 2006–2011.
- NSF Long Range Plan Overview.

Closed

Committee on Audit and Oversight (11:15 a.m.–11:45 a.m.), Room 1235.

- Pending Investigations.

Committee on Strategy and Budget (3:30 p.m.–3:45 p.m.), Room 1235.

- Preliminary Discussion of FY 2008 Budget.

Wednesday, May 10, 2006

Open

Committee on Programs and Plans Task Force on Transformative Research (7:45 a.m.–8:15 a.m.), Room 1235.

- Approval of March 2006 Minutes.
- Update on TR Workshop III, National Science Foundation, May 16, 2006.
- Outcomes of Previous TR Workshops.

Committee on Programs and Plans (8:15 a.m.–10:15 a.m.), Room 1235.

- Approval of March 2006.
- Status Reports:
  - Task Force on Transformative Research.
  - Task Force on International Science.
  - Task Force on Hurricane Science and Engineering.
  - Subcommittee on Polar Issues.
- NSB Information Items:
  - Update on Status of Planning for NSF's Role in the Renewal of the National Academic Research Fleet.
  - An MREFC Horizon Project—the Global Environment for Networking Innovations.
- Major Research Facilities:
  - NSF Facility Plan 2006.
  - NSF Annual Major Facilities Plan Review.
- Update on NSF's Cyberinfrastructure Vision.

Executive Committee (11:45 a.m.–12 noon), Room 1235.

- Approval of November-December 2005 Minutes.
- Annual Report of the Executive Committee.
- Updates or New Business from Committee Members.

Closed Sessions

Committee on Programs and Plans (10:15 a.m.–11:45 a.m.), Room 1235.

- Awards and Agreements.

Executive Committee (12 noon–12:15 p.m.), Room 1235.

- Director's Items.

Plenary Sessions of the Board (1 a.m.–3 p.m.)

Executive Closed Session (1 p.m.–1:15 p.m.), Room 1235.

- Approval of March 2006 Executive Closed Minutes.
- Elections for Chair, Vice Chair and 2 Executive Committee Members.

Closed Session (1:15 p.m.–1:30 p.m.), Room 1235.

- Approval of March 2006 Closed Session Minutes.
- Awards and Agreements.
- Closed Committee Reports.

Open Session (1:30 p.m.–3 p.m.), Room 1235.

- Approval of March 2006 Open Session Minutes.
- Resolution to Close Portions of August 2006 meeting.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 06–4183 Filed 5–1–06; 9:48 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation and Model License Amendment Request on Technical Specification Improvement Regarding Use of the Improved Bank Position Withdrawal Sequence for General Electric Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to changes to Standard Technical Specification (STS) 3.1.6, "Rod Pattern Control," and STS 3.3.2.1, "Control Rod Block Instrumentation" for NUREG–1433 and NUREG–1434. The proposed changes would revise the Bases for STS 3.1.6, "Rod Pattern Control," and STS 3.3.2.1, "Control Rod Block Instrumentation" to allow licensees to use an improved control rod bank position withdrawal sequence (BPWS) when performing a reactor shutdown. In addition, for NUREG–1434 licensees, the proposed changes would add a footnote to Table 3.3.2.1–1, "Control Rod Block Instrumentation." The requirements for implementing the improved BPWS are described in General Electric Licensing Topical Report (LTR) NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," dated July 2004. The General Electric Boiling Water Reactor Owners Group (BWROG) participants in the Technical Specifications Task Force (TSTF) proposed these changes to the STS in TSTF–476, Revision 0, "Improved BPWS Control Rod Insertion Process (NEDO–33091)."

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate these changes into plant-specific Technical Specifications (TS) for General Electric Boiling Water Reactors (BWRs). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model LAR, model SE and NSHC determination to its plant. The NRC staff is requesting comments on the model LAR, model SE and NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 30 days from the date of this publication. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Submit comments by electronic mail to: *CLIIP@nrc.gov.*

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Eric Thomas, Mail Stop: O–12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6772.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process [CLIIP] for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that changes the Bases for sections 3.1.6 and 3.3.2.1 of the General Electric BWR STS, Revision 3 of NUREG–1433 and NUREG–1434, and Table 3.3.2.1–1 in the NUREG–1434 STS. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Following the public comment period, the model LAR and model SE will be finalized, and posted on the NRC Web page. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves implementation of an improved BPWS, which would allow licensees of General Electric BWRs to follow the improved BPWS when inserting control rods into the core during a reactor shutdown. By letter dated August 30, 2004, the BWROG proposed these changes for incorporation into the STS as TSTF–476, Revision 0. These changes are based on the NRC staff-approved LTR NEDO–33091–A, "Improved BPWS Control Rod Insertion Process," dated July 2004, as approved by NRC in an SE dated June 16, 2004, accessible electronically from the Agency-wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession No. ML041700479) 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 Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Applicability

These proposed changes will revise the Section 3.6.1 and Section 3.3.2.1 TS Bases for General Electric BWR/4 and BWR/6 plants, and TS Table 3.3.2.1–1 for BWR/6 plants.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–476, Revision 0, using the CLIIP submit an LAR that adheres to the following model. Any variations from the model LAR should be explained in the licensee's submittal. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–476.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of this publication. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the model LAR, model SE or model NSHC determination as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Dated at Rockville, Maryland this 7th day of April 2006.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Attachments—For Inclusion on the Technical Specification Web Page the Following Example of an Application Was Prepared by the NRC Staff to Facilitate the Adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–476, Revision 0 "Improved BPWS Control Rod Insertion Process (Nedo-33091)." The Model Provides the Expected Level Of Detail and Content for an Application to Adopt TSTF–476, Revision 0. Licensees Remain Responsible for Ensuring That Their Actual Application Fulfills Their Administrative Requirements as Well as NRC Regulations.

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

Subject: Plant Name, Docket No. 50–[XXX,] Re: Application For Technical Specification Improvement To Adopt TSTF–476, Revision 0, "Improved BPWS Control ROD Insertion Process (NEDO–33091)".

Dear Sir or Madam: In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.]. The proposed changes would revise Sections 3.1.6, "Rod Pattern Control," and 3.3.2.1, "Control Rod Block Instrumentation," to allow [PLANT NAME] to reference a new Banked Position Withdrawal Sequence (BPWS) shutdown sequence in the TS Bases. [(BWR/6 only), In addition, a footnote is added to Table 3.3.2.1–1, "Control Rod Block Instrumentation."]

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–476, Revision 0, "Improved BPWS Control Rod Insertion Process (NEDO–33091)." The availability of this TS improvement was announced in the **Federal Register** on [DATE] ([ ]FR[ ]) as part of the consolidated line item improvement process (CLIIP).

Enclosure 1 provides a description and assessment of the proposed changes, as well as confirmation of applicability. Enclosure 2 provides the existing TS pages and TS Bases marked-up to show the proposed changes. Enclosure 3 provides final TS pages and TS Bases pages.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY

DATE OR WITHIN X DAYS]. In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement]. If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name, Title

Enclosures:

1. Description and Assessment of Proposed Changes
2. Proposed Technical Specification Changes and Technical Specification Bases Changes
3. Final Technical Specification and Bases pages

cc: NRR Project Manager, Regional Office, Resident Inspector, State Contact, ITSB Branch Chief.

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would revise Technical Specification (TS) 3.1.6, "Rod Pattern Control", and 3.3.2.1, "Control Rod Block Instrumentation," [(BWR/6 only) along with TS Table 3.3.2.1–1, "Control Rod Block Instrumentation,"] to allow reference to an improved, optional Bank Position Withdrawal Sequence (BPWS) in the TS Bases for use during reactor shutdown.

The new BPWS is described in Topical Report NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," dated July 2004 (Reference 1), and approved by the NRC by Safety Evaluation (SE) dated June 16, 2004 (ADAMS ML041700479) (Reference 2). Technical Specification Task Force (TSTF) change traveler TSTF–476, Revision 0, "Improved BPWS Control Rod Insertion Process (NEDO–33091)" was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Changes

Consistent with NRC-approved TSTF–476, Revision 0, the proposed TS changes include:

- Revised TS Section 3.6.1 Bases to allow use of an optional BPWS during plant shutdown.
- Revised TS Section 3.3.2.1 Bases to allow reprogramming of the rod worth minimizer during the optional BPWS shutdown sequence.
- [(BWR/6 only): Revised Table 3.3.2.1–1, "Control Rod Block Instrumentation," which adds a footnote that allows operators to bypass the rod pattern controller if conditions for the optional BPWS shutdown process are satisfied.]

3.0 Background

The background for this application is as stated in the model SE in NRC's Notice of Availability published on [DATE]([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–476, Revision 0.

4.0 Technical Analysis

[LICENSEE] has reviewed References 1 and 2, and the model SE published on [DATE] ([ ] FR [ ]) as part of the CLIIP Notice for Comment. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–476, Revision 0 and the model SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.], and justify this amendment for the incorporation of the changes to the [PLANT] TS.

5.0 Regulatory Analysis

A description of this proposed change and its relationship to applicable regulatory requirements and guidance was provided in the NRC Notice of Availability published on [DATE] ([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–476, Revision 0.

5.1 Regulatory Commitments

As discussed in the model SE published in the **Federal Register** on [DATE] ([ ] FR [ ]) for this technical specification improvement, the following plant-specific verifications/commitments were performed. In Reference 2 the NRC staff explained that the potential for the control rod drop accident (CRDA) will be eliminated by the following changes to the operational procedures, which [PLANT NAME] [has made/will commit to make prior to implementation]:

1. Before reducing power to the low power setpoint (LPSP), operators shall confirm control rod coupling integrity for all rods that are fully withdrawn. Control rods that have not been confirmed coupled and are in intermediate positions must be fully inserted prior to power reduction to the LPSP. No action is required for fully-inserted control rods.

If a shutdown is required and all rods, which are not confirmed coupled, cannot be fully inserted prior to the power dropping below the LPSP, then the original/standard BPWS must be adhered to.

2. After reactor power drops below the LPSP, rods may be inserted from notch position 48 to notch position 00 without stopping at the intermediate positions. However, GE Nuclear Energy recommends that, to the maximum extent possible, operators insert rods in the same order as specified for the original/standard BPWS. If a plant is in the process of shutting down following improved BPWS with the power below the LPSP, no control rod shall be withdrawn unless the control rod pattern is in compliance with standard BPWS requirements.

In addition to the procedure changes specified above, the staff previously concluded, based on its review of NEDO–33091–A, that no single failure of the boiling water reactor CRD mechanical or hydraulic system can cause a control rod to drop completely out of the reactor core during the shutdown process. Therefore, the proper use of the improved BPWS will prevent a CRDA from occurring while power is below the LPSP. [LICENSEE] has verified, in accordance with NEDO–33091–A, Revision 2, that no single failure of the boiling water reactor CRD mechanical or hydraulic system can cause a control rod to drop completely out of the reactor core during the shutdown process.

6.0 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

7.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental consideration included in the model SE published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented therein are applicable to [PLANT] and the determination is hereby incorporated by reference for this application.

8.0 References

1. Topical Report NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," dated July 2004.

2. NRC Safety Evaluation (SE) approving Topical Report NEDO–33091, Revision 2, "Improved BPWS Control Rod Insertion Process," dated June 16, 2004.

3. **Federal Register** Notices:
Notice for Comment published on [DATE] ([ ] FR [ ])
Notice of Availability published on [DATE] ([ ] FR [ ])

Model Safety Evaluation—U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation—"Technical Specification Task Force TSTF–476, Revision 0—"Improved BPWS Control Rod Insertion Process (NEDO–33091)

1.0 Introduction

By letter dated [__ ___, 20__], [LICENSEE] (the licensee) proposed changes to the technical specifications (TS) for [PLANT NAME]. The requested changes are the adoption of TSTF–476, Revision 0, "Improved BPWS Control Rod Insertion Process (NEDO–33091–A)," to the Boiling Water Reactor (BWR) Standard Technical Specifications (STS), which was proposed by the Technical Specifications Task Force (TSTF) by letter on August 30, 2004. This TSTF involves changes to NUREG–1433 and NUREG–1434 Section 3.1.6 "Rod Pattern Control," Section 3.3.2.1 "Control Rod Block Instrumentation," and Table 3.3.2.1–1 (NUREG–1434 only). The proposed TSTF would allow the use of the improved bank position withdrawal sequence (BPWS) during normal shutdowns if the conditions of NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," dated July 2004, have been satisfied.

2.0 Regulatory Evaluation

The control rod drop accident (CRDA) is the design basis accident for the subject TS changes. In order to minimize the impact of a CRDA, the BPWS process was developed to minimize control rod reactivity worth for BWR plants. The proposed improved BPWS further simplifies the control rod insertion process, and in order to evaluate it, the staff followed the guidelines of Standard Review Plan Section 15.4.9, and referred to General Design Criterion (GDC) 28 of Appendix A to 10 CFR Part 50 as its regulatory requirement. GDC 28 states that the reactivity control systems shall be designed with appropriate limits on the potential amount and rate of reactivity increase to assure that the effects of postulated reactivity accidents can neither (1) result in damage to the reactor coolant pressure boundary greater than limited local yielding nor (2) sufficiently disturb the core, its support structures or other reactor pressure vessel internals to impair significantly the capability to cool the core.

3.0 Technical Evaluation

In its safety evaluation for Licensing Topical Report NEDO–33091–A, "Improved BPWS Control Rod Insertion Process," dated June 16, 2004, (ADAMS ML041700479) the staff determined that the methodology described in TSTF–476, Revision 0, to incorporate the improved BPWS into the STS, is acceptable.

TSTF–476, Revision 0; states that the improved BPWS provides the following benefits: (1) Allows the plant to reach the all-rods-in condition prior to significant reactor cool down, which reduces the potential for re-criticality as the reactor cools down; (2) reduces the potential for an operator reactivity control error by reducing the total number of control rod manipulations; (3) minimizes the need for manual scrams during plant shutdowns, resulting in less wear on control rod drive (CRD) system components and CRD mechanisms; and, (4) eliminates unnecessary control rod manipulations at low power, resulting in less wear on reactor manual control and CRD system components.

[PLANT NAME] has been approved to use the improved BPWS, and the potential for a CRDA with power below the low power setpoint (LPSP) has been eliminated. The safety evaluation for NEDO–33091–A explained that the potential for the CRDA will be eliminated by the following changes to operational procedures, which [PLANT NAME] [has made/will commit to make prior to implementation]:

1. Before reducing power to the LPSP, operators shall confirm control rod coupling integrity for all rods that are fully withdrawn. Control rods that have not been confirmed coupled and are in intermediate positions must be fully inserted prior to power reduction to the LPSP. No action is required for fully-inserted control rods.

If a shutdown is required and all rods that are not confirmed coupled cannot be fully inserted prior to power dropping below the LPSP, then the original/standard BPWS must be adhered to.

2. After reactor power drops below the LPSP, rods may be inserted from notch position 48 to notch position 00 without stopping at the intermediate positions. However, GE Nuclear Energy recommends that, to the maximum extent possible, operators insert rods in the same order as specified for the original/standard BPWS. If a plant is in the process of shutting down following improved BPWS with the power below the LPSP, no control rod shall be withdrawn unless the control rod pattern is in compliance with standard BPWS requirements.

In addition to the procedure changes specified above, the staff previously verified during its review of NEDO–33091–A, Revision 2, that no single failure of the boiling water reactor CRD mechanical or hydraulic system can cause a control rod to drop completely out of the reactor core during the shutdown process. Therefore, the proper use of the improved BPWS will prevent a CRDA from occurring while power is below the LPSP.

The staff finds the proposed Technical Specification changes in [PLANT NAME's] amendment request properly incorporate the improved BPWS procedure into the STS, and that [PLANT NAME] accurately adopted TSTF–476 and the requisite procedural changes. Therefore, the staff approves the [PLANT NAME] license amendment request to adopt TSTF–476, Revision 0.

4.0 State Consultation

In accordance with the Commission's regulations, the [_____] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment[s] change[s] a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 or surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on such finding published [DATE] ([ ] FR [ ]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [Plant name] requests adoption of an approved change to the standard technical specifications (STS) for Boiling Water Reactor (BWR) Plants (NUREG–1433 & NUREG–1434) and plant specific technical specifications (TS), to allow the use of the improved bank position withdrawal sequence (BPWS) during normal shutdowns in accordance with NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," dated July 2004. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–476.

Basis for proposed no-significant-hazards-consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no-significant-hazards-consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes modify the TS to allow the use of the improved bank position withdrawal sequence (BPWS) during normal shutdowns if the conditions of NEDO–33091–A, Revision 2, "Improved BPWS Control Rod Insertion Process," July 2004, have been satisfied. The staff finds that the licensee's justifications to support the specific TS changes are consistent with the approved topical report and TSTF–476. Since the change only involves changes in control rod sequencing, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting TSTF–476 are no different than the consequences of an accident prior to adopting TSTF–476. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The control rod drop accident (CRDA) is the design basis accident for the subject TS changes. This change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change, TSTF–476, incorporates the improved BPWS, previously approved in NEDO–33091–A, into the improved TS. Control rod drop accident

(CRDA) is the design basis accident for the subject TS changes. In order to minimize the impact of a CRDA, the BPWS process was developed to minimize control rod reactivity worth for BWR plants. The proposed improved BPWS further simplifies the control rod insertion process and, in order to evaluate it, the staff followed the guidelines of Standard Review Plan Section 15.4.9, and referred to General Design Criterion 28 of Appendix A to 10 CFR part 50 as its regulatory requirement. The TSTF stated the improved BPWS provides the following benefits: (1) Allows the plant to reach the all-rods-in condition prior to significant reactor cool down, which reduces the potential for re-criticality as the reactor cools down; (2) reduces the potential for an operator reactivity control error by reducing the total number of control rod manipulations; (3) minimizes the need for manual scrams during plant shutdowns, resulting in less wear on control rod drive (CRD) system components and CRD mechanisms; and, (4) eliminates unnecessary control rod manipulations at low power, resulting in less wear on reactor manual control and CRD system components. The addition of procedural requirements and verifications specified in NEDO–33091–A, along with the proper use of the BPWS will prevent a control rod drop accident (CRDA) from occurring while power is below the low power setpoint (LPSP). The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this ____ day of _____, 2006.

For the Nuclear Regulatory Commission.

Project Manager, Plant Licensing Branch [ ], Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–6678 Filed 5–2–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–27306; File No. 812–13188]

The Variable Annuity Life Insurance Company, et al., Notice of Application

April 27, 2006.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act"), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Applicants: The Variable Annuity Life Insurance Company ("VALIC"), VALIC Separate Account A ("Separate Account A" and, collectively with VALIC, the "Applicants"), and VALIC Company I ("VALIC I" and, collectively with VALIC and Separate Account A, the "Section 17 Applicants").

Summary of Application: Applicants seek an order approving the proposed substitution of shares of Evergreen Fundamental Large Cap Fund with Large Cap Core Fund; Evergreen Equity Income Fund with Broad Cap Value Fund; American Century Ultra Fund with VALIC Ultra Fund; AIM Large Cap Growth Fund, Janus Fund and Putnam New Opportunities Fund with Large Capital Growth Fund; MSIF Mid Cap Growth Fund, Putnam OTC & Emerging Growth Fund and SIT Mid Cap Growth Fund with Mid Cap Strategic Growth Fund; Evergreen Special Values Fund with Small Cap Special Values Fund; SIT Small Cap Growth Fund and Evergreen Special Equity Fund with Small Cap Strategic Growth Fund; Credit Suisse Small Cap Growth Fund with Small Cap Aggressive Growth Fund; Janus Adviser Worldwide Fund and Putnam Global Equity Fund with Global Equity Fund; Templeton Global Asset Allocation Fund with Global Strategy Fund; Templeton Foreign Fund with Foreign Value Fund; and Dreyfus Basic U.S. Mortgage Securities Fund with Capital Conservation Fund (the "Substitution"). Section 17 Applicants seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with the Substitution.

Filing Date: The application was originally filed on May 6, 2005, and an amended and restated application was filed on April 26, 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 must be received by the Commission by 5:30 p.m. on May 22, 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 requester'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, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, 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., Washington, DC 20549 (202–551–8090).

Applicants' and Section 17 Applicants' Representations

1. VALIC is a stock life insurance company originally organized in 1955 under the laws of Washington, DC and reorganized in Texas in 1968. VALIC is an indirect wholly-owned subsidiary of American International Group, Inc., a United States based international insurance and financial services organization.

2. Separate Account A was established in 1979. Separate Account A is registered under the Act as a unit investment trust (File No. 811–3240) and is used to fund variable annuity contracts (the "Contracts") (File No. 33–75292) issued by VALIC.

3. VALIC I was incorporated in Maryland on December 7, 1984 and is registered under the Act as an open-end management investment company (File Nos. 811–3738 and 002–83631).

4. Purchase payments under the Contracts may be allocated to one or more divisions ("Divisions") of Separate Account A. Income, gains and losses, whether or not realized, from assets allocated to Separate Account A are, as provided in the Contracts, credited to or charged against Separate Account A without regard to other income, gains or losses of VALIC. The assets maintained in Separate Account A will not be charged with any liabilities arising out of any other business conducted by VALIC. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of VALIC. Accordingly, Applicants represent that all of VALIC's assets are available to meet its obligations under the Contracts.

5. The Contracts permit allocations of account value to available Divisions that invest in specific investment portfolios of underlying registered investment companies (a "Fund" and, collectively, the "Mutual Funds"). VALIC I is one of the available Mutual Funds and each of the following is a series of VALIC I:

Large Cap Core Fund, Broad Cap Value Fund, VALIC Ultra Fund, Large Capital Growth Fund, Mid Cap Strategic Growth Fund, Small Cap Special Values Fund, Small Cap Strategic Growth Fund, Small Cap Aggressive Growth Fund, Global Equity Fund, Global Strategy Fund, Foreign Value Fund, and Capital Conservation Fund (collectively, the "Replacement Funds"). The other Funds involved in this application (collectively, the "Replaced Funds") are all registered under the Act as open-end management investment companies and include the following: AIM Large Cap Growth Fund, American Century Ultra Fund, Credit Suisse Small Cap Growth Fund, Dreyfus BASIC U.S. Mortgage Securities Fund, Evergreen Equity Income, Evergreen Fundamental Large Cap Fund, Evergreen Special Equity, Evergreen Special Values Funds, Janus Adviser Worldwide Funds, Janus Fund, MSIF Mid Cap Growth Portfolio, Putnam Global Equity Fund, Putnam New Opportunities Fund, Putnam OTC & Emerging Growth Fund, Sit Mid Cap Growth Fund, Sit Small Cap Growth Fund, Templeton Foreign Fund, and Templeton Global Asset Allocation Fund.

6. The Contracts permit transfers of accumulation value from one Division to another Division at any time prior to annuitization, subject to certain restrictions. No sales charge applies to such a transfer of accumulation value among Divisions.

7. The Contracts reserve the right, upon notice to contract owners (the "Contract Owners"), to substitute shares of another mutual fund for shares of a Fund held by a Division.

8. The Replaced Funds involved in the Substitution include 18 separate portfolios representing ten investment company complexes. After the Substitution, there will be 12 portfolios, all of which will be portfolios of VALIC I. Applicants represent that the investment objective and policies of each Replacement Fund will be the same as or substantially similar to the investment objective and policies of the corresponding Replaced Fund. Applicants state that the Substitution is being proposed to reduce the number of overlapping portfolio offerings in certain classes and eliminate certain portfolios whose performance levels in the recent years have not maintained the level of performance that was the basis of their inclusion as variable account options. Applicants represent that relieving Separate Account A of the administrative burdens of interfacing with ten unaffiliated investment company complexes is expected to simplify compliance, accounting and auditing and, generally, to allow VALIC to administer the Contracts more efficiently. Applicants state that VALIC will serve as the investment adviser for each Replacement Fund, and many of the Replacement Funds will retain as sub-adviser the investment adviser of the Replaced Fund. Applicants state that, because VALIC I has "manager of managers" exemptive relief, VALIC, as investment adviser, will be able to act more quickly and efficiently, subject to Board of Directors approval, to protect Contract Owners' interests if the performance of one or more of the sub-advisers does not meet expectations.[1]

9. Applicants propose the following substitutions of shares:

Substitution	Replaced portfolio	Replacement portfolio
A	Evergreen Fundamental Large Cap Fund	Large Cap Core Fund.
B	Evergreen Equity Income Fund	Broad Cap Value Fund.
C	American Century Ultra Fund	VALIC Ultra Fund.
D	AIM Large Cap Growth	Large Capital Growth Fund.
E	Janus Fund.	
F	Putnam New Opportunities Fund.	
G	MSIF Mid Cap Growth Fund	Mid Cap Strategic Growth Fund.
H	Putnam OTC & Emerging Growth Fund.	
I	SIT Mid Cap Growth Fund.	
J	Evergreen Special Values Fund	Small Cap Special Values Fund.
K	SIT Small Cap Growth Fund	Small Cap Strategic Growth Fund.
L	Evergreen Special Equity Fund.	
M	Credit Suisse Small Cap Growth Fund	Small Cap Aggressive Growth Fund.
N	Janus Adviser Worldwide Fund	Global Equity Fund.
O	Putnam Global Equity Fund.	
P	Templeton Global Asset Allocation Fund	Global Strategy Fund.
Q	Templeton Foreign Fund	Foreign Value Fund.
R	Dreyfus Basic U.S. Mortgage Securities Fund	Capital Conservation Fund.

10. *Substitution A:* Applicants describe the investment objective for the Evergreen Fundamental Large Cap Fund and the Large Cap Core Fund identically. Each Fund invests, under normal conditions, at least 80% of its assets in the common stock of large U.S. companies. Each Fund's stock selection is based on a diversified style of equity management that allows it to invest in both value and growth oriented equity securities. Applicants represent that both the Replaced Fund and the Replacement Fund have similar investment strategies and have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61%, 12b–1 Fees of 0.30%, and Other Expenses of 0.59%.[2] Charges for the Replacement Fund include: Management Fees of 0.70% and Other Expenses of 0.15%; it does not charge a 12b–1 Fee. Respectively, the Replaced Fund's total gross and net operating expenses are 1.50% and 1.39% (reflecting a 0.11% fee reduction arrangement). Both total gross and net annual operating expenses for the Replacement Fund equal 0.85%. Under the Contracts, both Funds' Separate Account fee is the same. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are nearly identical; and (2) the Replacement Fund assets will be managed by the same investment adviser (using the same management style and strategy) as the Replaced Fund.

[1] Investment Company Act Release Nos. 23386 (Aug. 12, 1998) (Notice) and 23429 (Sept. 9, 1998) (Order).

[2] For the descriptions of charges involved in the Substitution, all percentages for the Management Fees, 12b–1 Fees, Other Expenses, Fee Reductions, Total Gross and Net Annual Operating Expenses, and Separate Account Fees represent a percentage of average annual assets.

11. *Substitution B:* Applicants state that the Evergreen Equity Income Fund seeks current income and capital growth by investing primarily in equity securities across all market capitalizations that on the purchase date pay a higher yield than the average yield of companies included in the Russell 1000 Value Index. Applicants represent that the Broad Cap Value Fund seeks total return through capital appreciation with income as a secondary consideration. The Replacement Fund invests primarily in large capitalization companies whose stocks are considered to be undervalued. The Replacement Fund may also invest in companies with mid-sized or small market capitalizations and may invest up to 20% in foreign securities. Applicants state that the investment strategies of the funds differ such that the Replaced Fund invests in "growth" and "value" securities whereas the Replacement Fund invests in what it determines are "value" securities. However, Applicants also represent that notwithstanding these differences, the risk profile of the two funds is very similar.

Charges for the Replaced Fund include Management Fees of 0.59%, 12b–1 Fees of 0.30%, and Other Expenses of 0.34%. Charges for the Replacement Fund include Management Fees of 0.70%, and Other Expenses of 0.15%. The Replacement Fund does not charge a 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. The total gross annual operating expenses for the Replaced and Replacement Funds are 1.23% and 0.85%, respectively. Under the Contracts, the Separate Account fee is the same for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (current income and capital growth) and policies of the two Funds are substantially similar; (2) the income yield of the Replacement Fund has been comparable to the Replaced Fund for the past five years, and (3) the Replacement Fund's overall risk profile is very similar to that of the Replaced Fund.

13. *Substitution C:* Applicants state that the Replaced Fund seeks long-term capital growth through investments primarily in common stocks that are considered to have a greater-than-average chance to increase in value over time. Applicants represent that the Replacement Fund seeks long term capital growth by investing primarily in common stocks of growing companies using a strategy that looks for companies with earnings and revenues that are growing at a successively faster or accelerating pace. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities and have nearly identical investment strategies.

Charges for the Replaced Fund include only a Management Fees of 0.99%; there are no 12b–1 Fees or Other Expenses. The Replacement Fund charges Management Fees of 0.80% and Other Expenses of 0.15%; there are no 12b–1 Fees. There is no fee reduction arrangement applicable to the Replaced or the Replacement Fund. The total gross annual operating expenses are for the Replaced and Replacement Funds are 0.99% and 0.95%, respectively. Under the Contracts, the Separate Account fee is 1.04% for the Replace Fund and 1.00% for the Replacement Fund. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are nearly identical; and (2) the Replacement Fund assets will be managed by the same investment adviser (using the same management style and strategy) as the Replaced Fund.

14. *Substitution D:* Applicants state that both Replaced and Replacement Funds seek long-term capital growth through investment in large-capitalization companies within the range of the Russell 1000 Index. Applicants also represent that (1) the Replaced and Replacement Funds have no significant risk disparities; (2) AIM serves as adviser to both funds (though as a co-subadviser for the Replacement Fund); and (3) the Funds have very similar investment strategies.

Charges for the Replaced Fund include Management Fees of 0.75%, 12b–1 Fees of 0.25%, and Other Expenses of 0.45%. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64% and Other Expenses of 0.15%; it has no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.45% and 1.37% (reflecting a 0.08% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.79%. Under the Contracts, both Funds' Separate Account fee is identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are substantially similar; (2) the investment advisor of the Replaced Fund, AIM Advisors, will continue to serve as one of the two sub-advisers of the Replacement Fund; and (3) in subadvising the Replacement Fund, AIM Advisors will continue using the same style and strategy as is used in managing the Replaced Fund.

15. *Substitution E:* Applicants state that the Replaced Fund seeks long-term growth of capital consistent with preservation of capital through investment in common stocks of larger, more established companies selected for their growth potential. The Replacement Fund seeks long-term growth of capital through investment in common stocks of well-established, high-quality growth companies no smaller than the smallest capitalized company included in the Russell 1000 Index. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.64%, Other Expenses of 0.25%, and no 12b–1 Fee. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64%, Other Expenses of 0.15%, and no 12b–1 Fee. Neither Replaced nor Replacement Fund has a fee reduction arrangement. Total gross annual operating expenses for Replaced and Replacement Funds are 0.89% and 0.79%, respectively. Under the Contracts, Separate Account fees for both Funds are identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term capital growth) and policies of the two Funds are substantially similar; and (2) both the Replaced and Replacement Fund have similar risk profiles.

16. *Substitution F:* Applicants state that the Replaced Fund seeks long-term capital appreciation by investing mainly in common stocks of U.S. companies, focusing on growth stocks in sectors of the economy the adviser believes have high growth potential. The Replacement Fund seeks long-term growth of capital through investment in common stocks of well-established, high-quality growth companies no smaller than the smallest capitalized company included in the Russell 1000 Index. Applicants represent that (1) the Replaced Fund is more likely to be subject to small and mid-cap risks than the Replacement Fund; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for the Fund's first year of operations; and (3) both Funds may invest in derivatives, convertible securities and foreign securities.

Charges for the Replaced Fund include Management Fees of 0.52%,

12b–1 Fees of 0.25%, and Other Expenses of 0.35%. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64%, Other Expenses of 0.15%, and no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.12% and 0.79%, respectively. Under the Contracts, Separate Account fees for both Funds are identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term growth of capital) and policies of both Replaced and Replacement Funds are substantially similar; and (2) both the Replaced and Replacement Fund have similar risk profiles.

17. *Substitution G:* Applicants state that the Replaced and Replacement Funds each seek long-term capital growth by investing primarily in growth-oriented equity securities of U.S. mid-cap companies and, to a limited extent, foreign companies. Applicants represent that for the Replaced Fund, the market capitalization of Mid-cap companies is generally less than $35 billion. Applicants represent that the Replacement Fund identifies a company as a mid cap company if, at the time of purchase, its capitalization is (1) within the range of companies represented in the Russell Mid Cap Growth Index, or (2) between $1 billion and $12 billion. Applicants represent that (1) the Replaced Fund invests up to 10% of its assets in REITs compared to the Replacement Fund which typically invests only up to 5% in REITs; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for the Fund's first year of operations; and (3) both Funds may invest in derivatives and initial public offerings ("IPOs").

Charges for the Replaced Fund include Management Fees of 0.50%, 12b–1 Fees of 0.25%, and Other Expenses of 0.13%. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 0.88% and 0.85%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Replaced and Replacement Funds are substantially similar; (2) the investment adviser of the Replaced Fund, Morgan Stanley Investment Management ("MSIM"), will continue to serve as one of two sub-advisers of the Replacement Fund; and (3) MSIM will continue using the same style and strategy as is used in managing the Replaced Fund.

18. *Substitution H:* Applicants state that the Replaced Funds seeks capital appreciation by investing mainly in common stocks of U.S. companies traded in the over-the-counter market and "emerging growth" companies listed on securities exchanges, with a focus on growth stocks. Applicants state that the Replacement Fund seeks long-term capital growth by investing primarily in growth-oriented equity securities of U.S. mid-cap companies and, to a limited extent, foreign companies. Applicants represent that (1) the Replaced Fund may invest more of its assets in small-cap companies than the Replacement Fund; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for that Fund's first year of operations; and (3) both Funds' overall risk profile is very similar.

Charges for the Replaced Fund include Management Fees of 0.62%, 12b–1 Fees of 0.25%, and Other Expenses of 0.54%. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.41% and 1.40% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.85%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term capital growth) and policies of both Funds are substantially similar; and (2) both Replaced and Replacement Funds have similar risk profiles.

19. *Substitution I:* Applicants state that the Replaced Funds seeks long-term capital appreciation by investing in the common stocks of companies with capitalizations of $2 billion to $15 billion at the time of purchase. Applicants state that the Replacement Fund seeks long-term capital growth by investing primarily in growth-oriented equity securities of U.S. and, to a limited extent, foreign, mid-cap companies with market capitalization at the time of purchase is between $1 billion and $12 billion or within the range of companies represented in the Russell Mid Cap Growth Index. Applicants represent that there are no significant risk disparities between the Replaced and Replacement Funds.

The Replaced Fund carries a Management Fee of 1.25%, and has no 12b–1 Fees or Other Expenses. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.25% and 1.15% (reflecting a 0.10% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.85%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Replaced and Replacement Funds are substantially similar; (2) although the Replaced and Replacement Funds define "mid-cap companies" slightly differently, the investment objective of both Funds is to seek long-term capital growth; and (3) both the Replaced and Replacement Fund have similar risk profiles.

20. *Substitution J:* Applicants state that the investment objective of both the Replaced and Replacement Funds is to produce capital growth by investing primarily in common stocks of small U.S. Companies. The capitalization range is identical for both Funds. Applicants represent that Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.78%, 12b–1 Fees of 0.25%, and Other Expenses of 0.34%. Charges for the Replacement Fund include Management Fees of 0.75%, Other Expenses of 0.15%, and no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.37% and 1.32% (reflecting a 0.05% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.90%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are substantially similar; (2) the investment adviser of the Replaced Fund, Evergreen Investment Management ("EIM"), will continue to serve as one of two sub-advisers of the

Replacement Fund; and (3) EIM will continue using the same style and strategy as is used in managing the Replaced Fund.

21. *Substitution K:* Applicants state that the investment objective of the Replaced Fund is to maximize long-term capital appreciation by investing in common stocks of companies with capitalizations of $2.5 billion or less at the time of purchase. Applicants state that the Replacement Fund seeks capital growth by investing primarily in common stocks of small U.S. companies whose market capitalization at purchase is within the range tracked by the Russell 2000 Index. Noting that only the Replacement Fund may invest in emerging market securities and IPOs, Applicants represent that the Funds have similar investment strategies and overall risk profiles.

The Replaced Fund carries a Management Fee of 1.50%, and has no 12b–1 Fees or Other Expenses. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.50% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are substantially similar; (2) although the Replaced and Replacement Funds define "small companies" slightly differently, the investment objective of both Funds is to seek capital growth by investing in small companies; and (3) both the Replaced and Replacement Fund have similar risk profiles.

22. *Substitution L:* Applicants state that the investment objective of both the Replaced and Replacement Funds is to produce capital growth by investing primarily in common stocks of small U.S. companies. The capitalization range is identical for both Funds. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.89%, 12b–1 Fees of 0.30%, and Other Expenses of 0.36%. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.55% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

23. *Substitution M:* Applicants state that both Replaced and Replacement Funds seek capital growth through investment in securities of small U.S. companies. Applicants describe the capitalization range for both Funds identically and represent that the Replaced and Replacement Funds are managed by the same portfolio managers and have similar investment strategies.

Charges for the Replaced Fund include Management Fees of 1.00%, 12b–1 Fees of 0.25%, and Other Expenses of 0.74%. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.99% and 1.40% (reflecting a 0.59% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 1.00%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

24. *Substitution N:* Applicants state that Replaced Fund seeks long-term growth of capital in a manner consistent with the preservation of capital by investing in common stocks of companies of any size located throughout the world. Applicants state that the Replacement Fund seeks capital appreciation by investing primarily in common stocks of mid-sized and large companies worldwide. Applicants represent that the Replacement Fund will invest mainly in developed countries but also may invest in developing markets. Applicants state that both Funds may invest in companies of any size.

Charges for the Replaced Fund include Management Fees of 0.60%, 12b–1 Fees of 0.25%, and Other Expenses of 0.31%. Charges for the Replacement Fund include Management Fees of 0.79%, Other Expenses of 0.30%, and no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.16% and 1.15% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 1.09%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (capital appreciation by investing in common stocks of companies worldwide) and policies of both Funds are substantially similar; and (2) the Replaced and Replacement Funds have similar risk profiles.

25. *Substitution O:* Applicants state that both Replaced and Replacement Funds seek capital appreciation by investing principally in common stocks of companies worldwide and employ a strategy of investing primarily in mid-sized and large companies in developed countries. Applicants state that each Fund may invest in companies of any size and companies located in developing markets. Applicants represent that the Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.67%, 12b–1 Fees of 0.25%, and Other Expenses of 0.37%. Charges for the Replacement Fund include Management Fees of 0.79%, Other Expenses of 0.30%, and no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.29% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replacement Fund are nearly identical to those of the Replaced Fund; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

26. *Substitution P:* Applicants state that the Replaced Fund seeks high total return by normally investing in equity securities of companies of any country, debt securities of companies and governments of any country, and money market instruments. Applicants state that the Replacement Fund seeks high total return by investing in equity

securities of companies in any country, fixed income (debt) securities of companies and governments of any country, and in money market instruments. Applicants also represent that the Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61% and Other Expenses of 0.24%; it has no 12b–1 Fee. Charges for the Replacement Fund include Management Fees of 0.50% and Other Expenses of 0.30%; it also has no 12b–1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 0.85% and 0.84% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.80%. Under the Contracts, the Separate Account fee is 1.25% for the Replace Fund and 1.00% for the Replacement Fund. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

27. *Substitution Q:* Applicants state that both the Replaced and Replacement Funds seek long-term capital growth by investing mainly in equity securities of companies located outside the U.S., including emerging markets. Applicants further represent that both Funds may invest in companies of any market capitalization, and they have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61%, 12b–1 Fees of 0.25%, and Other Expenses of 0.37%. Charges for the Replacement Fund include Management Fees of 0.70% and Other Expenses of 0.30%; it has no 12b–1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.23% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

28. *Substitution R:* Applicants state that the Replaced Fund seeks as high a level of current income as is consistent with the preservation of capital and invests in mortgage-related securities issued or guaranteed by the U.S. government, its agencies or instrumentalities to achieve this objective. Applicants represent that the Replacement Fund seeks the highest possible total return consistent with the preservation of capital through current income and capital gains on investments in intermediate and long-term debt instruments and other income producing securities. Applicants state that the Replaced Fund invests more significantly in mortgage-related securities than the Replacement Fund and that the Replacement Fund may invest a larger portion of its assets in foreign securities such as U.S. dollar denominated emerging market debt.

Charges for the Replaced Fund include Management Fees of 0.60% and Other Expenses of 0.21%. Charges for the Replacement Fund include Management Fees of 0.50% and Other Expenses of 0.20%. Neither Fund has a 12b–1 Fee or a fee reduction arrangement. Total gross operating annual expenses for Replaced and Replacement Funds are 0.81% and 0.70%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replacement Fund are substantially similar to those of the Replaced Fund; (2) both Funds invest in fixed-income securities with a focus on current income; (3) the Replaced and Replacement Funds have similar risk profiles and similar long-term performance; and (4) considering all of VALIC's currently offered investment options, the Applicants believe that the Replacement Fund is the most appropriate substitute for the Replaced Fund because of its similarities in terms of its investment objectives, policies, media and risk.

29. Applicants represent that the Substitution will take place at the Funds' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract Owner's account value or death benefit or in the dollar value of his or her investment in any of the Divisions. Applicants represent that there will be no financial impact on any Contract Owner. Applicants assert that the Substitution will generally be effected by having each of the Divisions that invests in the Replaced Funds redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Funds at the net asset value calculated on the same date.

30. Applicants represent that, in the alternative, should a Replaced Fund determine that a cash redemption would adversely affect its shareholders, it may redeem the interest "in-kind." Applicants represent that in such a case, the Substitution will be effected by the Division contributing all the securities it receives from the Replaced Fund for an amount of Replacement Fund shares equal to the fair market value of the securities contributed. Applicants assert that all in-kind redemptions from a Replaced Fund of which any of the Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999).

31. Applicants state that the Substitution was described in a supplement to the prospectuses for the Contracts ("Supplements") dated and filed with the Commission on March 1, 2006 and mailed to Contract Owners. Applicants represent that the Supplements provided Contract Owners with notice of the Substitution and described the reasons for engaging in the Substitution. Applicants further represent that the Supplements informed Contract Owners with assets allocated to a Division investing in the Replaced Funds that the Replaced Funds will not be an available investment option after the date of the Substitution and that Contract Owners will have the opportunity to reallocate account value:

- Prior to the Substitution, from the Divisions investing in the Replaced Funds, and
- For 30 days after the Substitution, from the Divisions investing in the Replacement Funds to Divisions investing in other Funds available under the respective Contracts,

without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading.

32. Applicants represent that the prospectuses for the Contracts will contain the substance of the information contained in the Supplements concerning the Substitution. Applicants represent that each Contract Owner will

be provided with a prospectus for the Replacement Funds before the Substitution and that within five days after the Substitution, VALIC will send affected Contract Owners written confirmation that the Substitution has occurred and notice that Contract Owners will have the opportunity to reallocate account value for 30 days after the Substitution, from the Divisions investing in the Replacement Funds to Divisions investing in other Funds available under the respective Contracts, without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading.

33. Applicants state that VALIC will pay all direct and indirect expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution, and no costs will be borne by Contract Owners. Further, Applicants represent that affected Contract Owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. Applicants represent that (1) the Substitution will not cause the fees and charges under the Contracts currently being paid by Contract Owners, including Separate Account Fees, to be greater after the Substitution than before the Substitution; (2) the Substitution will have no adverse tax consequences to Contract Owners; and (3) the Substitution will in no way alter the tax benefits to Contract Owners.

34. Applicants believe that their request satisfies the standards for relief pursuant to Section 26(c) of the Act, as set forth below, because the affected Contract Owners will have:

(1) Account values allocated to a Division invested in a Replacement Fund with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Fund; and

(2) Replacement Funds whose current total annual expenses are equal to or lower than those of the Replaced Funds for their 2005 fiscal years. In addition, VALIC has agreed that, for a period of 24 months following the Substitution, it will reimburse affected Contract Owners to the extent the expenses of a Replacement Fund exceed those of the Replaced Fund for the 2005 fiscal years.

Applicants' Section 26(c) Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission may approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and represent that this reserved right is disclosed in the prospectus for the Contracts.

3. Applicants represent that for all 18 Substitutions, the investment objectives and policies of the Replacement Funds are sufficiently similar to those of the corresponding Replaced Funds that Contract Owners will have reasonable continuity in investment expectations. Accordingly, Applicants believe the Replacement Funds are appropriate investment vehicles for those Contract Owners who have account values allocated to the Replaced Funds.

4. For each of the 18 Substitutions, Applicants represent that the Replacement Funds' current annual expenses are lower than the annual expenses of the corresponding Replaced Funds for their 2005 fiscal years. Applicants represent that for the 24 month period following the date of the Substitution, VALIC agrees that if, on the last day of each fiscal quarter during the 24 month period, the total operating expenses of a Replacement Fund (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year, it will, for each Contract outstanding on the date of the Substitution, make a corresponding reimbursement of Separate Account expenses as of the last day of such fiscal quarter, such that the amount of the Replacement Fund's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Fund and the expenses of the Separate Account for the 2005 fiscal year. Applicants also represent that VALIC agrees that, notwithstanding any higher maximum permitted Separate Account Fee disclosed in a prospectus and set forth in a variable annuity contract, the net Separate Account Fee charged in the future to a Contract Owner on a Division that invests in a Replacement Fund will be no higher than the net Separate Account Fee charged in the most recent fiscal year to that Contract Owner on the Division that invests in the corresponding Replaced Fund. In addition, Applicants represent that for 24 months following the Substitution, VALIC will not increase contractual asset-based fees or charges for Contracts outstanding on the day of the Substitution.

5. VALIC represents that the Substitution and the selection of the Replacement Funds were not motivated by any financial consideration paid or to be paid by the Replacement Funds, their advisors or underwriters, or their respective affiliates.

6. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and represent that the Substitution is consistent with the protection of investors and the purposes fairly intended by the Act because:

(1) Each of the Replacement Funds is an appropriate fund to which to move Contract Owners with account values allocated to the Replaced Funds because the new funds have substantially similar investment objectives and policies.

(2) The direct and indirect costs of the Substitution, including any brokerage costs, will be borne by VALIC and will not be borne by Contract Owners. No charges will be assessed to effect the Substitution.

(3) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any Contract Owner's account value.

(4) The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract Owners, including Separate Account Fees, to be greater after the Substitution than before the Substitution and will result in Contract Owners' account values being moved to a Fund with the same or lower current total annual expenses.

(5) All Contract Owners will be given notice of the Substitution prior to the Substitution and will have an opportunity beginning after such notice and until 30 days after the Substitution to reallocate account value among other available Divisions without the reallocation being counted as one of the Contract Owner's free transfers in a contract year and without the imposition of any transfer charge or limitation, other than any applicable

limitations in place to deter potentially harmful excessive trading.

(6) Within five days after the Substitution, VALIC will send to its affected Contract Owners written confirmation that the Substitution has occurred.

(7) The Substitution will in no way alter the insurance benefits to Contract Owners or the contractual obligations of VALIC.

(8) The Substitution will have no adverse tax consequences to Contract Owners and will in no way alter the tax benefits to Contract Owners.

(9) No Replacement Fund will rely on the previously granted "manager of managers" exemptive relief unless such action is approved by a majority of the Replacement Fund's shareholders at a meeting whose record date is after the Substitution has been effected.

Section 17 Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company.

2. Because shares held by Separate Account A are legally owned by VALIC, VALIC will own of record substantially all of the shares of the Replacement Funds. In addition, as investment adviser to each Replacement Fund, VALIC could be deemed to control each Replacement Fund. Therefore, each Replacement Fund could be deemed to be an affiliate of VALIC and, to the extent Separate Account A uses assets received in-kind to purchase shares of a Replacement Fund, the Substitution may be deemed to involve one or more purchases or sales of securities or property between persons who are affiliates of affiliates. Accordingly, the Section 17 Applicants are seeking relief to the extent necessary from Section 17(a) for the in-kind purchases and sales of Replacement Fund Shares.

3. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

4. The Section 17 Applicants represent that the terms of the proposed in-kind purchases of shares of the Replacement Funds by Separate Account A, including the consideration to be paid and received by each Fund involved are reasonable, fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also represent that the proposed in-kind purchases by Separate Account A are consistent with the policies of VALIC I and the individual Replacement Funds. Finally, the Section 17 Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

5. To the extent that Separate Account A's in-kind purchases of Replacement Fund shares are deemed to involve principal transactions between entities. which are affiliates of affiliates, Applicants assert that the procedures described herein should be sufficient to assure that the terms of the proposed transactions are reasonable and fair to all participants because (1) the proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract Owner's account value or death benefit or in the dollar value of his or her investment in any Division; (2) Contract Owners will not suffer any adverse tax consequences as a result of the substitutions; and (3) the fees and charges under the Contracts will not increase because of the substitutions.

6. Even though they may not rely on Rule 17a–7, the Section 17 Applicants represent that they will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and each Fund's procedures thereunder, except that: (1) The consideration paid for the securities being purchased or sold may not be entirely cash, and (2) the Board of Directors of VALIC I will not separately review each portfolio security purchased by the Replacement Funds. Section 17 Applicants assert that the circumstances surrounding the proposed substitutions will offer the same degree of protection to each Replacement Fund from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, Section 17 Applicants assert that VALIC (or any of its affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Section 17 Applicants represent that although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c–1 under the Act. Further, Section 17 Applicants represent that no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid to any party in connection with the proposed transactions.

7. The Section 17 Applicants assert that the sale of shares of Replacement Funds for investment securities, as contemplated by the proposed in-kind transactions, is consistent with the investment policy and restrictions of the Replacement Funds because (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Section 17 Applicants represent that each sub-adviser will examine the portfolio securities being offered to each Replacement Fund and accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction.

8. Section 17 Applicants assert that the proposed in-kind transactions (1) are consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section I of the Act; (2) do not present any of the conditions or abuses that the Act was designed to prevent; and (3) the abuses described in Sections l(b)(2) and (3) of the Act will not occur in connection with the proposed in-kind purchases.

Conclusions

1. Applicants submit that for the reasons and upon the facts set forth in their application, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

2. Section 17 Applicants represent that the proposed in-kind transactions meet all of the requirements of Section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–6660 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27304; 812–13113]

Forum Funds, et al.; Notice of Application

April 26, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of the Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Forum Funds ("Trust"), and Brown Investment Advisory Incorporated ("Advisor").

Filing Dates: The application was filed on July 29, 2004, and amended on February 13, 2006 and April 25, 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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2006 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Anthony C.J. Nuland, Seward & Kissel LLP, 1200 G Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of twenty-eight series ("Funds"), each with a separate investment objective, policy, and restrictions.[1] The Advisor, a Maryland corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to nine of the existing Funds ("Series") pursuant to investment advisory agreements ("Advisory Agreements"). Each Advisory Agreement has been approved by the Trust's board of trustees (the "Board"),[2] including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Advisor ("Independent Trustees"), as well as by the shareholders of each Series.

2. Applicants propose to establish a program in which the Advisor, in its capacity as investment adviser to each Series, oversees the portfolio management of a Series by its subadvisers (each, a "Subadvisor"). The Advisor would provide overall investment management services to each Series, including Subadvisor monitoring and evaluation and would be responsible for recommending the hiring, termination and replacement of Subadvisors to the Board. All subadvisory agreements ("Subadvisory Agreements") will be approved by the Board, including a majority of the Independent Trustees. Under each Subadvisory Agreement, the Subadvisor would determine which securities will be purchased and sold for a Series' investment portfolio or for a portion of the portfolio. Each Subadvisor will be registered under the Advisers Act and paid by the Advisor out of the fee it receives from the Series under its Advisory Agreement. Applicants request an order to permit the Advisor, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Series or of the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series ("Affiliated Subadvisor").

3. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Advisor to each Subadvisor. An exemption is requested to permit each Series, in the event that a Series has more than one Subadvisor, to disclose (both as a dollar amount and as a percentage of a Series' net assets): (a) The aggregate fees paid to the Advisor and Affiliated Subadvisors; and (b) aggregate fees paid to Subadvisors other than Affiliated Subadvisors ("Aggregate Fee Disclosure"). For any Series that employs an Affiliated Subadvisor, the Series will provide separate disclosure of any fees paid to such Affiliated Subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor; (b) uses the multi-manager structure as described in the application; and (c) complies with the terms and conditions of the application (included in the term "Series"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. All references to the term "Advisor" herein include (a) the Advisor or its successor in interest (limited to any entity resulting from a reorganization of the Advisor into another jurisdiction or a change in the type of business organization), and (b) an entity controlling, controlled by, or under common control with the Advisor. If the name of any Series contains the name of a Subadvisor (as defined below), the name of the Advisor will precede the name of the Subadvisor.

[2] With respect to a Series not part of the Trust, the term "Board" refers to the board of directors/trustees of the relevant Series.

investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Series, shareholders are in effect hiring the Advisor to manage the Series' assets through monitoring and evaluation of Subadvisors rather than by hiring the Advisor's own employees to directly manage assets, and that shareholders will expect that the Advisor will oversee its Subadvisors and recommend whether to hire, terminate or replace such Subadvisors when deemed appropriate. Applicants believe that permitting the Advisor to hire Subadvisors without incurring the unnecessary delay and expense of obtaining shareholder approval of each Subadvisory Agreement is appropriate in the interest of the Series' shareholders and will allow each Series to potentially operate more efficiently. Applicants note that the Advisory Agreements will continue to be subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that, because the Advisor compensates the Subadvisors out of the fee it receives from each Series for advisory services, disclosure of the individual fees that the Advisor would pay to each Subadvisor in a co-subadvisory or multi-subadvisory situation does not serve any meaningful purpose. Applicants further assert that some Subadvisors use a "posted" rate schedule to set their fees. Applicants state that while Subadvisors are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Subadvisors to negotiate lower subadvisory fees with the Advisor, the benefits of which may be passed on to Series shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Advisor will provide general investment management services to each Series, including overall supervisory responsibility for the general management and investment of the Series' assets and, subject to review and approval of the Board, will: (i) Set the Series' overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or a portion of a Series' assets; (iii) allocate and, when appropriate, reallocate a Series' assets among multiple Subadvisors; (iv) monitor and evaluate Subadvisor performance; and (v) implement procedures reasonably designed to ensure that Subadvisors comply with the relevant Series' investment objective, policies and restrictions.

2. Before a Series may rely on the order requested herein, the operation of the Series in the manner described in this application will be approved by a majority of the Series' outstanding voting securities as defined in the Act, or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Series' shares are offered to the public.

3. The prospectus for each Series will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, each Series will hold itself out to the public as employing the manager of managers structure described in this application. The prospectus will prominently disclose that the Advisor has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisors and recommend their hiring, termination, and replacement.

4. Within 90 days of the hiring of any new Subadvisor, the shareholders of the relevant Series will be furnished all information about the new Subadvisor that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadvisor. To meet this obligation, the Advisor will provide shareholders of the applicable Series, within 90 days of the hiring of a new Subadvisor, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee or officer of the Trust or a Series or director or officer of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor except for: (i) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by or is under common control with a Subadvisor.

6. At all times, at least a majority of the Board will be independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees. The Board also will satisfy the fund governance standards defined in rule 0–1(a)(7) under the Act.

7. Whenever a Subadvisor change is proposed for a Series with an Affiliated Subadvisor, the Series' Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

8. Each Series in its registration statement will disclose the Aggregate Fee Disclosure.

9. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act,

will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

10. The Advisor will provide the Board, no less frequently than quarterly, with information about the Advisor's profitability on a per Series basis. This information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

11. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the Advisor's profitability.

12. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor, without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

13. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–6638 Filed 5–2–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8681; 34–53737/April 28, 2006]

Order Making Fiscal Year 2007 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b), and 31(c) of the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 ("Securities Act") requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Finally, Sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees to the Commission on transactions in specified securities.[4]

The Investor and Capital Markets Fee Relief Act ("Fee Relief Act")[5] amended Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal Year 2007 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Section 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, Sections 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.

Section 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2007. Specifically, the Commission must adjust the fee rate under Section 6(b) to a "rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2007], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal year 2007]." That is, the adjusted rate is determined by dividing the "target offsetting collection amount" for fiscal year 2007 by the "baseline estimate of the aggregate maximum offering prices" for fiscal year 2007.

Section 6(b)(11)(A) specifies that the "target offsetting collection amount" for fiscal year 2007 is $214,000,000.[8] Section 6(b)(11)(B) defines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2007 as "the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2007] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *."

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2007, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB") to project aggregate offering price for purposes of the fiscal year 2006 annual adjustment. Using this methodology, the Commission determines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2007 to be $6,974,885,248,909.[9] Based on this estimate, the Commission calculates the annual adjustment for fiscal 2007 to be $30.70 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

[4] 15 U.S.C. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

[5] Pub. L. 107–123, 115 Stat. 2390 (2002).

[6] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 2011.

[7] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the "target offsetting collection amount" specified in Section 6(b)(11)(A) for that fiscal year.

[8] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual adjustment mechanism will result in additional fee rate reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

[9] Appendix A explains how we determined the "baseline estimate of the aggregate maximum offering price" for fiscal year 2007 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2007 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its "baseline estimate of the aggregate maximum offering price" for fiscal year 2007.

III. Fiscal Year 2007 Annual Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to Section 31(j)(2),[10] which currently is $30.70 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange. Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of sales of specified securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011.[11]

Section 31(j)(1) specifies the method for determining the annual adjustment for fiscal year 2007. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for [fiscal year 2007], is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for [fiscal year 2007]."

Section 31 (*l*)(1) specifies that the "target offsetting collection amount" for fiscal year 2007 is $881,000,000.[12] Section 31(*l*)(2) defines the "baseline estimate of the aggregate dollar amount of sales" as "the baseline estimate of the aggregate dollar amount of sales of securities * * * to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during [fiscal year 2007] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *."

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2007, the Commission is using the same methodology it developed in consultation with the CBO and OMB to project dollar volume for purposes of prior fee adjustments.[13] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal year 2007 to be $53,460,711,153,955. Based on this estimate, and an estimated collection of $51,489 in assessments on security futures transactions under Section 31(d) in fiscal year 2007, the uniform adjusted rate is $15.30 per million.[14]

IV. Effective Dates of the Annual Adjustments

Section 6(b)(8)(A) of the Securities Act provides that the fiscal year 2007 annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act shall take effect on the later of October 1, 2006, or five days after the date on which a regular appropriation to the Commission for fiscal year 2007 is enacted.[15] Section 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustments to the fee rates applicable under Sections 13(e) and 14(g) of the Exchange Act.[16]

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2007 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2006, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2007 is enacted.

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act,[17]

It is hereby ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $30.70 per million effective on the later of October 1, 2006, or five days after the date on which a regular appropriation to the Commission for fiscal year 2007 is enacted; and

It is further ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $15.30 per million effective on the later of October 1, 2006, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2007 is enacted.

By the Commission.

Nancy M. Morris,

Secretary.

Appendix A

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the "aggregate maximum offering prices," which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2007, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to March 2006, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2007

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 1996–March 2006). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach

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[10] Order Making Fiscal Year 2006 Annual Adjustments to the Fee Rates Applicable under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33–8572 (April 28, 2005), 70 FR 23271 (May 4, 2005).

[11] The annual adjustments, as well as the mid-year adjustments required in specified circumstances under Section 31(j)(2) in fiscal years 2002 through 2011, are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the "target offsetting collection amount" specified in Section 31(*l*)(1) for that fiscal year.

[12] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of dollar volume for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual and, in specified circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

[13] Appendix B explains how we determined the "baseline estimate of the aggregate dollar amount of sales" for fiscal year 2007 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2007 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its "baseline estimate of the aggregate dollar amount of sales" for fiscal year 2007.

[14] The calculation of the adjusted fee rate assumes that the current fee rate of $30.70 per million will apply through October 31, 2006, due to the operation of the effective date provision contained in Section 31(j)(4)(A) of the Exchange Act.

[15] 15 U.S.C. 77f(b)(8)(A).

[16] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[17] 15 U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more "typical" value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from March 1996 to March 2006.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software such as SAS or Eviews. Using least squares, the estimated parameter values are $\alpha = 0.01095$ and $\beta = -0.78845$.

6. For the month of April 2006, forecast $\Delta_{t=4/06} = \alpha + \beta e_{t=3/06}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2006 is given by $FLAAMOP_{t=6/06} = \log(AAMOP_{t=3/06}) + \Delta_{t=4/06} + \Delta_{t=5/06} + \Delta_{t=6/06}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For June 2007, this gives a forecast AAMOP of $24.4 billion (Column I), and a forecast AMOP of $537.2 billion (Column J).

10. Iterate this process through September 2007 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2007 of $6,974,885,248,909.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/06 and 9/30/07 to be $6,974,885,248,909.

2. The rate necessary to collect the target $214,000,000 in fee revenues set by Congress is then calculated as: $214,000,000 ÷ $6,974,885,248,909 = 0.00003068 (or $30.70 per million).

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Table A. Estimation of baseline of aggregate maximum offering prices .

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/06 to 9/30/07 ($Millions)	6,974,885
b. Implied fee rate ($214 Million / a)	$30.70

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-96	21	117,780	5,609	22.448					
Apr-96	21	158,005	7,524	22.741	0.294				
May-96	22	142,452	6,475	22.591	-0.150				
Jun-96	20	122,598	6,130	22.538	-0.055				
Jul-96	22	113,637	5,165	22.365	-0.171				
Aug-96	22	128,154	5,825	22.485	0.120				
Sep-96	20	108,763	5,438	22.417	-0.069				
Oct-96	23	171,507	7,457	22.732	0.318				
Nov-96	20	164,574	8,229	22.831	0.098				
Dec-96	21	214,241	10,202	23.046					
Jan-97	22	138,615	6,210	22.549					
Feb-97	19	317,624	16,717	23.540					
Mar-97	20	140,809	7,040	22.675					
Apr-97	22	182,657	8,303	22.840	0.165				
May-97	21	163,702	7,795	22.777	-0.083				
Jun-97	21	162,111	7,720	22.767	-0.010				
Jul-97	22	188,007	7,637	22.756	-0.011				
Aug-97	21	153,705	7,319	22.714	-0.042				
Sep-97	21	179,559	8,550	22.869	0.155				
Oct-97	23	260,719	11,336	23.151	0.282				
Nov-97	19	219,618	11,559	23.171	0.020				
Dec-97	22	228,605	10,391	23.064	-0.106				
Jan-98	20	228,030	11,402	23.157	0.093				
Feb-98	19	250,266	13,172	23.301	0.144				
Mar-98	22	378,185	17,190	23.568	0.266				
Apr-98	21	242,310	11,539	23.169	-0.399				
May-98	20	298,454	14,923	23.426	0.257				

Jun-98	22	328,994	14,954	23.428	0.002				
Jul-98	22	272,957	12,407	23.242	-0.187				
Aug-98	21	392,104	18,672	23.650	0.409				
Sep-98	21	325,144	15,483	23.463	-0.187				
Oct-98	22	139,786	6,354	22.572	-0.891				
Nov-98	20	269,065	13,453	23.322	0.750				
Dec-98	22	248,596	11,300	23.148	-0.174				
Jan-99	19	253,448	13,339	23.314	0.166				
Feb-99	19	217,433	11,444	23.161	-0.153				
Mar-99	23	415,145	18,050	23.616	0.456				
Apr-99	21	431,280	20,537	23.746	0.129				
May-99	20	229,082	11,454	23.162	-0.584				
Jun-99	22	367,943	16,725	23.540	0.379				
Jul-99	21	332,623	15,839	23.486	-0.054				
Aug-99	22	240,157	10,916	23.114	-0.372				
Sep-99	21	236,011	11,239	23.143	0.029				
Oct-99	21	216,883	10,328	23.058	-0.085				
Nov-99	21	372,582	17,742	23.599	0.541				
Dec-99	22	319,846	14,538	23.400	-0.199				
Jan-00	20	282,165	14,108	23.370	-0.030				
Feb-00	20	665,367	33,268	24.228	0.858				
Mar-00	23	550,107	23,918	23.898	-0.330				
Apr-00	19	244,510	12,869	23.278	-0.620				
May-00	22	269,774	12,262	23.230	-0.048				
Jun-00	22	406,409	18,473	23.640	0.410				
Jul-00	20	230,894	11,545	23.169	-0.470				
Aug-00	23	257,797	11,209	23.140	-0.030				
Sep-00	20	332,120	16,606	23.533	0.393				
Oct-00	22	362,493	16,477	23.525	-0.008				
Nov-00	21	317,653	15,126	23.440	-0.086				
Dec-00	20	246,006	12,300	23.233	-0.207				
Jan-01	21	462,726	22,035	23.816	0.583				
Feb-01	19	388,304	20,437	23.741	-0.075				
Mar-01	22	523,443	23,793	23.893	0.152				

Apr-01	20	289,212	14,461	23.395	-0.498				
May-01	22	274,298	12,468	23.246	-0.148				
Jun-01	21	348,268	16,584	23.532	0.285				
Jul-01	21	264,590	12,600	23.257	-0.275				
Aug-01	23	245,591	10,678	23.091	-0.165				
Sep-01	15	178,524	11,902	23.200	0.108				
Oct-01	23	260,719	11,336	23.151	-0.049				
Nov-01	21	286,199	13,629	23.335	0.184				
Dec-01	20	395,230	19,762	23.707	0.372				
Jan-02	21	401,290	19,109	23.673	-0.034				
Feb-02	19	476,837	25,097	23.946	0.273				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22	282,947	12,861	23.277	-0.391				
May-02	22	215,645	9,802	23.006	-0.272				
Jun-02	20	277,757	13,888	23.354	0.348				
Jul-02	22	208,638	9,484	22.973	-0.381				
Aug-02	22	265,750	12,080	23.215	0.242				
Sep-02	20	109,565	5,478	22.424	-0.791				
Oct-02	23	179,374	7,799	22.777	0.353				
Nov-02	20	243,590	12,179	23.223	0.446				
Dec-02	21	212,838	10,135	23.039	-0.184				
Jan-03	21	201,839	9,611	22.986	-0.053				
Feb-03	19	144,642	7,613	22.753	-0.233				
Mar-03	21	444,331	21,159	23.775	1.022				
Apr-03	21	142,373	6,780	22.637	-1.138				
May-03	21	328,792	15,657	23.474	0.837				
Jun-03	21	281,580	13,409	23.319	-0.155				
Jul-03	22	304,383	13,836	23.351	0.031				
Aug-03	21	328,351	15,636	23.473	0.122				
Sep-03	21	459,563	21,884	23.809	0.336				
Oct-03	23	285,039	12,393	23.240	-0.569				
Nov-03	19	257,779	13,567	23.331	0.091				
Dec-03	22	244,998	11,136	23.133	-0.197				
Jan-04	20	369,784	18,489	23.640	0.507				

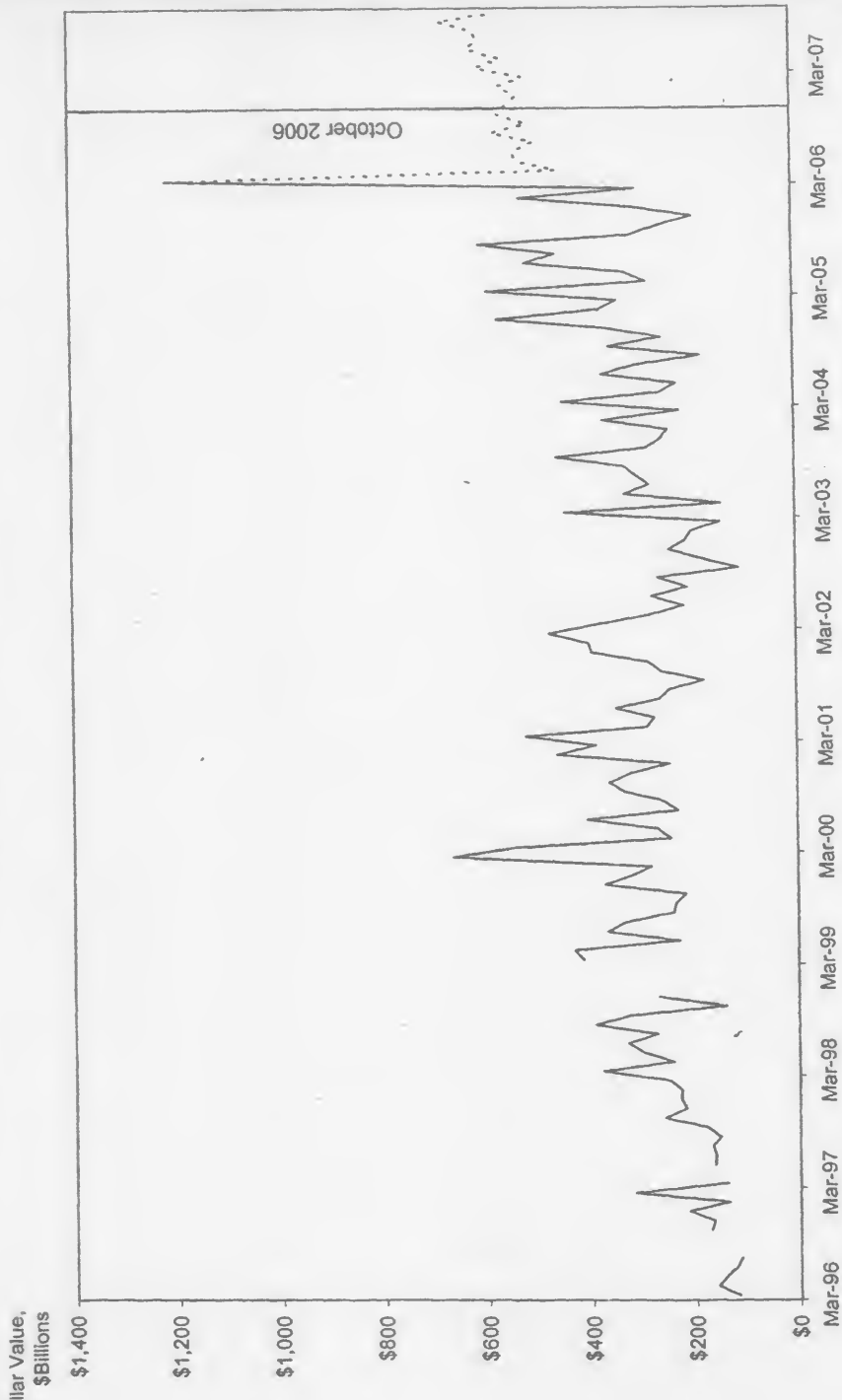
Feb-04	19	221,517	11,659	23.179	-0.461				
Mar-04	23	448,543	19,502	23.694	0.514				
Apr-04	21	260,029	12,382	23.240	-0.454				
May-04	20	227,239	11,362	23.154	-0.086				
Jun-04	21	370,668	17,651	23.594	0.441				
Jul-04	21	305,519	14,549	23.401	-0.193				
Aug-04	22	179,688	8,168	22.823	-0.577				
Sep-04	21	357,007	17,000	23.556	0.733				
Oct-04	21	254,489	12,119	23.218	-0.338				
Nov-04	21	363,406	17,305	23.574	0.356				
Dec-04	22	570,918	25,951	23.979	0.405				
Jan-05	20	375,484	18,774	23.656	-0.324				
Feb-05	19	338,922	17,838	23.605	-0.051				
Mar-05	22	590,862	26,857	24.014	0.409				
Apr-05	21	282,018	13,429	23.321	-0.693				
May-05	21	323,652	15,412	23.458	0.138				
Jun-05	22	517,022	23,501	23.880	0.422				
Jul-05	20	457,487	22,874	23.853	-0.027				
Aug-05	23	605,534	26,328	23.994	0.141				
Sep-05	21	312,281	14,871	23.423	-0.571				
Oct-05	21	258,956	12,331	23.235	-0.187				
Nov-05	21	192,736	9,178	22.940	-0.295				
Dec-05	21	308,134	14,673	23.409	0.469				
Jan-06	20	526,550	26,328	23.994	0.585				
Feb-06	19	301,446	15,866	23.487	-0.506				
Mar-06	23	1,211,344	52,667	24.687	1.200				
Apr-06	19					23.835	0.337	23,768	451,584
May-06	22					23.846	0.345	24,091	529,993
Jun-06	22					23.857	0.352	24,418	537,196
Jul-06	20					23.868	0.359	24,750	494,997
Aug-06	23					23.879	0.366	25,086	576,983
Sep-06	20					23.889	0.373	25,427	508,542
Oct-06	22					23.900	0.380	25,773	566,999
Nov-06	21					23.911	0.387	26,123	548,582

Dec-06	20						23.922	0.393	26.478		529,559
Jan-07	21						23.933	0.399	26.838		563,593
Feb-07	19						23.944	0.406	27,203		516,848
Mar-07	22						23.955	0.412	27,572		606,588
Apr-07	20						23.966	0.418	27,947		558,938
May-07	22						23.977	0.424	28,327		623,188
Jun-07	21						23.988	0.430	28,712		602,945
Jul-07	21						23.999	0.436	29,102		611,139
Aug-07	23						24.010	0.442	29,497		678,439
Sep-07	19						24.021	0.448	29,898		568,067

Figure A

Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)

(Dashed Line Indicates Forecast Values)



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Appendix B

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to investors based on the value of their transactions. This appendix provides the formula for determining such fees, which the Commission adjusts annually, and may adjust semi-annually.[18] In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected dollar transaction volume on the securities exchanges and certain over-the-counter markets over the course of the year. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected dollar transaction volume.

For 2007, the Commission has estimated dollar transaction volume by projecting forward the trend established in the previous decade. More specifically, dollar transaction volume was forecasted for months subsequent to March 2006, the last month for which the Commission has data on transaction volume.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Sales for Fiscal Year 2007

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 1996–March 2006). The monthly aggregate dollar amount of sales (exchange plus certain over-the-counter markets) is presented in column C of Table B.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.013 and the standard deviation 0.117. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 2.0%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for March 2006 ($165,519,031,905) to forecast ADS for April 2006 ($168,860,299,166 = $165,519,031,905 × 1.020).[19] Multiply by the number of trading days in April 2006 (19) to obtain a forecast of the total dollar volume for the month ($3,208,345,684,147). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table B. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.013$ and $\sigma = 0.117$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.020 \times ADS_{t-1}$.

6. For April 2006, this gives a forecast ADS of 1.020 × $165,519,031,905 = $168,860,299,166. Multiply this figure by the 19 trading days in April 2006 to obtain a total dollar volume forecast of $3,208,345,684,147.

7. For May 2006, multiply the April 2006 ADS forecast by 1.020 to obtain a forecast ADS of $172,269,015,268. Multiply this figure by the 22 trading days in May 2006 to obtain a total dollar volume forecast of $3,789,918,335,894.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A to Calculate the New Fee Rate

1. Use Table B to estimate fees collected for the period 10/1/06 through 10/31/06. The projected aggregate dollar amount of sales for this period is $4,188,205,050,118. Projected fee collections at the current fee rate of 0.0000307 are $128,577,895.

2. Estimate the amount of assessments on securities futures products collected during 10/1/06 and 9/30/07 to be $51,489 by projecting a 2.0% monthly increase from a base of $3,342 in March 2006.

3. Subtract the amounts $128,577,895 and $51,489 from the target offsetting collection amount set by Congress of $881,000,000 leaving $752,370,487 to be collected on dollar volume for the period 11/1/06 through 9/30/07.

4. Use Table B to estimate dollar volume for the period 11/1/06 through 9/30/07. The estimate is $49,272,506,103,837. Finally, compute the fee rate required to produce the additional $752,370,487 in revenue. This rate is $752,370,487 divided by $49,272,506,103,837 or 0.0000152696.

5. Round the result to the seventh decimal point, yielding a rate of .0000153 (or $15.30 per million).

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[18] Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

[19] The value 1.020 has been rounded. All computations are done with the unrounded value.

Table B. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/06 to 10/31/06 ($Millions)	4,188,205
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/06 to 9/30/07 ($Millions)	49,272,506
c. Estimated collections in assessments on securities futures products in FY 2007 ($Millions)	0.051
d. Implied fee rate (($881,000,000 - 0.0000307*a - c) /b)	$15.3

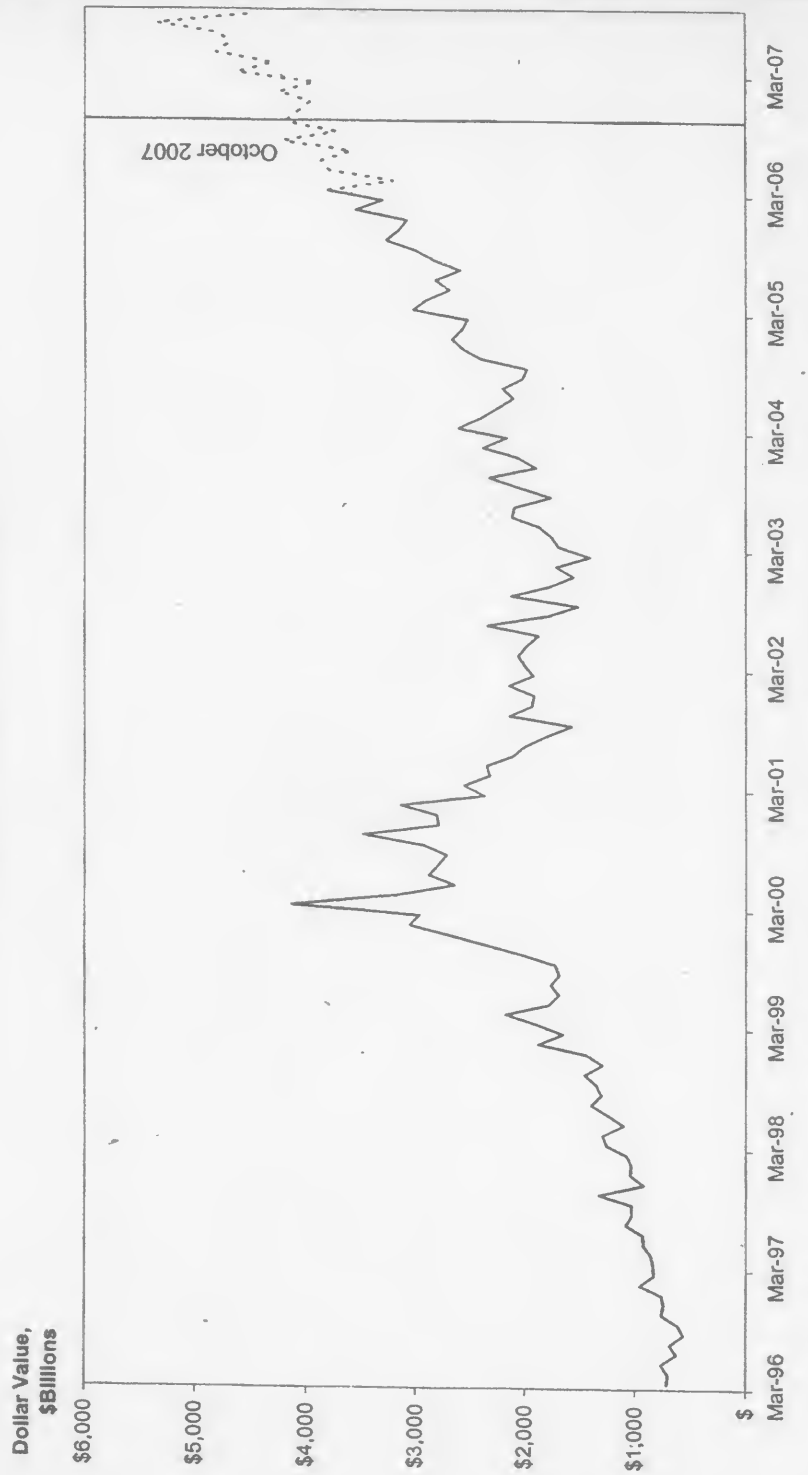
Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-96	21	714,836,120,093	34,039,815,243	-		
Apr-96	21	704,410,318,022	33,543,348,477	-0.015		
May-96	22	768,379,507,489	34,926,341,250	0.040		
Jun-96	20	631,098,780,223	31,554,939,011	-0.102		
Jul-96	22	688,428,728,384	31,292,214,927	-0.008		
Aug-96	22	570,109,772,036	25,914,080,547	-0.189		
Sep-96	20	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	764,479,496,753	36,403,785,560	-0.028		
Jan-97	22	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	839,192,728,788	41,959,636,439	-0.049		
Apr-97	22	862,799,213,315	39,218,146,060	-0.068		
May-97	21	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	1,036,460,244,602	49,355,249,743	0.005		
Oct-97	23	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	1,046,220,806,199	47,555,491,191	-0.025		
Jan-98	20	1,037,925,292,902	51,896,264,645	0.087		
Feb-98	19	1,081,705,333,396	56,931,859,652	0.093		
Mar-98	22	1,259,994,685,467	57,272,485,703	0.006		
Apr-98	21	1,298,494,359,253	61,833,064,726	0.077		
May-98	20	1,110,221,658,995	55,511,082,950	-0.108		
Jun-98	22	1,243,779,791,913	56,535,445,087	0.018		
Jul-98	22	1,399,011,433,748	63,591,428,807	0.118		
Aug-98	21	1,307,501,463,442	62,261,974,450	-0.021		
Sep-98	21	1,352,428,235,083	64,401,344,528	0.034		
Oct-98	22	1,460,835,397,598	66,401,608,982	0.031		
Nov-98	20	1,298,403,768,065	64,920,188,403	-0.023		
Dec-98	22	1,442,697,787,306	65,577,172,150	0.010		
Jan-99	19	1,884,555,055,910	99,187,108,206	0.414		
Feb-99	19	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	1,730,505,881,178	82,405,041,961	0.068		
Oct-99	21	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,839,174,160	129,091,958,708	0.060		
Feb-05	19	2,532,202,396,053	133,273,810,319	0.032		

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-05	22	3,027,678,711,444	137,621,759,611	0.032		
Apr-05	21	2,905,852,920,334	138,373,948,587	0.005		
May-05	21	2,696,918,002,820	128,424,666,801	-0.075		
Jun-05	22	2,825,026,079,840	128,410,276,356	0.000		
Jul-05	20	2,603,497,532,408	130,174,876,620	0.014		
Aug-05	23	2,845,670,391,894	123,724,799,648	-0.051		
Sep-05	21	3,008,993,433,003	143,285,401,572	0.147		
Oct-05	21	3,279,422,103,293	156,162,957,300	0.086		
Nov-05	21	3,162,729,725,215	150,606,177,391	-0.036		
Dec-05	21	3,089,675,315,936	147,127,395,997	-0.023		
Jan-06	20	3,555,274,119,568	177,763,705,978	0.189		
Feb-06	19	3,313,621,122,247	174,401,111,697	-0.019		
Mar-06	23	3,806,937,733,806	165,519,031,905	-0.052		
Apr-06	19				168,860,299,166	3,208,345,684,147
May-06	22				172,269,015,268	3,789,918,335,894
Jun-06	22				175,746,541,775	3,866,423,919,041
Jul-06	20				179,294,267,734	3,585,885,354,680
Aug-06	23				182,913,610,235	4,207,013,035,401
Sep-06	20				186,606,014,972	3,732,120,299,437
Oct-06	22				190,372,956,824	4,188,205,050,118
Nov-06	21				194,215,940,441	4,078,534,749,265
Dec-06	20				198,136,500,850	3,962,730,016,997
Jan-07	21				202,136,204,062	4,244,860,285,292
Feb-07	19				206,216,647,701	3,918,116,306,314
Mar-07	22				210,379,461,642	4,628,348,156,134
Apr-07	20				214,626,308,664	4,292,526,173,271
May-07	22				218,958,885,107	4,817,095,472,343
Jun-07	21				223,378,921,557	4,690,957,352,703
Jul-07	21				227,888,183,536	4,785,651,854,266
Aug-07	23				232,488,472,205	5,347,234,860,705
Sep-07	19				237,181,625,081	4,506,450,876,545

Figure B.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53723; File No. SR–Amex–2005–105]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of Principal Protected Notes Linked to the Metals-China Basket

April 25, 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 October 20, 2005, the American Stock Exchange LLC (the "Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On March 23, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] On April 12, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade principal protected notes, the performance of which is linked to a basket comprised of an equal weighting of the FTSE/Xinhua China 25 Index (the "China 25 Index" or "Index") and the following four commodities: copper, lead, nickel, and zinc (the "Metals-China Basket" or "Basket").

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Amex' 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 Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under section 107A of the Company Guide principal protected notes linked to the performance of the Metals-China Basket (the "Notes").[6]

Wachovia will issue the Notes under the name "Asset Return Obligation Securities." The China 25 Index is determined, calculated and maintained solely by FXI while the commodity prices are determined by the cash settlement price of each respective commodity futures contract traded on the London Metals Exchange (the "LME"). The Notes will provide for participation in the positive performance of the Metals-China Basket during their term while reducing the risk exposure to investors through principal protection.

The Notes will conform to the initial listing guidelines under section 107A[7] and continued listing guidelines under sections 1001–1003[8] of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The principal amount of each Note is expected to be $1,000. The Notes are expected to have a term of at least one (1) but no more than ten (10) years. At a minimum, the Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount. At maturity, the holder would receive the full principal investment amount of each Note plus the Basket Performance Amount. The Basket Performance Amount is the greater of zero and the product of $1,000 and the performance of the Basket as adjusted by the adjustment factor (the "Adjustment Factor").[9] Accordingly, if the performance of the Metals-China Basket is negative or does not appreciate by greater than 7.2341% as of the Valuation Date, a holder will nevertheless receive the principal investment amount of the Note at maturity. The Notes are not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the "Maturity Payment Amount") will depend on the performance of the Metals-China Basket during the term of the Note. The Metals-China Basket will not be managed and will remain static over the term of the Notes.[10] Performance of the Basket will be determined at the close of the market on

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change: (1) Clarifies certain specialist restrictions regarding potential conflicts of interests in the underlying commodities; and (2) specifies that the listing and trading principle protected notes will occur on the debt trading floor and be subject to the Exchange's debt trading rules.

[4] Amendment No. 2 to the proposed rule change states that the applicable composite basket will be calculated and disseminated once each trading day.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[6] Wachovia Corporation ("Wachovia") and FTSE/Xinhua Index Limited ("FXI"), a joint venture between FTSE International Limited and Xinhua Financial Network, have entered into a non-exclusive license agreement providing for the use of the Xinhua Index by Wachovia and certain affiliates and subsidiaries in connection with certain securities including these Notes. FTSE/Xinhua Index Limited is not responsible and will not participate in the issuance and creation of the Notes.

[7] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[8] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] The Adjustment Factor is initially set at 100% and will be reduced by a rate of 2% per annum compounded daily on an actual 365 day count. On any calendar day, the Adjustment Factor is equal to $(100\% - (2\%/365))^n$. "n" is the number of calendar days from but excluding July 21, 2005 to and including the calendar day. The Adjustment Factor as of the Valuation Date will be 93.2341%.

[10] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the Metals-China Basket is not managed.

the fifth business day (the "Valuation Date") prior to maturity of the Notes. The Basket Starting Level will be 1,000 and the Basket Ending Level will be the closing level of the underlying basket on the Valuation Date, equal to the sum of the products of (i) the component multiplier of each basket component and (ii) the closing price or level of the respective basket component on the Valuation Date. The Basket Ending Level is then adjusted by the Adjustment Factor as of the Valuation Date. In the event that the Valuation Date occurs on a non-trading day or if a market disruption event [11] occurs on such date, the Valuation Date will be the next trading day on which no market disruption event occurs.

At maturity, a holder will receive a maturity payment amount per Note equal to $1,000 + Basket Performance Amount. If the Adjusted Basket Ending Level is less than or equal to the Basket Starting Level, the Basket Performance Amount will be zero and the Maturity Payment Amount will be $1,000.

The Basket Performance Amount per Note is equal to the greater of: (i) Zero; and (ii)

$$\$1{,}000 \times \left(\frac{\text{Adjusted Basket Ending Level} - \text{Basket Starting Level}}{\text{Basket Starting Level}} \right)$$

The Maturity Payment Amount per Note will never be less than the principal investment amount of $1,000.

Metals-China Basket

The Basket is an equally-weighted basket of four commodities (copper, lead, nickel, and zinc) and the China 25 Index. Each component of the Basket will initially represent 20% of the Basket. The Basket is not a recognized market index and was created solely for purpose of offering the Notes. The Metals-China Basket will not be managed and will remain static over the term of the Notes. The basket value will be calculated and disseminated once each trading day. The Exchange believes that this daily dissemination of an indicative basket amount is appropriate because the Notes are a bond traded on Amex's debt floor, the value of which is linked to the basket, and there will be no creation or redemption of shares as there would be with an exchange-traded fund ("ETF").[12]

China 25 Index

The China 25 Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. The Index consists of the 25 largest and most heavily traded Chinese companies.[13] The components of the Index are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally have a higher representation in the Index. Components are screened for liquidity and weightings are capped to avoid over-concentration in any one stock. The China 25 Index commenced publication in March 2001. As of September 30, 2005, the top three holdings were China Mobile, PetroChina and BOC Hong Kong, with the top three industries being telecommunications, oil and gas, and banks.

As of September 30, 2005, the China 25 Index's components had a total market capitalization of approximately $414 billion and a float-adjusted market capitalization of approximately $55 billion.[14] The average total market capitalization was approximately $16.5 billion and the average float-adjusted market capitalization was approximately $22 billion. The ten largest constituents represented approximately 62% of the index weight. The 5 highest weighted stocks, which represented 41.7% of the index weight, had an average daily trading volume in excess of $79 million globally during the past six (6) months.

Component Selection Criteria. The China 25 Index is rule-based and is monitored by a governing committee. The China 25 Index Committee (the "Index Committee") is responsible for conducting quarterly reviews of components and for making changes in accordance with applicable procedures. The Index Committee is currently composed of 19 members, four of whom are currently affiliated with non-U.S. broker-dealers. FTSE has represented that the FTSE, FXI, and the Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Index and have instituted procedures designed to prevent the improper dissemination or the use of such information.

Float-Adjusted Market Capitalization. When calculating a component's index weight, shares held by governments, corporations, strategic partners, or other control groups are excluded from the company's shares outstanding. Shares owned by other companies are also excluded, regardless of whether such

[11] A "market disruption event" is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) A trading disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; or (iii) an early closure. A "trading disruption" generally means any suspension of, or limitation, imposed on trading by the relevant exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise: (i) Relating to securities that comprise 20% or more of the level of the Index; or (ii) in options contracts or futures contracts relating to the Index on any relevant related exchange. An "exchange disruption" means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to: (i) Effect transactions in, or obtain market values on, any relevant exchange or related exchange in securities that comprise 20 percent or more of the level of the Index or; (ii) effect transactions in options contracts or futures contracts relating to the Index on any relevant related exchange. A "related exchange" is an exchange or quotation system on which futures or options contracts relating to the Index are traded. *See* footnote 19, *infra*.

[12] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Raymond Lombardo, Special Counsel, Division of Market Regulation, Commission, on April 13, 2006.

[13] All classes of equity securities in issue are eligible for inclusion in the Index, subject to conforming with free-float and liquidity restrictions. H shares and Red Chip shares are eligible for inclusion in the Index. H shares are incorporated in China and listed and traded on the Hong Kong Stock Exchange. They are quoted and traded in Hong Kong and U.S. dollars. Like other securities trading on the Hong Kong Stock Exchange, there are no restrictions on who can trade H shares. Red Chip shares are incorporated in Hong Kong and trade on the Hong Kong Stock Exchange. They are quoted in Hong Kong dollars. Red Chip companies may be substantially owned directly or indirectly by the Chinese Government and have the majority of their business interested in mainland China. H shares and Red Chip shares trade on the Hong Kong Stock Exchange, typically on a T+2 basis, through a central book-entry system that the Exchange states effectively guarantees settlement of exchange trades by broker-dealers.

[14] Float-adjusted market capitalization includes shares available in the market for public investment and reflects free float adjustments to the Index in accordance with FTSE's free float rules. Additional information regarding FTSE's free float adjustment methodology is available on *http://www.ftse.com*.

companies are index components. Where a foreign investment limit exists at the sector or company level, the component's weight will reflect either the foreign investment limit or the percentage float, whichever is more restrictive. Component stocks are screened to ensure there is sufficient liquidity to be traded. Factors in determining liquidity include the availability of current and reliable price information and the level of trading volume relative to shares outstanding. Value traded and float turnover are also analyzed on a monthly basis to ensure ample liquidity. Fundamental analysis is not part of the selection criteria for inclusion or exclusion of stocks from the Index. The financial and operating conditions of a company are not analyzed.

Index Maintenance. The Index Committee is responsible for undertaking the review of the China 25 Index and for approving changes of components in accordance with the index rules and procedures. The FTSE Global Classification Committee is responsible for the industry classification of constituents of the Index within the FTSE Global Classification System. The FTSE Global Classification Committee may approve changes to the FTSE Global Classification System and Management Rules. FXI appoints the Chairman and Deputy Chairman of the Index Committee. The Chairman chairs meetings of the Committee and represents the Committee in outside meetings. Adjustments to reflect a major change in the amount or structure of a constituent company's issued capital (before the quarterly review) will be made before the start of the index calculation on the day on which the change takes effect. Adjustments to reflect less significant changes (before the quarterly review) will be implemented before the start of the index calculation on the day following the announcement of the change. All adjustments are made before the start of the index calculations on the day concerned, unless market conditions prevent this. A company will be inserted into the Index at the quarterly periodic review if it rises to 15th position or above when the eligible companies are ranked by full market value before the application of any investibility weightings. A company in the Index will be deleted at the quarterly periodic review if it falls to 36th position or below when the eligible companies are ranked by full market value before the application of any investibility weightings. Any deletion to the Index will simultaneously entail an addition to the Index to maintain 25 index constituents at all times.

The China 25 Index is reviewed quarterly for changes in free float. These reviews will coincide with the quarterly reviews undertaken of the Index as a whole. Implementation of any changes will be after the close of the index calculation on the third Friday in January, April, July, and October.

The quarterly review of the Index constituents takes place in January, April, July, and October. Any changes will be implemented on the next trading day following the third Friday of the same month of the review meeting. Details of the outcome of the review and the dates on which any changes are to be implemented will be published as soon as possible after the Index Committee meeting has concluded its review.

Index Dissemination. The Index is calculated in real time and published every minute during the index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. PDT). It is available, by subscription, published every minute, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID, and LSE/Proquote. The end of day index value, based on last sale prices, is distributed at 16:15 (Local Hong Kong Time). This end of day index value is also made available to the Financial Times Asia edition and other major newspapers and will be available at the FTSE Index Services Web site: *http://www.ftse.com.* The Index is calculated using Hong Kong Stock Exchange trade prices and Reuter's realtime spot currency rates, as described below. A total return index value that takes into account reinvested dividends is published daily at the end of day. The Index is not calculated on days that are holidays in Hong Kong. The daily closing index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes are publicly available from *http://www.ftsexinhua.com.* All corporate actions and rules relating to the management of the indices are also available from the Web site.

Exchange Rates and Pricing. FXI calculates the value of the Index using Reuters real-time foreign exchange spot rates and local stock exchange real-time, last sale security prices. The underlying Index is calculated in Hong Kong Dollars, using Hong Kong Stock Exchange trade prices. Non-Hong Kong Dollar denominated constituent prices are converted to Hong Kong Dollars in order to calculate the value of the underlying Index. Thus, the Reuter's foreign exchange rates and Hong Kong Stock Exchange prices received at the closing time of the underlying Index will be used to calculate the final underlying Index value each day.

The Commission has previously approved the listing of securities linked to the performance of the China 25 Index.[15]

Commodities: Copper, Lead, Nickel, and Zinc

Commodity prices are volatile and, although ultimately determined by the interaction of supply and demand, are subject to many other influences, including the psychology of the marketplace and speculative assessments of future world and economic events. Political climate, interest rates, treaties, balance of payments, exchange controls and other governmental interventions, as well as numerous other variables affect the commodity markets, and even with complete information it is impossible for any trader to reliably predict commodity prices.

Copper. The Exchange states that copper was the first mineral that man extracted from the earth and along with tin gave rise to the Bronze Age. As the ages and technology progressed, the uses for copper increased. With the increased demand, exploration for the metal was extended throughout the world, laying down the foundations for the industry as we know it today. Copper is an excellent conductor of electricity, as such one of its main industrial usage is for the production of cable, wire and electrical products for both the electrical and building industries. The construction industry also accounts for copper's second largest usage in such areas as pipes for plumbing, heating, and ventilating as well as building wire and sheet metal facings.

The price of copper is volatile with fluctuations expected to affect the value of the Notes. The closing price of copper is determined by reference to the official U.S. dollar cash settlement price per ton of the copper futures contract traded on the LME. The price of copper is primarily affected by the global demand for and supply of copper.

Demand for copper is significantly influenced by the level of global industrial economic activity. Industrial sectors which are particularly important

[15] *See, e.g.*, Securities Exchange Act Release Nos. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (approving the listing and trading of the iShares FTSE/Xinhua China 25 Index Fund) and 50800 (December 6, 2004), 69 FR 72228 (December 13, 2004) (approving the trading of the iShares FTSE/Xinhua China 25 Index Fund).

include the electrical and construction sectors. In recent years demand has been supported by strong consumption from newly industrializing countries, which continue to be in a copper-intensive period of economic growth as they develop their infrastructure (such as China). An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. Apart from the United States, Canada, and Australia, the majority of copper concentrate supply (the raw material) comes from outside the Organization for Economic Cooperation and Development countries. Chile is the largest producer of copper concentrate. In previous years, copper supply has been affected by strikes, financial problems, and terrorist activity. Output has fallen particularly sharply in the "African Copperbelt" and in Bougainville, Papua New Guinea.

The price of copper during the period January 2001 through September 2005, ranged from a high of $3,978 per ton in September 2005 to a low of $1,319 per ton in November 2001. As of September 30, 2005, the spot price as provided by that day's spot copper futures contract was $3,949 per ton.

Lead. Being very soft and pliable and highly resistant to corrosion, lead was ideal for use in plumbing as well as for the manufacture of pewter. In the early 20th century, the Exchange states that the automotive industry took off and new areas of consumption—batteries and petrol—created an enormous market. Storage batteries remain the main outlet but lead-free fuels have caused a decline in usage. Ironically, environmental issues have brought about new uses for the metal, particularly in the housing of power generation units to protect against electrical charges or dangerous radiation.

Changes in the price of lead are expected to affect the value of the Notes. The closing price of lead is determined by reference to the official U.S. dollar cash settlement price per ton of the lead futures contract traded on the LME. The price of lead is primarily affected by the global demand for and supply of lead. Demand for lead is significantly influenced by the level of global industrial economic activity. The storage battery market is extremely important given that the use of lead in the manufacture of batteries accounts for approximately two-thirds of worldwide lead demand. Lead is also used to house power generation units as it protects against electrical charges and dangerous radiation. Additional applications of lead include petrol additives, pigments, chemicals and crystal glass. The supply of lead is widely spread around the world. It is affected by current and previous price levels, which influences important decisions regarding new mines and smelters. A critical factor influencing supply is the environmental regulatory regimes of the countries in which lead is mined and processed. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of lead during the period January 2001 through September 2005 ranged from a high of $1,056 per ton in December 2004 to a low of $425 per ton in October 2002. As of September 30, 2005, the spot price as provided by that day's spot lead futures contract was $975 per ton.[16]

Nickel. In the mid 18th century, the Exchange states that primary nickel was first isolated as a separate metal. Prior to this, it was found in copper mines and thought to be an unsmeltable copper ore. Primary nickel can resist corrosion and maintains its physical and mechanical properties even when placed under extreme temperatures. When these properties were recognized, the development of primary nickel began. It was found that by combining primary nickel with steel, even in small quantities, the durability and strength of the steel increased significantly, as did its resistance to corrosion. This partnership has remained and the production of stainless steel is now the single largest consumer of primary nickel today. This highly useful metal is also used in the production of many different metal alloys for specialized use.

Changes in the price of nickel are expected to affect the value of the Notes. The closing price of nickel is determined by reference to the official U.S. dollar cash settlement price per ton of the nickel futures contract traded on the LME. The price of nickel is primarily affected by the global demand for and supply of nickel. Demand for nickel is significantly influenced by the level of global industrial economic activity. The stainless steel industrial sector is particularly important given that the use of nickel in the manufacture of stainless steel accounts for approximately two-thirds of worldwide nickel demand. An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. Nickel supply is dominated by Russia, the world's largest producer by far. Australia and Canada are also large producers. The supply of nickel is also affected by current and previous price levels, which will influence investment decisions in new mines and smelters. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of nickel during the period January 2001 through September 2005 ranged from a high of $17,770 per ton in January 2004 to a low of $4,420 per ton in October 2001. As of September 30, 2005, the spot price per ton for nickel as provided by that day's spot nickel futures contract was $13,600 per ton.[17]

Zinc. Zinc is commonly mined as a co-product with standard lead, and both metals have growing core markets for their consumption. For zinc, the main market is galvanizing, which accounts for almost half its modern-day demand. Zinc's electropositive nature enables metals to be readily galvanized, which gives added protection against corrosion to building structures, vehicles, machinery, and household equipment.

Changes in the price of zinc are expected to affect the value of the Notes. The closing price of zinc is determined by reference to the official U.S. dollar cash settlement price per ton of the zinc futures contract traded on the LME. The price of zinc is primarily affected by the global demand for and supply of zinc. Demand for zinc is significantly influenced by the level of global industrial economic activity. The galvanized steel industrial sector is particularly important given that the use of zinc in the manufacture of galvanized steel accounts for approximately 50% of world-wide zinc demand. The galvanized steel sector is in turn heavily dependent on the automobile and construction sectors. A relatively widespread increase in the demand for zinc by the galvanized steel sector, particularly in China and the United States, has been the primary cause of the recent rise in zinc prices. An additional, but highly volatile, component of demand is adjustments to inventory in response to changes in economic activity and/or pricing levels. The supply of zinc concentrate (the raw material) is dominated by China, Australia, North America, and Latin America. The supply of zinc is also affected by current and previous price levels, which will influence investment

[16] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[17] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the spot price for nickel was calculated per ton.

decisions in new mines and smelters. It is not possible to predict the aggregate effect of all or any combination of these factors.

The price of zinc during the period January 2001 through September 2005 ranged from a high of $1,439 per ton in September 2005 to a low of $725.5 per ton in August 2002. As of September 30, 2005, the spot price per ton for zinc as provided by that day's spot zinc futures contract was $1,411 per ton.[18]

The LME

The LME was established in 1877. The Exchange states that the LME is the principal metals exchange in the world on which contracts for the future delivery of copper, lead, zinc, and nickel are traded. In contrast to U.S. futures exchanges, the LME operates as a principals' market for the trading of forward contracts and is therefore more closely analogous to over-the-counter physical commodity markets than futures markets in the U.S. As a result, members of the LME trade with each other as principals and not as agents for customers, although such members may enter into offsetting "back-to-back" contracts with their customers. In addition, while futures exchanges permit trading to be conducted in contracts for monthly delivery in stated delivery months, historically, LME contracts were established for delivery on any day (referred to as a "prompt date") from one day to three months following the date of the contract (*i.e.*, the average amount of time it took a ship to sail from certain Commonwealth countries to London). Currently, LME contracts may be established for monthly delivery up to 63, 27, and 15 months forward (depending on the commodity). Further, because it is a principals' forward market, there are no price limits applicable to LME contracts, and therefore, prices may decline without limitation over a period of time. Trading is conducted on the basis of warrants that cover physical material held in listed warehouses.

The LME is not a cash cleared market. Both inter-office and floor trading are cleared and guaranteed by a system run by the London Clearing House, whose role is to act as a central counterparty to trades executed between clearing members. The LME is subject to regulation by the Securities and Investment Board ("SIB") in the United Kingdom. The bulk of trading on the LME is transacted through inter-office dealing that allows the LME to operate as a 24-hour market. Trading on the floor takes place in two sessions daily, from 11:40 a.m. to 1:15 p.m. and from 3:10 p.m. to 4:35 p.m., London time. The two sessions are each broken down into two rings made up of five minutes' trading in each contract. After the second ring of the first session, the official prices for the day are announced. Contracts may be settled by offset or delivery and can be cleared in U.S. dollars, pounds sterling, Japanese yen, and euros. Copper has traded on the LME since its establishment. The copper contract was upgraded to high grade copper in November 1981 and again to today's Grade-A contract which began trading in June 1986. Nickel joined the exchange in April 1979. The LME share (by weight) of world terminal market trading is over 90% of all copper and virtually all lead, nickel, and zinc.

Commodity Market Regulation

The Exchange states that the LME provides the trading environment for the four commodities of copper, lead, nickel, and zinc (as well as several others) and is required to ensure that business in its market is conducted in an orderly manner for the protection of investors. The members of the LME are the institutions involved in trading with each other and with their customers. Regulation of the market is largely carried out by the LME subject to SIB oversight with the Financial Services Authority (the "FSA") responsible for regulating the financial soundness and conduct of LME members. Market participants are generally subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products.

Approved as a recognized investment exchange ("RIE") and conforming with U.K. and other international regulatory requirements, the LME provides price and volume transparency and audit trails. The Exchange states that LME members operate in a strict regulatory environment policed by the FSA. To ensure compliance with its regulatory obligations, the LME has a compliance department under the supervision of its executive director of regulation and compliance. This department monitors the market and member positions in order to analyze developments and ensure that the LME is meeting its regulatory responsibilities.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Metals-China Basket. The Notes are designed for investors who desire to participate or gain exposure to the Metals-China Basket, are willing to hold the investment to maturity, and who want to limit risk exposure by receiving principal protection of their investment amount.

Trading

Because the Notes are issued in $1,000 denominations, the Amex's existing debt floor trading rules will apply to the trading of the Notes.[19] First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[20] Second, even though the trading of the notes will occur on the debt trading floor subject to the debt trading rules of the Exchange, the Notes will be subject to the equity margin rules of the Exchange.[21] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction. In addition, Wachovia will

[18] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006. Amex confirmed that the spot price for zinc was calculated per ton.

[19] Because the Notes are principal protected, the Exchange has not set out specific criteria for trading halts. However, if a "market disruption event" occurs that is of more than a temporary nature, the Exchange will cease trading the Notes. In the event a "market disruption event" occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[20] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[21] *See* Amex Rule 462 and section 107B of the Company Guide.

deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

Exchange surveillance procedures applicable to trading in the proposed Notes will be similar to those applicable to other index-linked notes listed and traded on the Exchange. The Exchange also has in place a comprehensive surveillance agreement with the Hong Kong Stock Exchange.[22] In addition, the Hong Kong Exchanges and Clearing Ltd. ("HKEx"), which is the clearing house for both the Hong Kong Stock Exchange and the Hong Kong Futures Exchange, is currently an affiliate member of the Intermarket Surveillance Group ("ISG"). In addition, the Exchange has negotiated an Information Sharing Agreement with the LME regarding the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of copper, lead, nickel, and zinc.

The listing and trading of the China-Metals Notes will be subject to Amex Rules 1203A and 1204A applicable to Commodity-Based Trust Shares. Amex Rule 1203A addresses potential conflicts of interest and provides that the prohibitions in the Amex Rule 175(c) apply to a specialist in the Notes so that the specialist or affiliated person may not act or function as a market maker in the underlying commodities, related futures contracts or option on commodity future, or any other related commodity derivative. An affiliated person of the specialist, consistent with the Amex Rule 193, may be afforded an exemption to act in a market making capacity, other than as a specialist in the Notes on another market center, in the underlying commodities, related futures or options or any other related commodity derivative. More specifically, Amex Rule 1203A provides that an approved person of the specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Notes, on another market center in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A requires that specialists provide the Exchange with all the necessary information relating to their trading in physical commodities and related futures contracts and options thereon or any other related commodities derivative. Amex Rule 1204A states that, in connection with trading the physical asset or commodities, futures or options on futures, or any other related derivatives, the use of material, non-public information received from any person associated with a member, member organization, or employee of such person regarding trading by such person or employee in the physical asset or commodities, futures or options on futures, or any other related derivatives is prohibited by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act[23] in general, and furthers the objectives of section 6(b)(5)[24] 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 transactions in securities, and to remove impediments to and perfect the mechanism 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, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on 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 self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2005–105. 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 at *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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[22] *See* Telephone Conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on April 24, 2006.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78(f)(b)(5).

All submissions should refer to File No. SR–Amex–2005–105 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6642 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53727; File No. SR–CBOE–2006–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

April 26, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker ("RMM") appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd ("VTC") Appointment, which confers the right to quote electronically in a certain number of products selected from various "Tiers". There are five Tiers (Tiers A, B, C, D, and E) that are structured according to trading volume statistics, and an "A+" Tier which consists of five option classes—options on Standard & Poor's Depositary Receipts, options on the Nasdaq-100 Index Tracking Stock, options on Diamonds, reduced value options on the Standard & Poor's 500 Stock Index, and options based on The Dow Jones Industrial Average. CBOE Rule 8.4(d) assigns "appointment costs" to Hybrid 2.0 Classes based on the Tier in which they are located, and an RMM may select for each Exchange membership it owns or leases any combination of products trading on the Hybrid 2.0 Platform whose aggregate "appointment cost" does not exceed 1.0.

CBOE proposes to make the following changes to the Tiers. CBOE proposes to remove from the A+ Tier reduced value options on the Standard & Poor's 500 Stock Index (XSP). Going forward, XSP options would fall within one of the remaining Tiers A through E depending on its trading volume. As a result of this change, the appointment cost for XSP options would be reduced from .25 to the appointment cost for whichever Tier (A through E) it is assigned.

CBOE also proposes to make two changes to the non-A+ Tiers. First, CBOE proposes to lower the appointment costs for Tiers B, C, D, and E as follows (the costs for Tiers A and A+ remain the same):

Tiers	Existing appointment cost	New appointment cost
B	.0667	.05
C	.05	.04
D	.04	.02
E	.033	.01

CBOE believes that the above new appointment costs for Tiers B, C, D, and E, are more appropriate for each of these four Tiers which would effectively lower an RMM's cost to access CBOE's marketplace and receive an appointment in multiple Hybrid 2.0 Classes. Moreover, these revised appointment costs are more competitive with the access costs at other options exchanges to hold an appointment as a market-maker in multiple option classes.

Second, CBOE proposes to amend the composition of the five non-A+ Tiers, in connection with CBOE's determination to increase the total number of option classes traded on the Hybrid 2.0 Platform from approximately 605 to 905. When CBOE launched its RMM program in March 2005, it initially designated as Hybrid 2.0 Classes the 602 most actively traded, multiply listed option classes. CBOE also advised its members that it may designate additional classes as Hybrid 2.0 Classes as conditions warrant. Increasing the total number of Hybrid 2.0 Classes to 905 would increase competition and liquidity in these option classes by allowing RMMs to have an appointment in them, and would provide RMMs with additional trading opportunities.

As noted above, Tiers A through E are structured according to trading volume statistics, with Tier A consisting of the 20% most actively-traded Hybrid 2.0 Classes over the preceding three calendar months, (excluding "A+" Tier products), Tier B consisting of the next 20% most actively-traded products, etc., through Tier E, which consists of the 20% least actively-traded Hybrid 2.0 Classes. Currently, there are approximately 605 option classes traded on the Hybrid 2.0 Platform. Tiers A through E thus each consist of approximately 120 Hybrid 2.0 Classes.

CBOE proposes to amend the composition of Tiers A through E as follows:

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Tiers	Current tier composition	New tier composition
A	20% Most Active Hybrid 2.0 Classes (Classes 1–120)	Hybrid 2.0 Classes 1–60.
B	Next 20% Most Active Hybrid 2.0 Classes (Classes 121–240)	Hybrid 2.0 Classes 61–120.
C	Next 20% Most Active Hybrid 2.0 Classes (Classes 241–360)	Hybrid 2.0 Classes 121–345.
D	Next 20% Most Active Hybrid 2.0 Classes (Classes 361–480)	Hybrid 2.0 Classes 346–570.
E	Next 20% Most Active Hybrid 2.0 Classes (Classes 481–600)	All Remaining Hybrid 2.0 Classes.[5]

CBOE believes that these new Tier compositions more accurately reflect the appropriate appointment costs for the classes located in them, based on the average daily trading volume for these classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the proposal may take effect upon filing. The proposal lowers the appointment costs for Tiers B, C, D, and E, and changes the composition of the five non-A+ Tiers to reflect the designation of additional Hybrid 2.0 classes. The Exchange believes that the proposed rule change does not raise any new regulatory issues and promotes competition by reducing the access costs of trading in multiple options classes as an RMM. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may take effect upon filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–37 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6659 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

[5] CBOE will publish periodically to its members via Information Circular the total number of option classes traded on the Hybrid 2.0 Platform.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53729; File No. SR–ISE–2006–15]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Execution of Complex Orders

April 26, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to specify that complex orders may be executed using the Solicited Order Mechanism. The text of the rule change is as follows. *Italics* indicate additions; [bracketing] indicates deletions.

* * * * *

Rule 716. Block Trades

(a) through (e) no change.

Supplementary Material to Rule 716

.01 through .07 no change.

.08 Complex Orders. Electronic Access Members may use the Facilitation Mechanism *and the Solicited Order Mechanism* according to paragraphs (d) *and (e)* of this Rule 716 to [facilitate] *execute* block-size complex orders (as defined in Rule 722) at a net price. Members may enter Indications for complex orders at net prices, and bids and offers for complex orders will participate in the execution of an order being [facilitated] *executed* as provided in paragraphs (d) *and (e)* of this Rule 716. With respect to bids and offers for the individual legs of a complex order entered into the [Facilitation M]*mechanisms*, the priority rules for complex orders contained in Rule 722(b)(2) will continue to be applicable. If an improved net price for the complex order being [facilitated] *executed* can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being [facilitated] *executed* will receive an execution at the better net price.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .08 to ISE Rule 716, "Block Trades," to specify that complex orders may be executed through the Solicited Order Mechanism. The Commission previously approved the execution of complex orders through the Facilitation Mechanism, and the Exchange has modified its system to similarly handle the execution of complex orders through the Solicited Order Mechanism.[5]

The Facilitation and Solicited Order Mechanisms work in the same basic manner. An Electronic Access Member ("EAM") enters an order of a minimum size with a counter side interest, and other market participants are given an opportunity to participate in the trade before it is automatically executed. Complex orders are entered at a net price and are handled in the same manner as any other order under ISE Rule 716(d), "Facilitation Mechanism," and ISE Rule 716(e), "Solicited Order Mechanism."[6] With respect to bids and offers for the individual legs of a complex order entered into either mechanism, the priority rules for complex orders contained in ISE Rule 722(b)(2), "Complex Order Priority," continue to be applicable. If an improved net price for the complex order being executed can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being executed will receive an execution at the better net price.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in section 6(b)(5),[7] in that it will serve to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will make an existing service available to an additional order type.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52327 (Aug. 24, 2005), 70 FR 51854 (Aug. 31, 2005) (order approving File No. SR–ISE–2004–33) ("Facilitation Mechanism Order").

[6] Each mechanism has different execution requirements. In particular, the Facilitation Mechanism has a minimum order size of 50 contracts, while the Solicited Order Mechanism has a minimum order size of 500 contracts. Each leg of a complex order must comply with these minimum order sizes. In addition, the Solicited Order Mechanism requires that all orders be entered as all-or-none orders, while the Facilitation Mechanism does not have this requirement. Complex orders would be subject to the all-or-none requirement when entered into the Solicited Order Mechanism.

[7] 15 U.S.C. 78f(b)(5).

designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),[8] the ISE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ISE–2006–15 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–ISE–2006–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2006–15 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6641 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53721; File No. SR–NSX–2006–03]

Self-Regulatory Organizations; National Stock Exchange℠; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Demutualization of the National Stock Exchange

April 25, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2006, the National Stock Exchange℠ ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 19, 2006, the NSX submitted Amendment No. 1 to the proposed rule change.[3] On April 25, 2006, the NSX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 ("Amendment No. 1") makes revisions to the proposed: Holdings Certificate of Incorporation, sections (b)(iii)(B) and (C); Holdings By-Laws, Article III, Sections 3.1 and 3.4; NSX By-Laws, Article III, section 3.2(b); and NSX Rule 2.10. In addition, Amendment No. 1 adds new proposed section 3.6 to Article III of the Holdings By-Laws, requiring Holdings to take reasonable steps necessary to cause its officers, directors, and employees to consent to the applicability to them of Article III of the Holdings By-Laws. Finally, Amendment No. 1 makes corresponding changes to Item 3 of Form 19b–4 and Exhibit 1 to describe the effect of the foregoing Exhibit 5 revisions and also add a description of proposed NSX Rule 2.10.

[4] Amendment No. 2 ("Amendment No. 2") made changes to Item 3 of Form 19b–4 and Exhibit 1, which changes have been incorporated into this notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NSX proposes a series of changes to its corporate structure and governance documents to allow for the demutualization of NSX. NSX is proposing to "demutualize" by converting NSX from an Ohio non-stock, nonprofit membership corporation to a Delaware for-profit stock corporation. To effect the demutualization, NSX states that it has established a Delaware for-profit stock holding company, NSX Holdings, Inc. ("Holdings") that would become the parent company and sole stockholder of NSX after the demutualization. NSX would become a Delaware for-profit stock corporation that would continue to engage in the business of operating a national securities exchange registered under Section 6 of the Act.[5] NSX states that it would continue to have self-regulatory responsibilities over its members, and would have its own Board of Directors that would manage NSX's business and affairs.

The proposed rule change for implementing the demutualization includes the Amended and Restated Certificate of Incorporation of Holdings (the "Holdings Certificate of Incorporation"), Amended and Restated By-Laws of Holdings (the "Holdings By-Laws"), Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc. (the "NSX Certificate of Incorporation"), Amended and Restated By-Laws of National Stock Exchange, Inc. (the "NSX By-Laws), and revised Rules of National Stock Exchange, Inc. (the "NSX Rules"), Exhibit 5 of NSX's proposed rule change contains the NSX Certificate of Incorporation, the NSX By-Laws, and the NSX Rules, each marked to reflect changes from the current Articles of Incorporation, By-Laws, and Rules of the Exchange, as well as the new Holdings Certificate of Incorporation and the Holdings Bylaws. A summary of these documents is provided below. The full text of Exhibit 5 is available on the Commission's Web site at *http://*

[5] 15 U.S.C. 78f.

www.sec.gov,[6] the Web site of the Exchange at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this proposed rule change, as amended, the Exchange proposes a series of changes to the Exchange's corporate structure that would allow for the demutualization of the Exchange. The Exchange also proposes changes to its rules to implement a proposed equity trading permit structure, which would replace the existing structure of Exchange membership as a basis for trading rights.

a. Description of Demutualization Transaction

Currently, NSX is a non-stock, nonprofit Ohio corporation. NSX proposes to demutualize by reorganizing as a Delaware for-profit stock corporation that would be a direct and wholly-owned subsidiary of a new Delaware for-profit stock holding company, Holdings. To accomplish the demutualization, NSX has established (i) two new Delaware stock for-profit corporations: Holdings, a direct and wholly-owned subsidiary of NSX, and NSX Delaware Merger Sub, Inc. ("NSX Delaware Merger Sub"), a direct and wholly-owned subsidiary of Holdings, and (ii) one transitory Ohio stock for-profit corporation, NSX Ohio Merger Sub, Inc. ("NSX Ohio Merger Sub"), also a direct and wholly owned subsidiary of Holdings.[7]

Pursuant to an agreement and plan of merger, NSX would merge ("Merger #1") with and into NSX Ohio Merger Sub, with NSX Ohio Merger Sub surviving the merger as an Ohio for-profit stock corporation that is a direct and wholly-owned subsidiary of Holdings. As a result of Merger #1, NSX Ohio Merger Sub will be the initial successor-in-interest to NSX. Immediately following Merger #1, pursuant to a second agreement and plan of merger, NSX Ohio Merger Sub would merge ("Merger #2") with and into NSX Delaware Merger Sub, with NSX Delaware Merger Sub surviving the merger as a Delaware for-profit stock corporation that is a direct and wholly-owned subsidiary of Holdings, and renamed National Stock Exchange, Inc. For ease of reference, the term "NSX" in this document will also refer to the Exchange as a Delaware for-profit stock corporation after the demutualization.

The Exchange states that upon completion of Merger #2, NSX, the Delaware for-profit stock corporation, would be, in effect, the successor-in-interest to NSX, the current Ohio non-stock, nonprofit corporation, and would assume all of the assets and liabilities of the Exchange, including, without limitation, the adherence to, and the performance of, the undertakings under the *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions*, entered by the Commission on May 19, 2005[8] (the "Order")[9]. NSX states that it would continue to engage in the business of operating a national securities exchange registered under section 6 of the Act.[10]

Presently, the members of NSX hold certificates of proprietary membership in NSX and have a right to trade on the exchange operated by NSX.[11] On the effective date of the demutualization (the "Effective Date"), each member of NSX would receive 1,000 shares of Holdings Class A common stock[12] for the first certificate of proprietary membership of NSX held by the member and would receive a modestly discounted number of shares of Class A common stock (determined by a formula set forth in the Merger #1 merger agreement) for each additional certificate held. If, however, the total number of Class A shares to be received by a member that would hold an equity trading permit entitling it to trading access on the Exchange after the demutualization (an "ETP Holder"), together with any Class A shares to be received by that member's Related Persons,[13] would exceed 20% of the

[6] The text of Exhibit 5 posted on the Commission's Web site is edited to incorporate the changes made in Amendment No. 1.

[7] The Exchange states that the establishment of NSX Ohio Merger Sub and the process of demutualization through two mergers (as described more fully in this document) are necessitated because under Ohio law, NSX, as an Ohio nonprofit corporation, may not merge directly with and into a foreign for-profit corporation, such as NSX Delaware Merger Sub.

[8] *See* Securities Exchange Act Release No. 51714.

[9] The Exchange has advised the staff that it may petition the Commission to modify the Order in light of the potential demutualization and the anticipated changes to the trading platform (for which Commission approval will be sought in a subsequent filing).

[10] 15 U.S.C. 78f. Following the demutualization, the Exchange states that earnings of NSX not retained in its business may be distributed to its parent, Holdings, and Holdings would be authorized to pay dividends to the stockholders of Holdings as and when they are declared by the Board of Directors of Holdings, but subject to the limitation under the proposed NSX By-Laws that any revenues received by NSX from regulatory fees or penalties may not be used to pay dividends. *See* proposed NSX By-Laws, Section 10.4.

[11] *See infra* note 16 and subsection c.(1)(b)(ii) for a description of Chicago Board Options Exchange, Incorporated's interest in NSX.

[12] Holdings would be authorized to issue 1,100,000 shares of common stock having a par value of $.0001 per share (of which 900,000 shares will be designated as Class A common stock, 100,000 shares will designated as Class B common stock and 100,000 shares will be designated as Class C common stock) and 100,000 shares of preferred stock having a par value of $.0001 per share. The Class A common stock would be entitled to one vote per share, absent a provision in the Holdings Certificate of Incorporation fixing or denying voting rights. Neither the Class B nor Class C common stock would be entitled to vote, unless the matter at issue would alter the rights, preferences, privileges or limitations (other than the right to vote) of that stock, respectively, without also altering the rights, preferences, privileges and limitations of the Class A common stock in an identical manner. *See* proposed Holdings Certificate of Incorporation, Article Fourth, and proposed Holdings By-Laws, Section 4.10.

[13] Under the proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (a)(ii), "Related Persons" means, with respect to any Person: (A) Any "affiliate" of such Person (as such term is defined in Rule 12b–2 under the Act); (B) any other Person with which such first Person has 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 the Corporation; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of an ETP Holder, any Person that is associated with the ETP Holder (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Act); (E) in the case of a Person that is an individual, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Corporation or any of its parents or subsidiaries; (F) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (G) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.

total number of Class A shares issued (and thus be in violation of an ownership limitation under the proposed Holdings Certificate of Incorporation [14]), that member would receive shares of Class C common stock[15] (which would generally not be entitled to the right to vote) in lieu of the shares of Class A common stock that are in excess of the 20% ownership limitation (and that the member would have received were the 20% ownership limitation not in effect under the proposed Holdings Certificate of Incorporation).

The Exchanges states that Chicago Board Options Exchange, Incorporated ("CBOE") is not a member of NSX but owns certificates of proprietary membership in NSX. In the demutualization, CBOE would receive shares of Holdings Class B common stock (which is generally not entitled to the right to vote) in exchange for its certificates of proprietary membership in NSX that are subject to put and call rights under a Termination of Rights Agreement between NSX and CBOE dated September 27, 2004 (the "TORA"),[16] and would receive shares of Holdings Class A common stock in exchange for the remainder of its certificates of proprietary membership.[17] The number of Class A and Class B shares received by CBOE would be based on the discount formula set forth in the Merger #1 merger agreement.

Following the demutualization, persons and entities who have been qualified for membership under the Exchange's current Rules and, as a result, have access to the Exchange's trading facilities would separately receive NSX equity trading permits ("ETPs") entitling them to maintain their trading access to NSX and, as noted above, would be referred to as "ETP Holders." Shares of Holdings capital stock and ETPs would not be tied together. The Exchange states that, as a result, following the demutualization, former NSX members would be able to sell the shares of Holdings capital stock they receive in connection with the demutualization, subject to the applicable restrictions in the proposed Holdings Certificate of Incorporation and Holdings By-Laws (as described more fully below), while retaining the ability to trade and operate on the Exchange pursuant to their ETPs. NSX states that any other person or entity that satisfies the regulatory requirements set forth in the NSX Rules also would be able to obtain an ETP without regard to whether such person is a stockholder of Holdings.

b. Reasons for the Proposed Demutualization

There are several benefits that the Exchange believes may result from the demutualization of the Exchange.

The Exchange believes that, by adopting a for-profit approach with a view towards optimizing volume, efficiency, and liquidity in the markets the Exchange provides, it would be able to better meet the demands of, and provide value to, investors, while also preserving the ability to provide benefits and opportunities for ETP Holders. Additionally, NSX believes that its reorganization into a holding company structure could provide increased financing opportunities and better access to capital markets, which, as a result, could improve the Exchange's business and facilitate strategic initiatives. NSX also believes that the creation of Holdings as a for-profit stock corporation may present opportunities to enter into strategic alliances, while allowing the regulated Exchange business to remain separate.

The Exchange states that it remains committed to its role as a national securities exchange and does not believe that a change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as further described below, the Exchange believes that it has proposed specific provisions in the proposed Holdings By-Laws and NSX By-Laws that reinforce the ability of the Exchange to perform its self-regulatory functions. In addition, NSX states that it has retained in the proposed NSX By-Laws certain governance provisions of its current By-Laws (for example, the inclusion and governing structure of a Regulatory Oversight Committee) that were required by the Order.

c. Summary of Proposed Rule Change

The proposed rule change, as amended, is outlined below. In general, the proposed rule change, as amended, consists of the proposed Holdings Certificate of Incorporation and Holdings By-Laws and the proposed changes to the Articles of Incorporation and By-Laws of the Exchange that reflect governance and corporate form changes. NSX states that the proposed rule change also includes proposed changes to the Rules of the Exchange that are necessary to implement the proposed equity trading permit structure. NSX also proposes to move certain provisions in the current By-Laws of NSX respecting members, listing standards, and other matters not relating to the Exchange's corporate governance to the NSX Rules.

(1) Corporate Structure

(a) Holdings

Following the demutualization, Holdings would be the parent company and sole stockholder of NSX. NSX states that all of the issued and outstanding stock of Holdings initially would be owned by the former owners of certificates of proprietary membership in the Exchange.

As sole stockholder of NSX, Holdings would have the right to elect the Board of Directors of NSX, subject to certain provisions in the Holdings By-Laws that require Holdings to vote for certain persons nominated for ETP Holder Director positions and certain persons nominated for CBOE Director positions, in each case in accordance with the revised governance documents of NSX. The Holdings Certificate of Incorporation and the Holdings By-Laws would govern the activities of Holdings.

(i) Holdings Board of Directors

The business and affairs of Holdings would be managed by its Board of Directors ("Holdings Board"). The Holdings Board would consist of between 10 and 16 persons, as determined by the Holdings Board, one of which shall be the Chief Executive Officer ("CEO") of Holdings. The Holdings Board would initially have 13 directors after the demutualization. No person that is subject to any "statutory

[14] This ownership limitation, in addition to other ownership, voting and transfer limitations, is described more fully later in this document.

[15] Each share of Class C common stock issued would be convertible, at the option of its holder, to one share of Class A common stock upon the satisfaction of certain notification and other requirements under the Holdings Certificate of Incorporation, but only to the extent that the conversion does not violate the limitations on ownership, transfer and voting applicable to Class A common stock under the Holdings Certificate of Incorporation, as more fully described in this document. *See* proposed Holdings Certificate of Incorporation, Article Fourth, paragraph (d).

[16] The Exchange states that, in 1986, NSX and CBOE entered into an agreement of affiliation pursuant to which CBOE obtained certificates of proprietary membership in NSX and certain rights associated with NSX, including the right to hold certain seats on the Board of Directors of NSX and certain put rights in connection with its certificates of proprietary membership in NSX. Under the TORA, the CBOE agreed to relinquish, upon certain terms, certain of these rights in exchange for cash payments and other undertakings. *See* Securities Exchange Act Release No. 34–51033 (January 13, 2005), 70 FR 3085 (January 19, 2005) (File No. SR–NSX–2004–12). *See also supra* subsection c(1)(b)(ii).

[17] Each share of Class B common stock would automatically convert to one share of Class A common stock upon its transfer, in accordance with the TORA, to a bona fide third party purchaser unaffiliated with CBOE. *See* proposed Holdings Certificate of Incorporation, Article Fourth, paragraph (c). NSX states that the Class B shares would be transferable only under extraordinary circumstances.

disqualification" (within the meaning of Section 3(a)(39) of the Act) may be a director of Holdings.[18]

The directors of Holdings would be divided into three classes, which would be as nearly equal in number as the total number of directors then constituting the entire Holdings Board. After completion of an initial phase-in schedule, the directors of Holdings would serve staggered three-year terms, with the term of office of one class expiring each year.[19]

The Holdings Board would elect its Chairman from among the directors on the Holdings Board, and may elect a vice-chairman to perform the functions of the Chairman in his or her absence.[20]

At each annual meeting of the stockholders of Holdings at which a quorum is present, the individuals receiving a plurality of the votes cast of the Class A shares would be elected directors of Holdings.[21] At an election of directors, each Holdings stockholder would be entitled to one vote for each share of Class A common stock owned by that stockholder.[22] Class B and Class C shares shall not be entitled to vote at an election of directors.[23]

In most cases, vacancies on the Holdings Board would be filled by the remaining directors of Holdings. If the vacancy has resulted from a director being removed for cause by the stockholders of Holdings, however, that vacancy may be filled by the stockholders of Holdings at the same meeting at which the director was removed. Any director appointed to fill a vacancy will serve until the expiration of the term of office of the replaced director or until the end of the term for a newly created directorship.[24]

(ii) Committees of Holdings

The Holdings Board would have an Audit Committee, a Governance and Nominating Committee, and such other committees that the Holdings Board establishes.[25] The Chairman of the Holdings Board would appoint the members of all committees of the Holdings Board, and may remove any member so appointed, subject to the approval of the Holdings Board.[26] Each committee would have the authority and duties prescribed for it in the Holdings By-Laws or by the Holdings Board.[27]

(iii) Officers of Holdings

The officers of Holdings would be a CEO, a President, a Secretary, a Treasurer, and such other officers as the Holdings Board determines.[28] The CEO would be responsible to the Holdings Board for management of the business affairs of Holdings.[29] The officers of Holdings would have the duties and authority set forth in the Holdings By-Laws or given to them by the Holdings Board, and in the case of the President, the Secretary, and the Treasurer, given to them by the Chief Executive Officer.[30] Any two or more offices may be held by the same person, except that the Secretary may not also serve as the CEO or the President. No person that is subject to any "statutory disqualification" (within the meaning of section 3(a)(39) of the Act) may be an officer of Holdings.[31]

(iv) Stockholder Restrictions

The Holdings Certificate of Incorporation and the Holdings By-Laws place certain restrictions on the ability to transfer, own, and vote the capital stock of Holdings.

(1) Restrictions on voting

The Holdings Certificate of Incorporation prohibits any Person,[32] either alone or together with its Related Persons, from (a) voting or giving a proxy or consent with respect to shares representing more than 20% of the voting power of the then-issued and outstanding capital stock of Holdings; or (b) entering into any agreement, plan, or arrangement that would result in the shares of Holdings subject to that agreement, plan, or arrangement not being voted on a matter, or any proxy relating thereto being withheld, where the effect of that agreement, plan, or arrangement would be to enable any Person, alone or together with its Related Persons, to obtain more than 20% of the voting power of the then-issued and outstanding capital stock of Holdings.[33]

This restriction would not apply to the Class B or Class C common stock and, as to the Class A common stock owned by Persons other than ETP Holders and their Related Persons, may be waived by Holdings Board pursuant to a resolution adopted by the Holdings Board.[34] Before adopting such resolution, however, the Holdings Board must determine that, among other things, the waiver of the voting limitation will not impair the ability of NSX to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, and will not impair the Commission's ability to enforce the Act and the rules and regulations promulgated thereunder.[35] In addition, the Holdings Board also must determine that a Person and its Related Persons that would vote more than 20% of the outstanding stock of Holdings are not subject to an applicable "statutory disqualification" (within the meaning of section 3(a)(39) of the Act).[36] Finally, any resolution of the Holdings Board that would permit a Person to vote more than 20% of the outstanding stock of Holdings must be filed with and approved by the Commission before it becomes effective.[37]

(2) Restrictions on ownership

Under the proposed Holdings Certificate of Incorporation, no Person, either alone or together with its Related Persons, may own shares constituting more than 40% of any class of capital stock of Holdings (other than a class of stock without general voting rights).[38] The Holdings Board may waive this ownership limitation pursuant to a resolution adopted by the Holdings Board. Before adopting such resolution, however, the Holdings Board must determine that, among other things, the waiver of the ownership limitation would not impair the ability of NSX to carry out its functions and responsibilities under the Act and the rules and regulations promulgated

[18] *See* proposed Holdings Certificate of Incorporation, Article Sixth, section (a), and proposed Holdings By-Laws, sections 2.2(a) and (b).

[19] *See* proposed Holdings Certificate of Incorporation, Article Sixth, section (b), and proposed Holdings By-Laws, section 2.2(c).

[20] *See* proposed Holdings By-Laws, section 2.3(a).

[21] *See* proposed Holdings By-Laws, section 4.8.

[22] *See* proposed Holdings Certificate of Incorporation, Article Fourth, paragraph (b), and proposed Holdings By-Laws, section 4.10.

[23] *See* proposed Holdings Certificate of Incorporation, Article Fourth, paragraphs (c) and (d).

[24] *See* proposed Holdings By-Laws, section 2.4.

[25] *See* proposed Holdings By-Laws, section 5.1.

[26] *See* proposed Holdings By-Laws, section 5.2.

[27] *See* proposed Holdings By-Laws, section 5.3.

[28] *See* proposed Holdings By-Laws, section 6.1.

[29] *See* proposed Holdings By-Laws, section 6.4.

[30] *See* proposed Holdings By-Laws, sections 6.1, 6.4, 6.5, 6.6, and 6.7.

[31] *See* proposed Holdings By-Laws, section 6.1.

[32] Article Fifth of the proposed Holdings Certificate of Incorporation defines a "Person" to mean "an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof."

[33] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(C).

[34] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraphs (b)(iii)(A) and (B). *See* Amendment No. 1, *supra* note 3.

[35] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B).

[36] 15 U.S.C. 78c(a)(39); *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iv).

[37] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B).

[38] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraphs (b)(ii)(A) and (b)(iii)(A).

thereunder and would not impair the Commission's ability to enforce the Act and the rules and regulations promulgated thereunder.[39]

In addition, the Holdings Board also must determine that any Person and its Related Persons that would own more than 40% of any class of capital stock of Holdings are not subject to any applicable "statutory disqualification" (within the meaning of section 3(a)(39) of the Act).[40] Finally, any Holdings Board resolution that would permit ownership of Holdings capital stock in excess of the ownership limitation described above must be filed with and approved by the Commission before it becomes effective.[41]

In addition to the ownership restriction described above, no ETP Holder, whether alone or together with its Related Persons, may own shares constituting more than 20% of any class of capital stock of Holdings.[42] However, this ownership restriction would not apply to any ETP Holder, with respect to shares of Class C common stock of Holdings issued to the ETP Holder in connection with, and from the date of, the demutualization of NSX so long as the ETP Holder becomes compliant with the ownership limitation promptly after such issuance.[43]

(3) Other stockholder ownership and voting restriction requirements

The Exchange states that the proposed Holdings Certificate of Incorporation contains several provisions that would enable Holdings to enforce restrictions on the ownership and voting of Holdings capital stock described in the preceding section. Specifically, if a stockholder purports to sell, transfer, assign, or pledge to any Person (other than Holdings) any shares of Holdings that would violate the ownership restrictions, Holdings would record on its books the transfer of only the number of shares that would not violate the restrictions and would treat the remaining shares as owned by the purported transferor, for all purposes, including, without limitation, voting, payment of dividends, and distributions.[44]

In addition, if any stockholder purports to vote, or to grant any proxy or enter into any agreement, plan, or arrangement relating to the voting of shares that would violate the voting restrictions, Holdings would not honor such vote, proxy, or agreement, plan, or other arrangement to the extent that the restrictions would be violated, and any shares subject to that arrangement would not be entitled to be voted to the extent of the violation.[45] Further, if any stockholder purports to sell, transfer, assign, pledge, vote, or own any shares that would violate the ownership and voting restrictions, Holdings would have the right to, and would generally be required to promptly, redeem such shares at a price equal to the par value of the shares.[46] Also, a stockholder that alone or together with its Related Persons owns five percent or more of the then outstanding shares of the capital stock of Holdings entitled to vote in an election of directors must, upon acquiring knowledge of such ownership, immediately give the Holdings Board written notice of such ownership.[47] Holdings may also require any Person reasonably believed to be subject to and in violation of the voting and ownership restrictions to provide to Holdings information relating to such potential violation.[48]

(4) Restrictions on transfer

Members, former members, and other equity owners of NSX who receive shares of capital stock of Holdings in the demutualization may not sell, transfer, or otherwise dispose of those shares for the first thirty days following their issuance, unless the Holdings Board waives this transfer restriction.[49]

Also, unless waived by the Holdings Board or pursuant to a redemption of shares by Holdings, each stockholder of Holdings would be prohibited from selling, transferring, or otherwise disposing of common shares of Holdings except in amounts of at least 1,000 shares (unless the stockholder is transferring all shares owned), and no stockholder would be permitted to transfer any capital stock of Holdings (other than pursuant to a redemption of shares by Holdings) until all amounts due and owing from that stockholder to NSX have been paid.[50]

In the event that a stockholder desires to transfer shares of capital stock of Holdings to any person (other than an affiliate of the stockholder or to another holder of the same class of capital stock) prior to January 1, 2011, Holdings would have a right of first refusal permitting it to purchase those shares, except for transfers by bequest, operation of law, or judicial decree under certain circumstances.[51]

In addition to these transfer restrictions, the Exchange states that shares of Holdings would be "restricted securities" under the Securities Act of 1933 ("Securities Act") and only may be transferred pursuant to an effective registration statement under the Securities Act and in accordance with applicable state securities laws or, if an exemption from registration is available, upon delivery to Holdings of a satisfactory opinion of counsel that such transfer may be effected pursuant to the exemption. In addition, counsel to Holdings may require delivery of documentation to ensure that the transfer complies with the Securities Act and state securities laws before such transfer is effected.[52] The Exchange states that Holdings has no present intention to register its common stock under the Securities Act or the Act, and, unless waived in writing by the Holdings Board, no transfer would be honored by Holdings that would cause Holdings to have to do so or to become subject to the reporting requirements of the Act.[53]

(v) Self-Regulatory Function and Oversight.

NSX states that the Holdings By-Laws contain various provisions designed to protect the independence of the self-regulatory function of NSX and to clarify the Commission's oversight responsibilities. For example, under the Holdings By-Laws, for as long as Holdings controls NSX, the Holdings Board and the directors, officers, and employees of Holdings must give due regard to the preservation of the independence of the self-regulatory function of NSX and to its obligations to investors and the general public, and are prohibited from taking actions that would interfere with the effectuation of

[39] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B).

[40] 15 U.S.C. 78c(a)(39); *see* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iv).

[41] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraphs (b)(iii)(B) and (C).

[42] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(B).

[43] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(C). *See* Amendment No. 1, *supra* note 3.

[44] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (d).

[45] *Id.*

[46] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (e).

[47] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (c)(i). Such notice must also be updated under certain circumstances. *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (c)(ii).

[48] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (c)(iii).

[49] *See* proposed Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(i).

[50] *See* proposed Holdings By-Laws, sections 9.4 and 9.5(b).

[51] *See* proposed Holdings By-Laws, section 9.6.

[52] *See* proposed Holdings By-Laws, section 9.5(a).

[53] *See* proposed Holdings By-Laws, section 9.5(c).

decisions by the Board of Directors of NSX ("NSX Board") relating to NSX's regulatory functions, including disciplinary matters, or which would interfere with NSX's ability to carry out its responsibilities under the Act.[54]

The Holdings By-Laws also contain a specific requirement that all books and records of NSX, and the information contained therein, that reflect confidential information pertaining to the self-regulatory function of NSX, which come into the possession of Holdings, must be retained in confidence by Holdings and its Board, officers, employees, and agents, and must not be used for any non-regulatory purposes.[55] In addition, the Holdings By-Laws provide that, to the extent they are related to the activities of NSX, the books, records, premises, officers, directors, agents, and employees of Holdings are deemed to be the books, records, premises, officers, directors, agents, and employees of NSX for the purposes of, and subject to oversight pursuant to, the Act.[56]

NSX states that, pursuant to the Holdings By-Laws, Holdings must comply with the Federal securities laws and the rules and regulations promulgated thereunder. With regard to the Commission's ability to oversee the activities of Holdings, the Exchange states that the Holdings By-Laws also provide that Holdings must cooperate with the Commission and NSX pursuant to and to the extent of their respective regulatory authority, and that the officers, directors, employees, and agents of Holdings, by virtue of their acceptance of such position, are deemed to agree to cooperate with the Commission and NSX in respect of the Commission's oversight responsibilities regarding NSX and the self-regulatory function and responsibilities of NSX.[57] In addition, the Holdings By-Laws provide that Holdings, its officers, directors, employees and agents, by virtue of their acceptance of such positions, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and NSX, for the purpose of any suit, action, or proceeding pursuant to the U.S. Federal securities laws, and the rules and regulations promulgated thereunder, arising out of, or relating to, the activities of NSX.[58]

Finally, the Holdings Certificate of Incorporation and the Holdings By-Laws provide that, as long as Holdings controls NSX, before any change to the Holdings Certificate of Incorporation or the Holdings By-Laws, respectively, will be effective, such change must be submitted to the NSX Board, and if the NSX Board determines that the change must be filed with or filed with and approved by the Commission before it may be effective, the change will not be effective until it is filed with, or filed with and approved by, the Commission, as the case may be.[59]

(b) NSX

Following the demutualization, NSX would become a Delaware for-profit stock corporation, with the authority to issue 1,000 shares of common stock. At all times, all of the voting stock of NSX would be owned by Holdings.[60] NSX states that it would continue to be the entity registered as a national securities exchange under section 6 of the Act[61] and, accordingly, NSX would continue to be a self-regulatory organization ("SRO"). Moreover, NSX states that it would continue to adhere to the undertakings in the Order[62] including, without limitation, the structure provisions of a Regulatory Oversight Committee, the separation of the regulatory functions from the commercial interests of the Exchange, and the retention of third parties to review the Exchange's regulatory functions.

(i) Governing Documents and NSX Rules

The proposed NSX Certificate of Incorporation,[63] NSX By-Laws, and NSX Rules (with the proposed changes described in this document) would govern the activities of NSX. NSX states that these rules and governance documents are proposed to reflect, among other things, NSX's status as a wholly-owned subsidiary of Holdings, its management by the NSX Board and its designated officers, and its self-regulatory responsibilities pursuant to NSX's registration under section 6 of the Act. NSX states that it has designed these proposed governance documents to be generally consistent with NSX's current governance structure, with certain changes based upon its proposed new corporate form. NSX states that none of these proposed changes are in contravention of the Order.

(ii) Board of Directors

After the demutualization, the NSX Board would initially consist of 13 directors. The NSX Board would be initially comprised of the CEO of NSX, 3 ETP Holder Directors,[64] 7 Independent Directors,[65] and 2 directors who are executive officers of CBOE, its members,[66] or executive officers of CBOE member organizations.[67] This composition is consistent with the composition of the Exchange's current Board of Directors, which consists of the CEO of NSX, 3 proprietary members or executive officers of proprietary members, 7 independent directors, and 2 executive officers of CBOE, CBOE members, or executive officers of CBOE member organizations.

Under the proposed rule change, the NSX Board may by resolution increase its size to up to 20 directors. Directors added to the NSX Board to fill these new director positions will be (i) Independent Directors, to the extent necessary for the NSX Board to include

[54] *See* proposed Holdings By-Laws, section 3.1.

[55] *See* proposed Holdings By-Laws, section 3.2.

[56] *See* proposed Holdings By-Laws, section 3.3. This provision also requires Holdings to maintain its books and records in the United States.

[57] *See* proposed Holdings By-Laws, section 3.4. *See* Amendment No. 1, *supra* note 3.

[58] *See* proposed Holdings By-Laws, section 3.5. Pursuant to the Holdings By-Laws, Holdings would be required to take reasonable steps necessary to cause its officers, directors, and employees, prior to accepting a position as an officer, director, or employee, as applicable, of Holdings, to consent in writing to the applicability to them of the provisions described in this and the preceding two paragraphs with respect to their activities related to NSX; *see* Amendment No. 1, *supra* note 3.

[59] *See* proposed Holdings Certificate of Incorporation, Article Twelfth, and proposed Holdings By-Laws, Article VIII. These provisions additionally state, respectively, that (i) any change to the proposed Holdings Certificate of Incorporation must also be first approved by the Holdings Board and (ii) any change to the proposed Holdings By-Laws may be made by either the stockholders of Holdings or the Holdings Board. In addition, under Article Fourth, paragraph (e) of the proposed Holdings Certificate of Incorporation, holders of preferred stock (voting separately as single class) must approve any change to the Holdings Certificate of Incorporation that would change the terms of that preferred stock. No preferred stock is currently issued and outstanding.

[60] *See* proposed NSX Certificate of Incorporation, Article Fourth.

[61] 15 U.S.C. 78f.

[62] *See supra* note 9.

[63] Due to differences in terminology between Ohio and Delaware law, the Exchange's Articles of Incorporation are proposed to be renamed its "Certificate of Incorporation."

[64] An ETP Holder Director is defined under the proposed NSX By-Laws as a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is an ETP Holder. *See* proposed NSX By-Laws, section 1.1(E)(2).

[65] An Independent Director is defined under the proposed NSX By-Laws as a member of the NSX Board that the NSX Board has determined to have no material relationship with NSX or any affiliate of NSX, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the NSX Board. *See* proposed NSX By-Laws, section 1.1(I)(1). This definition is consistent with the definition of Independent Director in the current By-Laws of NSX. NSX states that at least one Independent Director will be representative of investors; *see* Amendment No. 1, *supra* note 3.

[66] A CBOE member is defined under the proposed NSX By-Laws as an individual CBOE member or a CBOE member organization that is a regular member or special member of CBOE (as such terms are described in the Constitution of the CBOE), as such CBOE members may exist from time to time. *See* proposed NSX By-Laws, section 1.1(C)(2).

[67] *See* proposed NSX By-Laws, section 3.2(a).

at least 50% Independent Directors; (ii) ETP Holder Directors, to the extent necessary for the NSX Board to include at least 20% ETP Holder Directors; and (iii) persons who do not qualify as Independent Directors ("At-Large Directors"), for the remainder of the positions added to the NSX Board that are not filled with Independent Directors or ETP Holder Directors pursuant to clauses (i) and (ii) above. At all times, the NSX Board must include the CEO of NSX, at least 50% Independent Directors and 3 ETP Holder Directors (or such greater number of ETP Holder Directors as is necessary to comprise at least 20% of the NSX Board).[68]

NSX states that, consistent with the current By-Laws of NSX, no two or more directors under the proposed NSX By-Laws may be partners, officers, or directors of the same person or be affiliated with the same person, unless such affiliation is with a national securities exchange or Holdings.[69] Directors of NSX other than the CEO and the CBOE Directors would be divided into three classes, consisting as nearly as possible of equal numbers of directors.[70] After completion of an initial phase-in schedule, these directors would serve for staggered three-year terms, with the term of one class expiring each year. The CEO's appointment as a director would coincide with his or her term as CEO of NSX.[71] The CBOE Directors would each serve a one year term.[72]

NSX states that, consistent with the current By-Laws of NSX, under the proposed NSX By-Laws, the NSX Board is subject to change upon certain events in accordance with the TORA between CBOE and NSX.[73] Under the TORA, CBOE was provided with 4 put rights to transfer its equity interests in NSX to NSX and NSX was provided with 4 call rights on those equity interests. NSX states that, as of March 10, 2006, the first of these put rights was exercised by CBOE, decreasing the number of director positions of NSX filled by a representative of CBOE from 3 to 2 and increasing the number of positions filled by independent directors from 6 to 7. NSX states that, under the proposed NSX By-Laws:

- On the second closing of a put or call under the TORA, the number of positions on the NSX Board filled by representatives of CBOE will be reduced from 2 to 1. The vacant director position must be filled by an At-Large Director, unless an Independent Director is needed to maintain at least 50% Independent Directors on the NSX Board.[74]
- On the earlier of the date CBOE owns less than 5% of the outstanding capital stock of Holdings or the third anniversary of the fourth closing of a put or call under the TORA, CBOE's appointed positions on the NSX board will decrease to zero. The vacant director position must be filled with an At-Large Director, unless an Independent Director is needed to maintain at least 50% Independent Directors on the NSX Board.[75]

The NSX Board would elect its Chairman from among the directors of the NSX Board. The Chairman of the NSX Board may also serve as the CEO and President of NSX, but may hold no other offices in NSX. Unless the Chairman also serves as the CEO of NSX, the NSX Board must elect the Chairman from among the Independent Directors of the NSX Board.[76]

In most cases, vacancies on the NSX Board would be filled by the remaining directors of NSX. If the vacancy has resulted from a director being removed for cause by the stockholders of NSX, however, that vacancy may be filled by the stockholder of NSX (*i.e.*, Holdings) at the same meeting at which the director was removed. Any director appointed to fill a vacancy would serve until the expiration of the term of office of the replaced director or until the end of the term for a newly-created directorship.[77]

(iii) Nomination and Election of Directors

After the formation of the initial NSX Board, the NSX Governance and Nominating Committee would nominate directors for each director position (other than CBOE director positions) standing for election at the annual meeting of stockholders that year. Candidates for CBOE Directors would be nominated by the Board of Directors of CBOE at its annual meeting or within 20 days of NSX's annual stockholders' meeting. Because ETPs are not equity interests in NSX, ETP Holders are not entitled to directly elect members of the NSX Board. Rather, Holdings, as the sole stockholder of NSX, would have the sole right and the obligation to vote for the directors of the NSX Board.[78] However, NSX states that, to ensure that ETP Holders are afforded fair representation as required under section 6(b)(3) of the Act,[79] NSX has proposed a procedure, similar to one already in place under the current By-Laws of NSX, whereby ETP Holder Directors and ETP Holders would be involved in the selection of ETP Holder Director nominees.[80]

Specifically, the ETP Holder Director Nominating Committee of NSX (which would be composed solely of ETP Holder Directors and/or ETP Holder representatives) would consult with the NSX Governance and Nominating Committee, the Chairman, and the CEO of NSX and solicit comments from ETP Holders for the purpose of approving and submitting names of ETP Holder Director candidates. These initial candidates for nomination would be announced to ETP Holders, who would then have the opportunity to identify additional candidates for nomination to ETP Holder Director positions by submitting a petition signed by at least ten percent of the ETP Holders. An ETP Holder may endorse as many candidates as there are ETP Holder Director positions to be filled. If no petitions are submitted within the time frame prescribed by the NSX By-Laws, the initial candidates approved and submitted by the ETP Holder Director Nominating Committee would be nominated. If one or more valid petitions are submitted, the ETP Holders would vote on the entire group of potential candidates, and the individuals receiving the largest number of votes would be the ETP Holder

[68] *See* proposed NSX By-Laws, section 3.2(b); *see* Amendment No. 1, *supra* note 3.

[69] *See* proposed NSX By-Laws, section 3.2(c). NSX states that the current By-Laws of NSX prohibit two or more directors from being partners, officers, or directors of the same person or affiliated with the same person, except for affiliations with national securities exchanges.

[70] *See* proposed NSX By-Laws, section 3.4. NSX states that this board framework is consistent with the current By-Laws of NSX.

[71] *See* proposed NSX By-Laws, section 3.4(a). NSX states that this provision is consistent with the current By-Laws of NSX.

[72] *See* proposed NSX By-Laws, section 3.4(d). NSX states that this provision is consistent with the current By-Laws of NSX.

[73] *See generally* proposed NSX By-Laws, section 3.3. The current Board of Directors of NSX is also subject to these provisions of the TORA.

[74] *See* proposed NSX By-Laws, section 3.3(a). The current By-Laws of NSX permit the vacant director position to be filled by an independent director or a proprietary member director.

[75] *See* proposed NSX By-Laws, section 3.3(b). The current By-Laws of NSX permit the vacant director position to be filled by an independent director or a proprietary member director.

[76] *See* proposed NSX By-Laws, section 3.6.

[77] *See* proposed NSX By-Laws, section 3.7(a). NSX states that this provision is consistent with, and expands upon, the current By-Laws of NSX.

[78] Under section 10.5(a) of the proposed By-Laws of Holdings, the power to vote the stock of NSX held by Holdings would be in the CEO of Holdings, unless the Holdings Board instructs otherwise or unless the Holdings Board or the CEO of Holdings confers such power on another person.

[79] 15 U.S.C. 78f(b)(3).

[80] *See* proposed NSX By-Laws, section 3.5.

Director nominees.[81] NSX states that, under the Holdings By-Laws, the person with the power to vote the stock of NSX held by Holdings must vote to elect the ETP Holder Director candidates nominated in accordance with the foregoing procedure.[82]

(iv) Committees

The NSX Board would have the following committees: (1) A Business Conduct Committee; (2) a Securities Committee; (3) an Appeals Committee; (4) a Governance and Nominating Committee; (5) an ETP Holder Director Nominating Committee; (6) a Regulatory Oversight Committee; (7) a Compensation Committee; (8) an Executive Committee; and (9) an Audit Committee.[83] The NSX Board may establish other committees from time to time. Each committee would have the authority and responsibilities prescribed for it in the NSX By-Laws, the rules of the Exchange, or by the NSX Board.[84]

The Chairman of the NSX Board would appoint, and may remove, the members of the committees, subject to the approval of the NSX Board.[85] Each committee must have at least 3 members.[86] The Executive Committee would have the powers that the NSX Board delegates to it, except the power to change the membership of, or fill vacancies in, the Executive Committee.[87] The ETP Holder Director Nominating Committee would have the power to approve and submit names of candidates for election to the position of ETP Holder Director in accordance with the NSX By-Laws.[88] The Regulatory Oversight Committee shall oversee all of the regulatory functions and responsibilities of NSX and advise the NSX Board on regulatory matters.[89] The Regulatory Oversight Committee's duties and responsibilities are outlined in its charter. NSX states that the Regulatory Oversight Committee's charter following demutualization would be the same as the charter previously filed with the Commission, and is consistent with the terms of the Order.[90]

(v) Management

The officers of NSX would be a CEO, a President, a Chief Regulatory Officer, a Secretary, and a Treasurer, and such other officers as the NSX Board may determine.[91] Any two or more offices may be held by the same person, except that the Chief Regulatory Officer and the Secretary may not be the CEO or the President.[92] The Chairman of the NSX Board, subject to approval of the NSX Board, may designate one or more officers or other employees of NSX to serve as an Arbitration Director, who would perform or delegate all ministerial duties in connection with matters submitted for arbitration pursuant to the rules of NSX.[93]

(vi) Self-Regulatory Function and Oversight

As noted above, following the demutualization NSX would continue to be registered as a national securities exchange under section 6 of the Act and thus would continue to be an SRO.[94] The Exchange states that, as an SRO, NSX would be obligated to carry out its statutory responsibilities, including enforcing compliance by ETP Holders with the provisions of the federal securities laws and the applicable rules of NSX. Further, NSX states that it would retain the responsibility to administer and enforce the rules that govern NSX and the activities of its ETP Holders. In addition, NSX states that it would continue to be required to file with the Commission, pursuant to section 19(b) of the Act[95] and Rule 19b–4 thereunder,[96] any changes to its rules and governing documents. The Exchange states that the structural protections adopted by NSX pursuant to the Order to ensure that NSX's regulatory functions are independent from the commercial interests of NSX and its members would remain in effect following demutualization.

NSX states that, like the proposed Holdings By-Laws, the proposed NSX By-Laws contain specific provisions relating to the self-regulatory function of NSX.[97] For example, the proposed NSX By-Laws require the NSX Board to consider applicable requirements under Section 6(b) of the Act in connection with the management of the Exchange.[98] In addition, meetings of the NSX Board and of the committees of NSX that pertain to the self-regulatory function of NSX must be closed to persons who are not members of the NSX Board or NSX officers, staff, counsel, or other advisors whose participation is necessary or appropriate to the self-regulatory function of NSX, or representatives of the Commission.[99]

[81] Under section 3.5(e) of the proposed NSX By-Laws, each ETP Holder, regardless of its affiliation with other ETP Holders, will have one vote with respect to each ETP Holder Director position to be filled, but may not cast such votes cumulatively. NSX states that, these nomination provisions are generally consistent with the current By-Laws of NSX. Under the current By-Laws of NSX, independent directors are nominated by the Nominating Committee subject to approval by the Board of Directors of NSX. The CBOE directors are elected by the Board of Directors of CBOE at its January meeting or as soon thereafter as possible. The current By-Laws of NSX also contain a procedure for proprietary member director nominations, whereby one proprietary member director candidate is nominated by the Nominating Committee and additional proprietary member director candidates may be nominated by a petition signed by ten percent or more of the proprietary members. At an annual election during the annual meeting of members, the proprietary members vote for the proprietary member directors among the nominated candidates.

[82] Under section 10.5(b) of the proposed By-Laws of Holdings, the person with power to vote the stock of NSX held by Holdings must vote for the ETP Holder Directors and CBOE Directors nominated in accordance with the proposed NSX Certificate of Incorporation and NSX By-Laws.

[83] *See* proposed NSX By-Laws, section 5.1. NSX states that, under the current By-Laws of NSX, the standing committees of NSX are a Membership Committee, a Business Conduct Committee, a Securities Committee, an Appeals Committee, a Nominating Committee, and a Regulatory Oversight Committee.

[84] *See* proposed NSX By-Laws, sections 5.1 and 5.3.

[85] Under section 5.2 of the proposed NSX By-Laws, the terms of committee members are subject to the appointment and removal process of the Chairman and NSX Board. Under the current By-Laws of NSX, terms of committee members expire at the regular meeting of the Board of Directors of NSX after the corresponding annual election meeting, except for members of the Nominating Committee whose stated term is 1 year.

[86] *See* proposed NSX By-Laws, section 5.2. This provision is consistent with the current By-Laws of NSX.

[87] *See* proposed NSX By-Laws, section 5.5. This provision is consistent with the current By-Laws of NSX.

[88] *See* proposed NSX By-Laws, section 5.7.

[89] *See* proposed NSX By-Laws, section 5.6.

[90] *See* Securities Exchange Act Release No. 34–52573 (October 7, 2005), 70 FR 60113 (October 14, 2005) (File No. SR–NSX–2005–07).

[91] *See* proposed NSX By-Laws, section 6.1. Under the current By-Laws of NSX, the officers of NSX are a Chairman of the Board, President, Secretary, Treasurer, and such other officers as may be appointed by the Board of Directors of NSX.

[92] *See* proposed NSX By-Laws, section 6.1. Under the current By-Laws of NSX, the Secretary may not hold either the office of Chairman of the Board or President.

[93] *See* proposed NSX By-Laws, section 6.6. NSX states that this provision is consistent with the current By-Laws of NSX.

[94] *See* 15 U.S.C. 78c(a)(26).

[95] 15 U.S.C. 78s(b).

[96] 17 CFR 240.19b–4.

[97] *See* proposed NSX By-Laws, Article X.

[98] *See* proposed NSX By-Laws, section 10.1. Section 6(b) of the Act requires, among other things, that the Exchange's rules be designed to protect investors and the public interest. It also requires that the Exchange be so organized that it has the capacity to carry out the purposes of the Act and to enforce compliance by its members with the Act, the rules and regulations promulgated thereunder, and the rules of the Exchange.

[99] *See* proposed NSX By-Laws, section 10.2. In addition, the Exchange states that members of the Holdings Board who are also not members of the NSX Board and any officers, staff, counsel, or advisors of Holdings who do not hold similar positions with respect to NSX would not be allowed to participate in any meeting of the NSX Board (or any committee of NSX) that pertains to the self-regulatory function of NSX. NSX states that these requirements and the requirements relating to the confidentiality of records are not, however, designed to prevent the Exchange from sharing with Holdings the type of information about the Exchange's business that would ordinarily be

Further, the NSX books and records reflecting confidential information relating to the self-regulatory function of NSX must be kept confidential, must not be used for non-regulatory purposes, and must not be made available to any person other than those directors, officers, and agents of NSX to the extent necessary or appropriate to properly discharge NSX's self-regulatory responsibilities, and the books and records of NSX must be maintained in the U.S.[100] The proposed NSX By-Laws also provide that any revenues received by NSX from fees derived from its regulatory function or regulatory penalties must be applied to fund the legal and regulatory operations of NSX or to pay restitution and disgorgement of funds intended for NSX customers, and may not be used to pay dividends.[101]

(vii) Restrictions on Ownership and Transfer

Although there are no percentage-based restrictions on the ownership of NSX, the proposed NSX Certificate of Incorporation confirms that Holdings will own all of the voting stock of NSX at all times.[102]

(viii) Changes to Certificate of Incorporation and By-Laws

Under the proposed NSX Certificate of Incorporation, any change to that document must first be approved by the NSX Board and, if required to be approved or filed with the Commission before it may become effective, cannot take effect until the procedures of the Commission necessary to make it effective have been satisfied.[103]

Similarly, under the proposed NSX By-Laws, any change to that document that is required to be approved by or filed with the Commission before it may become effective cannot take effect until the procedures of the Commission necessary to make it effective have been satisfied.[104] Changes to the NSX By-Laws as proposed may be made by either the stockholders of NSX or the NSX Board, except that certain provisions relating to the NSX Board, and to the voting of NSX stockholders may not be changed without the approval of the stockholder of NSX.[105]

(c) Other Provisions in the Certificates of Incorporation and By-Laws

The proposed Holdings By-Laws, Holdings Certificate of Incorporation, NSX Certificate of Incorporation, and NSX By-Laws contain other customary provisions of for-profit corporations, such as provisions relating to corporate offices and corporate purposes;[106] director meetings, voting, removal, compensation and limitation of liability;[107] indemnification of, and insurance for, directors, officers, employees and agents, and advancement of expenses related to defending certain actions;[108] stock certificate procedures;[109] stockholder ownership, including provisions relating to the timing and conduct of meetings, record dates, quorum requirements, proxies, and other matters;[110] and other general provisions.[111] These provisions are designed to reflect current and customary corporate practices.

(2) National Market System Plans

NSX currently is a participant in various National Market System ("NMS") plans, including, but not limited to, the Consolidated Tape Association Plan, the Consolidated Quotation System Plan, the Intermarket Trading System Plan, the Intermarket Surveillance Group, and the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP") Plan. These plans are joint industry plans entered into by SROs for the purpose of addressing last sale reporting, quotation reporting, and intermarket equities trading. Following the completion of the demutualization, NSX, in its continuing role as the SRO, would continue to serve as the voting member of these NMS plans, and a representative of NSX would continue to serve as the Exchange's representative with respect to dealing with these plans.

(3) Equity Trading Permits; Administrative Changes

The proposed rule change includes proposed changes to the Rules of the Exchange that are necessary to implement the proposed ETP structure. As noted above, following NSX's demutualization, persons and firms who have been qualified for membership pursuant to the Exchange's current Rules and By-Laws and, as a result, have access to the Exchange's trading facilities would receive ETPs entitling them to maintain their trading access to NSX and would be referred to as ETP Holders. The Exchange proposes to replace references to "members," "member organizations," and similar terms in the current Rules of the Exchange with references to "ETP Holders" and similar terms in the NSX Rules.

The Exchange states that each ETP would constitute a revocable license allowing the holder of the permit access to the Exchange's trading facilities in the same manner as previously authorized for NSX's qualified trading members.[112] The demutualization and the implementation of the use of ETPs would not change current NSX member access to the Exchange or their ability to execute transactions. NSX states that persons holding ETPs of NSX would be "members" of the Exchange for

shared with a parent corporation, including information relating to the Exchange's compliance with applicable laws, reports from the Commission or others evaluating the Exchange's self-regulatory programs, and information about the trading activities and business strategies of the Exchange's ETP Holders.

[100] *See* proposed NSX By-Laws, section 10.3.

[101] *See* proposed NSX By-Laws, section 10.4.

[102] *See* proposed NSX Certificate of Incorporation, Article Fourth. Under the current By-Laws of NSX, certificates of proprietary membership may be sold to a person whose application for proprietary membership in NSX has been approved by NSX only if the owner of the certificate has paid in full all obligations to the Exchange and certain claims of creditors who are members of the Exchange. In addition, a registered national securities exchange may purchase, hold or sell certificates of proprietary membership only with approval of the Board of Directors of NSX.

[103] *See* proposed NSX Certificate of Incorporation, Article Eleventh.

[104] *See* proposed NSX Certificate of Incorporation, Article Seventh.

[105] *See* proposed NSX Certificate of Incorporation, Article Seventh and proposed NSX By-Laws, section 8.1. Under the current By-Laws of NSX, changes to the By-Laws may be proposed by any member of the Board of Directors of NSX by resolution or ⅓ of the proprietary members by petition. The NSX Board then determines whether to approve submission of the proposed change to the proprietary members for their approval. In addition, consistent with the current By-Laws of NSX, sections 3.1(b) and 8.2 of the proposed NSX By-Laws permit the NSX Board to amend, repeal, and adopt new Rules of the Exchange.

[106] See proposed NSX Certificate of Incorporation, Articles Second and Third, and proposed NSX By-Laws, Article II; see proposed Holdings Certificate of Incorporation, Articles Second and Third, and proposed Holdings By-Laws, Article I.

[107] *See* proposed NSX Certificate of Incorporation, Articles Fifth and Eighth, and proposed NSX By-Laws, Article III and Section 7.1; see proposed Holdings Certificate of Incorporation, Articles Sixth and Ninth, and proposed Holdings By-Laws, Article II and section 7.1.

[108] *See* proposed NSX By-Laws, Article VII, and proposed Holdings By-Laws, Article VII. In addition, under these provisions, neither corporation is liable for any loss or damage sustained by a current or former member of NSX or ETP Holder relating to such person's use of the facilities of the Exchange or its subsidiaries.

[109] *See* proposed NSX By-Laws, Article IX, and proposed Holdings By-Laws, Article IX.

[110] See proposed NSX Certificate of Incorporation, Article Ninth, and proposed NSX By-Laws, Article IV; See proposed Holdings Certificate of Incorporation, Article Tenth, and proposed Holdings By-Laws, Article IV.

[111] *See, for example,* proposed NSX Certificate of Incorporation, Article Tenth, and proposed NSX By-Laws, Article XI; *See, e.g.*, proposed Holdings Certificate of Incorporation, Article Eleventh, and proposed Holdings By-Laws, Article X.

[112] See proposed NSX Rules, Chapter II, Rules 2.1 and 2.2, and proposed NSX Rules, Chapter I, Rule 1.5 (definition of "ETP").

purposes of the Act and, as noted above, will be characterized as ETP Holders subject to NSX's regulatory jurisdiction.[113] ETP Holders would not have any ownership interest in NSX or in Holdings by virtue of their ETPs.

NSX proposes to move the provisions of the current By-Laws of NSX relating to members to a single chapter in the NSX Rules regarding ETP Holders, with certain changes based upon the fact that ETP Holders would be subject to modestly different application processes and would not have to purchase and own a certificate of proprietary membership.[114] Following the demutualization, the Exchange states that it would require persons seeking ETPs to complete appropriate application materials and registration forms, satisfy regulatory requirements, and pay processing charges and application fees as designated by the Exchange. NSX states that this process of applying for an ETP immediately following demutualization would be substantially similar to the current membership application process, except that ETP Holders would not be required to be approved by NSX's Membership Committee, ETP Holders would be subject to the financial responsibility requirements of Rule 15c3–1 under the Act (but would not be subject to a separate net capital requirement), and ETP applicants would not need to purchase shares of either NSX or Holdings.[115]

The Exchange states that, once issued, an ETP would be effective until voluntarily terminated by the ETP Holder or until revoked by NSX for, among other things, noncompliance with the NSX Rules.[116] NSX would have the ability to revoke an ETP for the same reasons that it is currently entitled to revoke a membership.[117] An ETP could not be sold, leased, or otherwise transferred.[118] There would be nominal processing charges and application fees relating to the issuance of ETPs. In addition, ETP Holders would be subject to such fees as are designated by NSX or set forth in the NSX Rules.[119]

NSX also proposes to move certain other provisions of the current By-Laws of NSX respecting listing standards and other matters not relating to the Exchange's corporate governance to the NSX Rules. For example, the Exchange proposes to move the provisions contained in Article IV of the current By-Laws of NSX (relating to Securities Listed on the Exchange) to a new Chapter XV of the NSX Rules. NSX also proposes to move Rules 13.6 and 13.7 (relating to Listing Standards) to this new Chapter XV of the NSX Rules.[120]

Finally, NSX proposes to include a new Rule 2.10 that would prohibit, without prior Commission approval, either (i) NSX or any NSX affiliate from directly or indirectly acquiring or maintaining an ownership interest in an ETP Holder, or (ii) an ETP Holder being or becoming an affiliate of NSX or any affiliate of NSX. Under proposed Rule 2.10 the term "affiliate" has the meaning specified in Rule 12b–2 of the Act. Proposed Rule 2.10 would not prohibit any ETP Holder or its affiliate from acquiring or holding an equity interest in Holdings that is permitted by the ownership and voting limitations in the Holdings Certificate of Incorporation, and would not prohibit an ETP Holder or an officer, director, manager, managing member, partner, or affiliate of an ETP Holder being or becoming an ETP Holder Director or an At-Large Director on the NSX Board, or a member of the Holdings Board.[121]

2. Statutory Basis

NSX believes the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations promulgated thereunder that are applicable to a national securities exchange, and in particular, with section 6(b) of the Act.[122] NSX believes that the proposal, as amended, is consistent with section 6(b)(5) of the Act[123] in that it would create a governance and regulatory structure of the Exchange that is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange states that it remains committed to its role as a national securities exchange and does not believe that the proposed change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as described above, the Exchange believes that it has proposed specific provisions in the proposed Holdings By-Laws and the proposed NSX By-Laws that reinforce the ability of the Exchange to perform its self-regulatory functions.

Moreover, the Exchange states that it is not proposing any significant changes to its existing operational and trading structure in connection with the demutualization. Instead, NSX represents that the proposed rule change, as amended, primarily consists of: organizational changes to the NSX Articles of Incorporation and By-Laws reflecting the changes in governance and corporate form; and rule changes that are necessary to implement the new NSX ETP structure, which would replace the existing structure of Exchange memberships as a basis for trading rights. The Exchange believes that the proposed rule change is consistent with governance changes approved by the Commission for other demutualized exchanges and does not serve to erode the principles articulated in the Commission's recent governance release.[124]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[113] *See* proposed NSX Rules, Chapter I, Rule 1.5 (definition of "ETP Holder").

[114] NSX states that, currently, applicants for membership are required to purchase and own a certificate of proprietary membership in order to become a member of NSX. *See* Article II, section 5.2 of the current By-Laws of NSX. NSX states that all outstanding certificates of proprietary membership would be cancelled in connection with the demutualization, and no other certificates of proprietary membership would be issued by NSX following the demutualization.

[115] *See* proposed NSX Rules, Chapter II. The Exchange states that applicants for membership currently must purchase and own a certificate of proprietary membership of NSX in order to become an NSX member.

[116] *See* proposed NSX Rules, Chapter II, Rules 2.6 and 2.7.

[117] *See* proposed NSX Rules, Chapter II, Rule 2.6.

[118] *See* proposed NSX Rules, Chapter II, Rule 2.8.

[119] *See, generally* NSX Rules, Chapter XI, Rule 11.10(B).

[120] In addition, NSX also proposes to move to the NSX Rules, and make technical changes to, certain provisions under the current By-Laws of NSX relating to Exchange Membership (Article II), Dues, Assessments and Other Charges (Article III), Securities Listed on the Exchange (Article IV), Commissions (Article XI) and Off-Exchange Transactions (Article XII).

[121] *See* Amendment No. 1, *supra* note 3.

[122] 15 U.S.C. 78f(b)

[123] 15 U.S.C. 78f(b)(5).

[124] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (File No. S7–39–04).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2006–03 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–NSX–2006–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2006–03 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[125]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6637 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53710; File No. SR–PCX–2006–10]

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Granting Approval to Proposed Rule Change Relating to Trade Shredding

April 24, 2006.

I. Introduction

On February 3, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to trade shredding.[3] The proposed rule change was published for comment in the **Federal Register** on March 20, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend its rules governing the NYSE Arca Marketplace, the equities trading facility of the NYSE Arca Equities, Inc., to prohibit the practice of splitting orders into multiple smaller orders for any purpose other than seeking the best execution of the entire order.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] particularly section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[6] The Commission believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PCX–2006–10), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–6640 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10454]

California Disaster #CA–00031 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 4/25/2006.

Incident: Severe mudslide.

Incident Period: 3/26/2006 and continuing.

Effective Date: 4/25/2006.

EIDL Loan Application Deadline Date: 1/25/2007.

ADDRESSES: Submit completed loan applications to: 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,

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[125] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Exchange filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect the recent acquisition of PCX by Archipelago Holdings, Inc. ("Archipelago") and the merger of the NYSE with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect the aforementioned rule change.

[4] *See* Securities Exchange Act Release No. 53469 (March 10, 2006), 71 FR 14045.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Mateo.

Contiguous Counties: California: Alameda, San Francisco, Santa Clara, Santa Cruz.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 104540.

The States which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: April 25, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–6644 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10428 and #10429]

Missouri Disaster Number MO–00002

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1631–DR) , dated 3/16/2006.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 3/8/2006 and continuing through 3/13/2006.

Effective Date: 4/25/2006.

Physical Loan Application Deadline Date: 5/15/2006.

EIDL Loan Application Deadline Date: 12/15/2006.

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 President's major disaster declaration for the State of Missouri, dated 3/16/2006, is hereby amended to re-establish the incident period for this disaster as beginning 3/8/2006 and continuing through 3/13/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–6643 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10439]

Oregon Disaster Number OR–00012.

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1632–DR), dated 3/20/2006.

Incident: Severe storms, flooding, landslides, and mudslides.

Incident Period: 12/18/2005 through 1/21/2006.

Effective Date: 4/20/2006.

Physical Loan Application Deadline Date: 5/19/2006.

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 President's major disaster declaration for Private Non-Profit organizations in the State of Oregon, dated 3/20/2006, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Yamhill.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–6646 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10322 and #10323]

Texas Disaster Number TX–00097

AGENCY: Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1624–DR), dated 1/11/2006.

Incident: Extreme wildfire threat.

Incident Period: 11/27/2005 and continuing.

Effective Date: 4/25/2006.

Physical Loan Application Deadline Date: 4/30/2006.

EIDL Loan Application Deadline Date: 10/11/2006.

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 President's major disaster declaration for the State of Texas, dated 1/11/2006, is hereby amended to re-establish the incident period for this disaster as beginning 11/27/2005 and continuing.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–6645 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, the staff of the U.S. Small Business Administration, and interested others. The conference call is scheduled for Tuesday, May 16, 2006 at 2 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss items for their next White Paper for the AA/OSBDC, and the timeframes and logistics for a California site visit to the San Diego and Los Angeles SBDC networks.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration,

Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–6691 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; U.S. Small Business Administration Region VI Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, May 16, 2006, at 9 a.m. The meeting will take place at the South West Texas Border—Small Business Development Center, University of Texas at San Antonio, 501 West Durango Boulevard, Durango Building, Room #2.316, San Antonio, TX 78207–4415. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Lucille Maldonado, in writing or by fax, in order to be put on the agenda. Lucille Maldonado, Public Information Officer, SBA, San Antonio District Office, 17319 San Pedro, Suite 200, phone (210) 403–5921, Ext. 374, fax (202) 481–4288, e-mail: *lucille.maldonado@sba.gov*.

For more information, see our Website at *http://www.sba.gov/ombudsman*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–6693 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration (SBA) Advisory Committee on Veterans Business Affairs, pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), will hold a public meeting beginning on Tuesday, May 9, 2006, until Wednesday, May 10, 2006. The meeting will be held at the U.S. Small Business Administration located at 409 3rd Street SW., Washington, DC 20416. The meeting will start at 9 a.m. until 5 p.m., in the Eisenhower Conference Room, 2nd Floor.

The purpose of the meeting is to focus on procurement opportunities and outreach services for the veterans and service disabled veterans.

Anyone wishing to attend must contact Cheryl Clark, Program Liaison, in the Office of Veterans Business Development, at (202) 205–6773, or e-mail *Cheryl.Clark@sba.gov*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–6692 Filed 5–2–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 14, 2006

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–24489.
Date Filed: April 11, 2006.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 482—Resolution 010i, TC3 Japan—Korea, Special Passenger Amending Resolution between Japan and Korea (Rep. of),
Intended effective date: 1 May 2006.

Docket Number: OST–2006–24490.
Date Filed: April 11, 2006.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR Mail Vote 484. Special Amending Resolution 010k between Luxembourg and Europe.
Intended effective date: 1 June 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–6661 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: DOT intends to establish a system of records under the Privacy Act of 1974.

SUMMARY: The Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires that agencies that maintain a system of records publish a notice in the **Federal Register** of the existence and character of the system. In accordance with the Privacy Act, DOT is giving notice of a system of records to enhance its ability to manage information sharing and employee access to various information systems of its Federal Highway Administration (FHWA).

DATES: *Effective Date:* This notice will be effective, without further notice, on June 12, 2006, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by June 2, 2006 to be assured consideration.

ADDRESSES: Send comments to James Kabel, Privacy Officer, Department of Transportation, Federal Highway Administration, 400 7th Street, SW., Room 4428, Washington, DC 20590 or *James.Kabel@fhwa.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Cheryl Ledbetter, Department of Transportation, Federal Highway Administration, HAIM–42, 400 7th Street, SW., Washington, DC 20590, (202) 366–9030 (voice), (202) 366–9030 (fax), or *Cheryl.Ledbetter@fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION: DOT intends to establish a system of records that will enable the FHWA to adequately monitor and identify possible unauthorized access incidents or security breaches of FHWA's electronic systems.

DOT/FHWA 219

SYSTEM NAME:

User Profile and Access Control System (UPACS).

SECURITY CLASSIFICATION:

Sensitive, Unclassified.

SYSTEM LOCATION:

This system is located in the Federal Highway Administration (FHWA), Office of Information and Management Services, 400 7th Street SW., Room 4331, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Employees and contractors of DOT's FHWA and Federal Motor Carrier Safety Administration, State DOT employees and contractors who require access to UPACS for their job duties, as well as other external users with specific needs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records may include user's general profile information that identifies the user, *i.e.*, name, work address, work email address, and the full Social Security Number for FHWA employees, user's application rights records, State, organization and routing symbol records, application information, log and session records and user-base review records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Managers Financial Integrity Act of 1982 as codified in 31 U.S.C. 3512.

PURPOSES:

The User Profile and Access Control System (UPACS) is the security control system that manages user authentication and associated access rights for individuals needing entry into any of FHWA's applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Respond to user complaints; (2) reply to user feedback comments; (3) manage access to restricted applications; (4) manage access rights to information within an application; (5) provide information to any person(s) authorized to assist in an approved investigation of improper access or usage of FHWA computer systems; (6) provide access to other government agencies when required by law; and (7) fulfill requests for reports and other similar information. These reports would be generated for auditing purposes and consist of the following information (any combination thereof): user account approvals and removals, account transfers, failed login attempts, locked passwords and PINs, all resets of passwords and PINs, after-hour activity, a user's successful or unsuccessful access and what FHWA application the user has accessed. See also the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All UPACS data is stored on a secure FHWA server. Database tables are setup to detect unauthorized access. FHWA employees and contractors who have access to UPACS information must protect sensitive FHWA data residing on any media, such as tapes, disks, and printouts. UPACS information is provided to only those who have a need to know and access to the information is controlled by the user's level of access rights.

RETRIEVABILITY:

These records of access may be retrieved by a user's name or Social Security Number.

SAFEGUARDS:

Access to the system of records is restricted to authorized users.

Each user is granted access with his or her user name and security password. The user privileges of each user are based on his or her assigned access rights. User access to sensitive data is granted only to limited individuals with the approval of FHWA management.

RETENTION AND DISPOSAL:

The records in this system of records are retained and disposed of in accordance with the approved records disposition schedules in FHWA Order M 1324.1A, Files Management and Records Disposition Manual.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Information and Management Services, Federal Highway Administration, 400 7th Street, SW., Room 4423, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Write to the System Manager.

RECORD ACCESS PROCEDURES:

Write to the System Manager. Provide full name and a description of the information that you seek, including the time frame during which the records may have been generated. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

Write to the System Manager. Identify the information being contested, the reason for contesting it, and the correction being requested. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 CFR 10.37).

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from users when they register for or change UPACS profile information and when they access different applications through UPACS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OMB CONTROL NUMBER:

None.

Kara Spooner,

Departmental Privacy Officer.

[FR Doc. E6–6510 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–24307]

ITS Program Advisory Committee to the Secretary of Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to form an advisory committee.

SUMMARY: Pursuant to section 5305(h) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), the Secretary of Transportation, acting through the Acting Administrator of the Federal Highway Administration, is establishing an advisory committee to advise the Secretary on carrying out the Department of Transportation's Intelligent Transportation System (ITS) Program. The purpose of this notice is to invite interested parties to submit comments on the issues to be discussed, and submit the names of organizations and participants to be considered for representation on the committee.

DATES: You should submit your comments or nominations for membership on the committee on or before June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Freitas, Managing Director, ITS Joint Program Office, (202) 366–9292; Ms. Robin Fields, Office of the Chief Counsel, (202) 366–4099; or Mr. Wil Baccus, Office of the Chief Counsel, (202) 366–1396; 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://*

www.archives.gov and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments and we recommend that you periodically check the Docket for new material.

Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Title V, Subtitle C, section 5305(h) mandates the establishment of an ITS Program Advisory Committee.

A. Notice of Intent To Establish an Advisory Committee and Request for Comment

In accordance with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App II, section 1, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to indicate the Department's intent to create a Federal advisory committee, under FACA, in order to invite interested parties to submit comments on ITS issues to be considered by the committee and to submit the names of organizations and participants to be considered for representation on the committee.

B. Name of Committee

ITS Program Advisory Committee to the Secretary of Transportation.

C. Purpose and Objective

The ITS Program Advisory Committee to the Secretary of Transportation (ITSAC–OST) will advise the Secretary of the Department of Transportation by:

1. Providing input into the development of the Intelligent Transportation System aspects of the strategic plan under section 508 of title 23, United States Code; and

2. Reviewing, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine—

(i) Whether these activities are likely to advance either the state-of-the practice or state-of-the art in intelligent transportation systems;

(ii) Whether the intelligent transportation system technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and

(iii) The appropriate roles for government and the private sector in investing in the research and technologies being considered.

ITSAC–OST does not exercise program management or regulatory development responsibilities and makes no decisions directly affecting the programs on which it provides advice. ITSAC–OST provides a forum for the development, consideration, and communication of information from a knowledgeable and independent perspective.

D. Balanced Membership Plans

According to section 5305(h) of SAFETEA–LU, the ITSAC–OST shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum—

(1) A representative from a State highway department;

(2) A representative from a local highway department who is not from a metropolitan planning organization;

(3) A representative from a State, local, or regional transit agency;

(4) A representative from a metropolitan planning organization;

(5) A private sector user of intelligent transportation system technologies;

(6) An academic researcher with expertise in computer science or another information science field related to intelligent transportation systems who is not an expert on transportation issues;

(7) An academic researcher who is a civil engineer;

(8) An academic researcher who is a social scientist with expertise in transportation issues;

(9) A representative from a nonprofit group representing the intelligent transportation system industry;

(10) A representative from a public interest group concerned with safety;

(11) A representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

(12) Members with expertise in planning, safety, and operations.

This document gives notice of this process to potential participants and affords them the opportunity to request representation on the ITSAC–OST. The procedure for requesting such representation is set out below. In addition, comments and suggestions for potential participants are invited.

The Department is aware that there are many more potential organizations and participants than there are membership slots on the committee. Organizations and participants should be prepared to support their participation on the committee.

It is very important to recognize that interested parties who are not selected to membership on the committee can make valuable contributions to the work of the ITSAC–OST in any of several ways. The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate. Any member of the public could attend the committee meetings, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

(1) The name of the applicant or nominee and the interest(s) identified in Section 5305(h) such person would represent;

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(3) A written commitment that the applicant or nominee would participate in good faith.

Every effort is made to select committee members who are objective. A balance is needed and weight is given to a variety of factors including but not limited to geographical distribution, gender, minority status, organization, and expertise.

F. Duration

Continuing.

G. Notice of Establishment

After evaluating comments received as a result of this notice, the Department will issue a notice announcing the establishment and composition of the committee.

(Authority: Section 5305(h), Public Law 109–59, 119 Stat. 1144)

Issued on: April 28, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E6–6687 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bannock County, Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Bannock County, Idaho.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin B. Johnson, Field Operations Engineer, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho, 83703, Telephone: (208) 334–9180, ext. 116, or Mr. Dennis Clark, Environmental Section Manager, Headquarters, Idaho Transportation Department, P.O. Box 7129 Boise, Idaho 83707–1129, Telephone: (208) 334–8203.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Idaho Transportation Department (ITD), will prepare an Environmental Impact Statement (EIS) for a proposal to provide a new access point along Interstate 15 (I–15) in Bannock County, Idaho. The proposed new access point project area is located between the existing I–86 system interchange (approximate location Mile Post (MP) 72.0), and terminating to the north at approximate MP 75.5 along I–15.

The purpose of this project is to locate a new service type access point to I–15, north of the existing I–86/I–15 system interchange in the Pocatello/Chubbuck metropolitan area located in Bannock County. Rapid residential growth in the northeastern bench and in the northern Chubbuck areas coupled with future commercial development has and will continue to create congestion and safety concerns at the existing interstate access points at the I–86/US 91 Chubbuck Interchange and at the I–15/Pocatello Creek Road Interchange, creating the need for this project.

This project will enhance access and cross-freeway mobility, improve traffic operations within the corridor, and provide safe and efficient movement of people, goods and services while giving full consideration to local roads as primary transportation corridors. This project is needed because congestion and safety concerns are rising within the project corridor and travel times for local and through traffic have increased. These conditions have arisen from increased and projected regional travel demand due to planned community growth, limited local city street connectivity to and across I–15, and mobility limitations at existing interchanges.

Seven enhancement concepts are under consideration, including: (a) Taking a no-build action, (b) applying enhanced Transportation Systems and Transportation Demand Management methods to the existing local roads, (c) constructing one of five build action options which include: a new service interchange near the 2-1/2-mile overpass; a new service interchange connecting with Tyhee Road; a new interchange connection with Siphon Road; and two different new interchange options at the existing Chubbuck Road Overpass.

Letters describing the proposed action and soliciting comments and input will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens. A series of public meetings will be held in the Chubbuck/Pocatello area. A scoping meeting and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for both public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or ITD at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

Issued on April 25, 2006.

Stephen A. Moreno,

Division Administrator, Boise, Idaho.

[FR Doc. 06–4130 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23239]

Proposed Improvements to the Motor Carrier Safety Status (SafeStat) Measurement System

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes improvements to its Motor Carrier Safety Status (SafeStat) Measurement System algorithm. The SafeStat system analyzes current and historical safety performance and compliance information to rank the relative safety fitness of commercial motor carriers. SafeStat enables FMCSA to quantify and monitor trends in the safety status of individual motor carriers. FMCSA focuses compliance review and roadside inspection resources on carriers posing the greatest potential safety risk. The proposed improvements are intended to make the algorithm more effective in identifying motor carriers posing a high crash risk.

DATES: Submit comments on or before July 3, 2006.

ADDRESSES: You may submit comments on the proposed changes through the SafeStat Online section of FMCSA's Analysis & Information Online Web site: *http://ai.fmcsa.dot.gov/SafeStat/SafeStatMain.asp.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 305, Pittsburgh, PA 15222. Telephone 412–395–4816. E-mail *bryan.price@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION: SafeStat is an automated, data-driven analysis system designed by FMCSA. It combines current and historical carrier-based safety performance information to measure the relative (peer-to-peer) safety fitness of interstate commercial motor carriers and intrastate commercial motor carriers that transport hazardous materials. This information includes Federal and State data on crashes and roadside inspections, on-site compliance review results, and enforcement history. SafeStat enables FMCSA to quantify and monitor the safety status of individual motor carriers on a monthly basis, and thereby focus compliance review and roadside inspection resources on carriers posing the greatest potential safety risk.

SafeStat can be accessed through the SafeStat Online portion of FMCSA's A&I Online Web site: *http://ai.fmcsa.dot.gov/SafeStat/SafeStatMain.asp*. The Agency has proposed improvements to the SafeStat system that would simplify the Accident Safety Evaluation Area (SEA), increase the relevance of moving violations in the Driver SEA, include in the Vehicle SEA vehicle out-of-service violations from inspections marked as driver-only, and shorten the data exposure time period considered by SafeStat from 30 months to 24 months. The proposed changes are also consistent with FMCSA's Comprehensive Safety Analysis 2010 (CSA 2010) reform initiative. The ultimate goal of CSA 2010 is development of an optimal operational model that will allow FMCSA to focus its limited resources on improving the performance of high-risk operators. For more information about CSA 2010, visit *http://www.fmcsa.dot.gov/safety-security/safety-initiatives/csa2010listening.htm*.

Revisions to the SafeStat system are exempt from notice and comment under the Administrative Procedure Act because they are both matters "relating to agency management" and "general statements of policy, or rules of agency * * * procedure, or practice" under 5 U.S.C. 553(a)(2) and (b)(A), respectively. Nonetheless, FMCSA encourages the public to review the details of the proposed SafeStat improvements by accessing SafeStat Online, and to submit comments directly to the Web site. The Agency will give careful consideration to all comments received, and provide appropriate notice regarding the changes to its safety measurement system at *http://ai.fmcsa.dot.gov/SafeStat/SafeStatMain.asp*.

Issued on: April 24, 2006.

William A. Quade,

Acting Associate Administrator, Enforcement and Program Delivery.

[FR Doc. E6–6647 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–23636]

Notice of Clarification of Effective Date for Guidance on New Starts Policies and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of clarification.

SUMMARY: This notice clarifies the effective date set forth in the notice of availability and request for comments for the Guidance on New Starts Policies and Procedures published on January 19, 2006, in the **Federal Register**. The Proposed Guidance on New Starts Policies and Procedures did not become effective on April 30, 2006, as stated in the January 19, 2006 notice. FTA will publish an additional notice in the **Federal Register** before new requirements are to become effective.

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or *Ronald.Fisher@fta.dot.gov*.

SUPPLEMENTARY INFORMATION: In the notice of availability for the proposed Guidance on New Starts Policies and Procedures issued on January 19, 2006 (71 FR 3149), FTA noted that the proposed changes "will become effective April 30, 2006." With today's notice, FTA seeks to clarify that none of the changes in the proposed Guidance on New Starts Policies and Procedures became effective on April 30, 2006. Further, none of those changes shall otherwise become effective until FTA publishes notice in the **Federal Register**, in accordance with the applicable requirements of 49 U.S.C. 5334(1), responding to comments received and explaining any changes, if appropriate, to the proposed guidance based on those comments.

Issued in Washington, DC this 27th day of April, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–4165 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in the VISA program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Approval is currently extended through September 30, 2007, as published in the **Federal Register** on September 23, 2005 (70 FR 55947).

As implemented, the VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. While tug/barge operators must own or bareboat charter barges committed to the VISA program, it is not required that these operators commit tug service through bareboat charter or ownership arrangements. Time charters of U.S.-flag tugs will satisfy tug commitments to the VISA program. However, participation in the VISA program is not satisfied by tug commitment only. Tug/barge VISA participants must commit capacity of at least one barge to the VISA program. Voyage and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration (MARAD), U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for prenegotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III will provide for additional capacity to the DOD when Stage I and II commitments or volunteered capacity

are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

VISA Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate in the program. Approved participants' VISA contingency contracts will coincide with the DOD contracting cycle of October 1, 2006 through September 30, 2007. This is the ninth annual enrollment period since the commencement of the VISA program. The annual enrollment was initiated because VISA has been fully integrated into DOD's priority for award of cargo to VISA participants. It is necessary to link the VISA enrollment cycle with DOD's peacetime cargo contracting cycle.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than May 31, 2006. Applicants must provide copies of loadline documents from a recognized classification society to validate oceangoing vessel capability, and U.S. Coast Guard Certificates of Documentation for all vessels in their fleet. If vessels are bareboat chartered or time chartered (applicable to tugs only) by the applicant, charter agreements should be provided along with the application. Bareboat charter and time charter agreements must, at a minimum, be valid from the time of application through September 30, 2007. Bareboat charter agreements must also state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to VISA program for the duration of the charter. Approved VISA participants will be responsible for assuring that information submitted with their application remains up to date beyond the approval process. Any changes to VISA commitments must be reported to MARAD and USTRANSCOM not later than seven days after the change. If charter agreements are due to expire, participants must provide MARAD with charters that extend the charter duration for another 12 months or longer.

Alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for the award of DOD peacetime cargo. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for DOD peacetime contracts during the time frame of October 1, 2006 through September 30, 2007. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

Because enrollment of carriers in the VISA program provides DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, DOD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

- U.S.-flag vessel capacity operated by VISA participants, and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.
- U.S.-flag vessel capacity operated by non-participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participants

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. The term "operator" is defined in the VISA document as "an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided". Applicants wishing to become participants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and that vessels are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. While vessel brokers, freight forwarders and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers, freight forwarders and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. Participants operating vessels in international trade and desiring to bid on DOD peacetime contracts will be required to provide commitment levels to meet DOD-established Stages I and/or II minimum percentages of the participant's militarily useful, oceangoing U.S-flag international trading fleet capacity on an annual basis. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation. During enrollment, each participant may choose a compensation methodology which is commensurate with risk and service provided. The compensation methodology selection will be completed with the appropriate DOD agency.

Enrollment

New applicants may enroll by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the **Federal Register** on September 23, 2005 will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. 12102, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program. As previously mentioned, VISA applicants must return the completed VISA application documents to MARAD not later than May 31, 2006. Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

After VISA eligibility is approved by MARAD and USTRANSCOM, approved applicants are required to execute a joint VISA Enrollment Contract (VEC) with the DOD [Military Surface Deployment and Distribution Command (SDDC) and the Military Sealift Command (MSC)] which will specify the participant's Stage III commitment for the period October 1, 2006 through September 30, 2007. Once the VEC is completed, the applicant completes the DOD contracting process by executing a Drytime Contingency Contract (DCC) with MSC (for Charter Operators) and if applicable, a VISA Contingency Contract (VCC) with SDDC (for Liner Operators). MARAD reserves the right to revalidate all eligibility requirements without notice.

For Additional Information and Applications Contact: Taylor E. Jones II, Director, Office of Sealift Support, U.S. Maritime Administration, Room 7307, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2323: Fax (202) 366–3128. Other information about the VISA can be found on MARAD's Internet Web Page at *http://www.marad.dot.gov.*

(Authority: 49 CFR 1.66)

Dated: April 28, 2006.

By Order of the Acting Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6680 Filed 5–2–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34864]

BNSF Railway Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railroad Company

The Kansas City Southern Railroad Company (KCS) has agreed to grant temporary overhead trackage rights to BNSF Railway Company (BNSF) over KCS's trackage between Jefferson, TX, and Metro, TX, a total distance of 200.9 miles.

The transaction is scheduled to be consummated on May 15, 2006. The temporary trackage rights will be effective: (1) From May 15, 2006, through May 24, 2006; (2) from May 31, 2006, through June 9, 2006; and (3) from June 15, 2006, through June 22, 2006, and will expire on June 22, 2006. The purpose of the temporary rights is for bridging BNSF's train service while BNSF's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34864, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 27, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–6656 Filed 5–2–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 27, 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 June 2, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1979.

Type of Review: Extension.

Title: Energy Efficient New Home Credit.

Form: IRS 8908.

Description: Contractors will use Form 8908 to claim the new energy efficient home credit for homes substantially completed after August 8, 2005 and sold for use as personal residences after January 1, 2006.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 512,820 hours.

OMB Number: 1545–1380.

Type of Review: Extension.

Title: (IA–17–90) (Final) Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require reporting on form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade

or business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 283,056 hours.

OMB Number: 1545–1974.

Type of Review: Extension.

Title: Profit and Loss from Business.

Form: IRS 1040.

Description: Schedule C (Form 1040) is used by individuals to report their business income, loss, and expenses. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 103,702,448 hours.

OMB Number: 1545–1516.

Type of Review: Revision.

Title: Entity Classification Election.

Form: IRS 8832.

Description: An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.

Respondents: Business or other for-profit; Farms.

Estimated Total Burden Hours: 23,200 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.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–6658 Filed 5–2–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Consideration of a Proposed Treasury Securities Lending Facility

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: The Department of the Treasury ("Treasury") is considering whether it should make available an additional, temporary supply of Treasury securities on rare occasions when market shortages threaten to impair the functioning of the market for Treasury securities and broader financial markets, and, if so, how Treasury should accomplish this. This document is intended as a vehicle to facilitate public discussion. Treasury has not taken any position on the basic question of whether it should establish a securities lender of last resort facility (SLLR), or, if it does so, how Treasury should implement such a facility.

DATES: Comments must be in writing and received by August 11, 2006.

ADDRESSES: Please submit comments to Treasury's Office of Debt Management, Attention: Jeff Huther, Director, Office of Debt Management, Room 2412, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Because postal mail may be subject to processing delay, we recommend that comments be submitted by electronic mail to: *debt.management@do.treas.gov.* All comments should be captioned with "Comments on Securities Lending Facility." Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. All comments received will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, please call the number below.

FOR FURTHER INFORMATION CONTACT: Jeff Huther, Director, Office of Debt Management, 202–622–2630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Introduction[1]

A safe, liquid and highly efficient U.S. Treasury securities market is an invaluable national asset. Treasury securities play a key role in financial markets as risk-free assets, and the extraordinary liquidity in the Treasury market has also led to a role for Treasury securities as pricing benchmarks for a broad array of private financial assets. Moreover, market participants can execute and manage large positions in the Treasury market with relatively low costs, making Treasury securities the instruments of choice for many in managing interest rate risk. Market participants are willing to pay a premium price for these special attributes of Treasury securities, which in turn allows the U.S. government to borrow at the lowest possible cost over time.

Confidence in the safety and liquidity of the Treasury market is supported by the efficient settlement and clearing of Treasury transactions. This underscores the importance of safeguarding, and enhancing where possible, a well-functioning Treasury market. The Treasury market generally operates very well—but there have been a few instances in which market functioning has been impaired by forces such as attempted market manipulation, catastrophic operational disruptions, and complications associated with historically low short-term interest rates. Some of these episodes have been associated with elevated levels of settlement fails as outsized demands for particular Treasury securities have outstripped the available supply.[2, 3] Adverse market outcomes in these cases have included one or more of the following—distorted prices in the Treasury cash, derivative and collateral markets, and deterioration in dealers' market-making activities. Left unaddressed, such developments could pose risks to efficient Treasury market functioning and result in higher borrowing costs for the U.S. Treasury.

In August of 2005, Treasury announced at its Quarterly Refunding that it had concluded that the concept of a backstop securities facility warranted further consideration, and indicated that further advice from market participants would be sought on this idea. At subsequent Quarterly Refundings, Treasury indicated that it was continuing to study the desirability of a standing, nondiscretionary securities lending facility. This concept was also discussed at meetings of the Treasury Borrowing Advisory Committee in August and November, 2005.

To assist in further consideration of this issue, Treasury is publishing this notice to seek comment on the question

[1] This notice was prepared by the staff of the Office of Debt Management, U.S. Department of the Treasury, in consultation with the staff of the Markets Group, Federal Reserve Bank of New York. It has benefited greatly from comments provided by colleagues in the Division of Monetary Affairs at the Board of Governors of the Federal Reserve System.

[2] Settlement failures occur when the party selling a security fails to deliver the security on the agreed upon settlement date. Settlement failures occur for a variety of reasons including errors and miscommunications. These failures, often called frictional failures, are small and are generally resolved quickly. Larger, more chronic fails can occur due to wide-scale operational disruptions. In addition, under current market conventions, the costs incurred by market participants in failing to deliver securities fall with the level of the market repo rate. The potential for chronic fails episodes thus increases in a very low interest rate environment such as that prevailing during the summer of 2003.

[3] In the collateral market, market participants borrow securities by lending funds against Treasury collateral, typically through the use of repurchase agreements. At the inception of the transaction, the dealer "borrows" the security and lends funds at the repo rate. When the transaction matures, the security is returned and the loan is repaid with interest. Although sometimes described in economic terms as a collateralized loan, a repurchase agreement consists of a purchase of securities, followed by a sale at the unwind of the transaction.

of whether establishment by Treasury of an SLLR would be an appropriate response to the potential threat of financial market duress described above. Assuming that an SLLR was seen as an appropriate response, we further seek comment on how we could accomplish this goal. Treasury has not taken any position on whether a SLLR would be beneficial, or, if so, the way in which an SLLR should be structured or implemented. In order to focus the discussion, however, and to solicit meaningful reaction and comments, this notice also outlines one potential structure for an SLLR.

To foster discussion and feedback on these basic questions, the notice identifies some important policy considerations underlying these questions. Section 2 begins by discussing basic issues associated with chronic settlement fails and also notes some of the related history of past proposals to establish a securities lending facility. Section 3 contains some basic lender of last resort principles that might apply to the design of a securities lending facility. Section 4 summarizes some of the potential benefits and costs of a SLLR. Section 5 then outlines one of several possible structures for a prototype SLLR and evaluates many critical design features, and section 6 addresses legislative changes that may be needed and other implementation issues. Section 7 concludes with a summary of critical questions for public comment. We invite comment on any and all aspects of this notice.

2. Chronic Settlement Fails

When settlement fails become acute and protracted, the smooth functioning of the Treasury market is undermined. Such episodes can lead to increased and unintended credit exposures, and can also hamper efforts by investors to liquidate positions. In these circumstances, resources are diverted from productive activities to the monitoring, controlling and clearing of unsettled trades.[4] Protracted acute fails may also shake investors' confidence in the safety and liquidity of U.S. Treasury securities at precisely those moments when bolstering public confidence is most needed. In such situations, the reliability and effectiveness of Treasuries in their benchmark and risk management roles could be compromised, with potential adverse spillover effects on the functioning of broader capital markets. This was precisely the situation encountered in the second half of 2003, when persistent and chronic settlement fails plagued the May 2013 ten-year note.[5]

The risk of acute and protracted settlement fails could potentially be alleviated by a temporary increase in the supply of Treasury securities. While market participants may be able to implement changes in market conventions that improve the availability of securities in high demand, only the U.S. Treasury can increase the aggregate supply of securities.[6] There are other options available to Treasury to address impaired Treasury market liquidity, including permanently increasing supply through a reopening or, in some cases, the issuance of a Large Position Report.[7] However, these options may be limited in their effectiveness, disruptive to Treasury's "regular and predictable" issuance patterns and costly to Treasury's commitment to stability of supply.[8] The 1992 Joint Report on the Government Securities Market identified a SLLR as a preferred option to reopenings in addressing acute supply shortages. The report states that "the securities lending approach has some significant advantages over auctions and taps. It would be a temporary measure to deal with a temporary market problem. It provides for a better possibility for the Treasury to capture some of the pricing anomaly and thus in effect make money for the taxpayer. Finally, like a tap, it is a more flexible approach than auctions to ending a squeeze."[9]

3. Objectives and Principles

We anticipate that the structure and operation of a securities lender of last resort would embody many of the basic objectives and principles that underlie traditional lender of last resort facilities. Fundamentally, a well-designed SLLR would act as a form of "catastrophe" insurance in the Treasury market—in normal circumstances, its impact would be minimal, but it would play an important role in mitigating the impact of very rare but potentially very costly events that weaken investor confidence and threaten the overall functioning of the Treasury and broader financial markets. Consistent with this broad objective, we anticipate that the design of a prototype SLLR could incorporate a few key principles listed below.

- The SLLR would provide additional, temporary supply on rare occasions when market shortages threaten to impair the functioning of the Treasury and broader financial markets.

The SLLR would be intended to act only as a backup source for Treasury securities during the rare episodes in which Treasury market liquidity and functioning has become impaired. The terms and conditions should ensure that program usage is confined only to those instances in which markets are not operating normally.

- Usage of the SLLR would be determined by market forces rather than Treasury discretion.

Crisis events can occur with little or no warning, and administrative discretion in determining whether the SLLR should be available could result in delayed access and in speculative uncertainty about its availability. The pricing of Treasury securities would be less certain in this environment and policymakers could be perceived as acting in an arbitrary or capricious manner or engaging in favoritism. (We note that such concerns led the U.K. Debt Management Office to establish a non-discretionary securities lending facility.)[10] In addition, a transparent

[4] Garbade, Kenneth, D. and John B. Kambhu, *"Why Is the U.S. Treasury Contemplating Becoming a Lender of Last Resort for Treasury Securities?,"* Federal Reserve Bank of New York, Staff Reports, No. 223, October 2005, revised April 2006.

[5] For a detailed discussion of this episode, see Fleming, Michael J. and Kenneth D. Garbade, *"Repurchase Agreements with Negative Interest Rates,"* Federal Reserve Bank of New York, Current Issues in Economic and Finance, Volume 10, Number 5, April 2004.

[6] Garbade and Kambhu (2005/2006) posit that "forestalling chronic settlement fails by introducing a lender of last resort of Treasury securities is conceptually similar to forestalling systemic bank suspensions by introducing a lender of last resort of money." Pg. 2.

[7] Under 15 U.S.C. 78o–5(f), Treasury may require persons holding or controlling large positions in certain Treasury securities to report their positions for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions.

[8] Following the post 9/11/2001 reopening of the August 2011 ten-year note in October 2001, then-Treasury Under Secretary Peter Fisher made it clear that reopening securities on an *ad hoc* basis to address shortages was not something that would be utilized frequently to address shortages because of the impact on borrowing costs. In remarks to the Futures Industry Association on March 14th 2002, US Fisher stated "* * * the unscheduled reopening of the 10-year note last October was undertaken because of concerns about the long-term consequences of systemic failure in our credit markets—even though the uncertainty it engendered may have added to our borrowing costs in the short run. For that reason, unscheduled reopenings will remain the exception—*the exceedingly rare exception*."

[9] See Department of the Treasury, Securities Exchange Commission and Board of Governors of the Federal Reserve System, *The Joint Report on the Government Securities Market* (January 1992). The report also identified other options and stated that there were advantages and disadvantages of each option.

[10] The U.K. Debt Management Office obtained the authority to lend securities in the late 1990s. However, market participants were unsure about the criteria that would inform the DMO's decisions to influence the supply of securities in this way, and this uncertainty was a source of concern. To address such concerns, the DMO proposed a non-discretionary facility in 1999 that was implemented

Continued

program that is driven objectively by market forces would be in keeping with the Treasury's commitment to a "regular and predictable" debt management policy.

• The availability of the SLLR should strengthen investor confidence in the continued safety, liquidity and efficiency of Treasury markets.

In many cases, the potential for a substantial decline in market liquidity can be self-fulfilling—market participants fearing a deterioration in market conditions may pull back from market activities such as securities lending, thereby exacerbating the situation. An effective SLLR should work to prevent this by bolstering confidence among market participants that an additional, transparent supply of highly sought after securities would be available.

4. Potential Benefits and Costs of Proposed SLLR

Market analysts have observed a number of possible benefits and costs that might be associated with an SLLR. Among the potential benefits, an effective SLLR might bolster overall Treasury market liquidity, even in normal circumstances, by insuring against extreme shortages of particular securities. Moreover, an SLLR could contribute to greater confidence during a financial crisis by assuring investors that additional supply of scarce Treasury securities will be available in periods of extreme market disruption. If this effect were significant, the SLLR could be an effective crisis management tool.[11] Finally, by guarding against widespread settlement fails, a SLLR could substantially reduce expected operational and regulatory costs associated with settlement of Treasury transactions.

Weighing against these possible benefits, some observers have pointed to the potential for significant adverse market effects. In particular, some have argued that a SLLR could contribute to moral hazard by effectively "bailing out" investors with short positions. The increase in moral hazard, in turn, might contribute to excessive risk-taking in markets. In addition, some have pointed to the potential for a SLLR to be "gamed" by market participants in a way that would be detrimental to investor confidence and that could impair the overall functioning of the Treasury cash and repo markets. Such an outcome would ultimately feed back in higher borrowing costs for the U.S. Treasury. An even broader conceptual question is whether there is a clearly-defined weakness in the market structure sufficient to warrant the involvement and intervention of the Federal Government in the market through a SLLR, and whether such an intervention would undermine or reduce private sector incentives to better (and perhaps more efficiently) resolve the issues that the SLLR is intended to address.

Quantifying the potential benefits and costs associated with a SLLR is inherently difficult. Other countries have implemented securities lending facilities, apparently without significant adverse effects. On the other hand, the level of activity in the U.S. Treasury market dwarfs that in other sovereign debt markets, so drawing inferences from the experience of other countries on this point may not be appropriate.

5. One Possible Structure—Terms, Conditions and Other Operational Details

The critical design features for the SLLR are the basic distribution mechanism and the various terms and conditions of securities loans, including rate, maturity, and delivery conventions. A number of other parameters, such as eligible borrowers, available securities, borrowing mechanics and transparency, collateral valuation, margins and rights of substitution, borrowing limits, and reporting and administrative criteria are also important. Each of these design features is discussed in greater detail below.

The terms and conditions that are presented below are not being recommended by Treasury and are being provided solely as a vehicle for more focused comment and discussion. Treasury has found in conversations with market participants and the public that a "straw man" model is extremely useful in eliciting views that are ultimately applicable to any of the many possible models on which an SLLR could be structured. The substantial detail presented in this particular SLLR model should not be construed as an endorsement by Treasury of either the general concept of implementing an SLLR, or, of this model.

• Distribution Mechanism: Auctions versus Fixed-Rate (Price) Standing Facility.

Securities borrowed from the SLLR could either be fixed in quantity with the rate set through an auction or fixed in rate with the quantity determined by the borrower. However, only a fixed-rate standing facility would ensure that the needed supply of Treasury securities would be available to all eligible borrowers. This construct seems to be most in line with the concept of "lender of last resort," allowing market participants to borrow as much supply as needed to resolve acute and protracted settlement fails.

• Rate, Maturity, Delivery and Reporting Options.

As noted above, these parameters should be set in a such a way that borrowing from the SLLR would be a viable option during rare periods of severe market stress but would be viewed as too expensive in normal market conditions. This could likely be achieved through an appropriate combination of the rate, maturity, delivery, and disclosure conventions.

The SLLR could make securities available at an implied rate of zero percent. The implied zero percent repo rate could be achieved by charging a lending fee equal to the appropriate term general collateral repo rate.[12] The lending fee alone should limit borrowing from the SLLR to only those cases when the market repo rate for a particular security has fallen to zero. The use of the SLLR could be even more narrowly targeted by suitable specifications of the term of the loan

in June of the following year. Under the terms of the facility, eligible institutions could borrow securities at any time. However, the securities were made available at a penalty rate that effectively discouraged borrowing except in those cases when market conditions were extremely tight or disrupted. Since its inception, the non-discretionary facility has been utilized quite infrequently and reportedly has had little, if any, adverse impact on the normal operations in the gilt cash, repo, and futures markets.

[11] When faced with unprecedented levels of settlement fails that persisted for weeks after the 9/11 terrorist attacks, the Treasury Borrowing Advisory Committee "overwhelmingly felt that Treasury should expand their ability to enhance liquidity in the Treasury market. To accomplish this, they could set up a repo facility to help alleviate protracted shortages, in particular, large and persistent fails when for some reason emergency reopenings, large position reporting, and debt buybacks do not work." *Report of the Treasury Borrowing Advisory Committee (October 30, 2001).*

[12] The lending fee would need to be set so as to guarantee the absence of arbitrage in the case with an assumed specials rate of zero for a security borrowed from the SLLR. For example, suppose the SLLR extended one-week term loans with a one-week forward start. In this case, a dealer could reverse in general collateral securities today for two weeks and earn the general collateral two-week term repo rate. The general collateral securities could then be financed for one week at the one-week general collateral rate. After one week had passed, the general collateral securities would be returned to the dealer and they could then be pledged at the SLLR in return for scarce securities. The securities borrowed from the SLLR could then be financed, by assumption, for one week at zero percent. The lending fee in this case would need to be set equal to the one-week forward one-week general collateral rate to guarantee the absence of arbitrage profits. As an operational matter, the discussion here suggests that specifying the appropriate lending fee would likely require calculations based upon regular quotes of general collateral repo rates across a range of maturities.

and a delayed delivery convention. For example, all SLLR loans might be offered for a fixed term with a standard forward delivery. Requiring that borrowers enter into a term securities loan with an implied zero percent repo rate and a forward settlement date would likely limit borrowing from the SLLR to periods of severe market disruption when the market repo rate was expected to remain at zero for some time and widespread settlement failures were expected to persist for an extended period. A forward settlement date would further discourage strategic use of the facility in implementing short-run trading strategies.

It is possible that fairly lengthy term and settlement periods—perhaps a one-week term with a T+5 settlement convention—might be required to limit usage only to scenarios in which markets are severely disrupted. Alternatively, shorter-term loans with maturities of a day or two and with next-day or skip-day settlement might be adequate. Input from market participants concerning appropriate settings for the term of SLLR loans and the forward delivery convention would be particularly useful.

A final element under the terms of borrowing concerns reporting requirements. It may well be desirable to require borrowers to report their daily cash, repo, and futures positions, and fails to deliver and receive in the security borrowed over an interval bracketing the period of borrowing. Reporting of this type would be another factor that would discourage use of the SLLR during normal market conditions and could also be useful in guarding against possible inappropriate uses of the facility.

• Collateral.

The SLLR would lend securities on a bond-for-bond basis, meaning that to borrow securities from the facility, a borrower would have to pledge other Treasury securities of equal market value, plus a margin, as collateral. A bond-for-bond facility structure would not affect the Treasury's cash position, which simplifies cash management for Treasury and open-market operations for the Federal Reserve.

It likely would be desirable to allow institutions to substitute collateral while borrowing from the SLLR. If collateral substitution capabilities were especially important to market participants, the SLLR might include a tri-party arrangement in which a collateral custodian would handle the back office work in tracking frequent collateral substitutions over the term of a SLLR loan.

• Available Securities.

The range of securities available through the SLLR could be defined in a number of ways. At one end of the spectrum, the SLLR could stand ready to lend additional supply for any outstanding CUSIP number. That structure would tend to address the inherent difficulties in anticipating future problems that could arise. On the other hand, many of the market problems faced in the past have involved recently-issued nominal coupon securities. This might suggest that the program could be limited to on-the-run and once-off-the-run securities. Input from market participants about the appropriate range of available securities would be quite valuable.

• Borrowing Mechanics and Public Transparency.

All borrowing requests would be submitted to the Federal Reserve Bank of New York (FRBNY) in its capacity as fiscal agent for the United States Government. As with other Treasury and Federal Reserve operations, the aggregate daily volume of borrowing requests by CUSIP would be made public promptly and well before the loans are settled.

Prompt disclosure would be critical to ensure that market participants with direct access to the facility do not gain a significant information advantage over those without direct access.[13] In particular, market participants would need to know how the temporary supply of an outstanding security would change in order to make informed trading and investment decisions. In addition, prompt disclosure should help to dispel bond market rumors about potential borrowing from the SLLR that might otherwise add to financial market volatility. The names of individual borrowers would be kept strictly confidential.

• Eligible Borrowers.

The complexity of collateralized bond-for-bond borrowing and the anticipated infrequent use of the SLLR suggest the need to limit the group of counterparties to a manageable number. For example, direct participation might be limited to primary dealers as designated by FRBNY. Primary dealers play a critical role in making markets for Treasury securities and maintain active trading relationships with FRBNY. Market participants who wished to obtain securities from the SLLR could place their order through a primary dealer.[14] This should not represent a significant disadvantage to those entities lacking direct access to the facility. The SLLR borrowing rate would be known to the entire market and competition among primary dealers should ensure that other market participants would be able to tap the SLLR through a primary dealer at a minimal cost. Moreover, details on the usage of the SLLR (the total amount of borrowing for each security) would be publicly available.

• Collateral Margin and Valuation.

As noted above, one of the basic options for the SLLR involves the provision of term securities loans. In the interest of protecting the Treasury from credit risk, only Treasury securities would be accepted as collateral. The amount of Treasury collateral required from a borrower could also include a margin to protect the Treasury from the risk that the market value of the pledged securities might fall below the value of the borrowed securities.

Protecting the Treasury could be enhanced by marking-to-market the value of the collateral each day. If the market value of the collateral including the margin were to fall below the market value of the borrowed securities, a margin call could be made to the borrower to provide more collateral and reestablish the margin. Conversely, if the market value of the collateral were to change in the borrower's favor, excess collateral could be released to the borrower.

• Borrowing Limitations.

It may be prudent to place some limitations on the total amount of securities that any one participant could borrow. Policymakers might have some concern, for example, about the motivations and financial circumstances of a market participant wishing to borrow enormous amounts of a particular security. A per-issue limit could be set in such a way that the aggregate amount of securities available from the SLLR would be adequate to resolve or substantially mitigate any market disruption.

• Rollovers/Loan Extensions.

Under conditions of severe market dislocations, borrowers may be unable to return borrowed securities to the Treasury on the closing leg of the lending transaction. In these circumstances, imposing harsh penalties for fails back to the Treasury would run counter to the intent of the program; market participants in this case would

[13] Even with prompt disclosure, borrowers may have an information advantage. They will certainly know that aggregate quantity will rise before it is disclosed to the public. Dealers submitting bids for others as well as themselves arguably would have the greatest information advantage.

[14] This structure would be analogous to that employed during 2000–2001 when the Treasury conducted buyback operations. Non-primary dealers that wished to participate in such operations placed their bids through primary dealers.

find it advantageous to fail to private counterparties in their efforts to avoid failing back to the Treasury, potentially exacerbating the fails situation that the SLLR would be intended to address. For this reason, it might be reasonable to treat fails back to Treasury in the same manner that fails among private counterparties are treated. The original loan could be extended on a daily basis at a zero percent rate with the lending fee thus set equal to the overnight general collateral repo rate.

6. Legislative, Regulatory, and Implementation Issues

Beyond determining the structure for the proposed SLLR, there are a number of issues that would need to be addressed prior to implementation, including statutory changes concerning the Treasury's borrowing authority, debt limit accounting, and the tax treatment of borrowed securities. Each of these is considered in more detail below.

- Authority to Issue Securities for the Purpose of Securities Lending.

Although this paper describes the proposed transactions of the SLLR as "lending," Treasury would actually be issuing additional securities for a temporary period of time. The Secretary of the Treasury ("Secretary") is authorized under Chapter 31 of Title 31, United States Code, to issue Treasury securities and to prescribe terms and conditions for their issuance and sale. The Secretary is authorized to borrow amounts necessary for expenditures authorized by law and may issue securities for the amounts borrowed, and may also issue securities to buy, redeem or refund outstanding securities. These authorities do not appear to encompass the activities of the proposed SLLR. As a result, Treasury would likely need to pursue new authority to issue securities for the purpose of securities lending in order to implement an SLLR.

- Debt Limit Treatment.

Treasury would also need to consider the implications of issuing additional securities, even on a temporary basis, on the debt subject to limit. A bond-for-bond SLLR may not provide a one-for-one offset accounting treatment for debt limit purposes. Under the current debt limit treatment, the par amount of the debt pledged as collateral to the facility could partially or fully offset the par amount of the securities that are lent. However, because the SLLR would likely use the market value of the collateral to determine the market value of borrowed and margined securities, to the degree that market values and par values differ, there would not be a one-for-one debt limit accounting offset in a bond-for-bond SLLR structure. For example, if all securities trade close to their par values, borrowing at the SLLR would tend to reduce the debt subject to the limit because the par value of securities pledged as collateral (including the margin) would tend to exceed the par value of securities borrowed. However, if the market value of pledged securities were substantially above par value, borrowing from the SLLR would likely increase the debt subject to limit. Given this uncertainty, Treasury might need to suspend the SLLR lending activity during the period leading up to debt-limit increases unless there is a legislative change to the current debt limit treatment.

- Tax Treatment.

Some tax issues would need to be addressed. For example, to ensure that Treasury securities borrowed from the lending facility are fully fungible with the outstanding securities, both the outstanding securities and the securities borrowed from the facility would have to be treated for Federal tax purposes as being part of the same issue. It may be necessary to seek legislation regarding this treatment.

7. Conclusion

As noted at the outset, maintaining a safe, efficient, and liquid Treasury market is a critical public policy objective. Treasury is seeking comments on whether a well constructed SLLR might provide low cost insurance against certain types of market disruptions during times of financial market crisis. An ideal facility would rarely be utilized, but would be available to mitigate strains in the Treasury market and in broader financial markets. As noted above, there are potential costs to be considered as well, including possible increases in moral hazard and the risk of significant gaming of the facility.

Public input in evaluating and designing a SLLR is essential and we invite comment on any aspect of the proposed facility, including whether it should be established at all. Treasury takes no position on whether a SLLR should be established or, if such a facility were established, how it should be structured. In this regard, comments focusing on potential benefits and costs associated with a SLLR together with an overall assessment of the desirability of establishing a SLLR would be particularly useful. In addition, comments on the various facets of the proposed structure, including various terms and conditions and other operational details, would also be most welcome.

Emil W. Henry, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. E6–6639 Filed 5–2–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (FSC)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each existing collection in use without an OMB control number, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain customers satisfaction on Financial Services Center (FSC) business process and system features.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Rachel A. Moffitt, Office of Management, Financial Services Center (104/BDD), Department of Veterans Affairs, 1615 Woodward Street, Austin, TX, 79772–001 or e-mail *rachel.moffitt@mail.va.gov*. Please refer to "OMB Control No. 2900–New (FSC)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Rachel A. Moffitt at (512) 460–5310 or fax to (512) 460–5117.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed

collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: FSC Product Line Survey.

OMB Control Number: 2900–New (FSC).

Type of Review: Existing collection in use without an OMB control number.

Abstract: Financial Services Center conducts annual surveys to evaluate customer satisfaction on various products and services. FCS data will use the data to improve FSC business practices and customer services.

Affected Public: Federal Government.

Estimated Annual Burden: 42 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 500.

Dated: April 25, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–6697 Filed 5–2–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VDBCS)]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). VA is requesting an emergency clearance for the Veterans' Disability Benefits Commission Survey regarding disability rating system for veterans and their survivors.

DATES: Comments must be submitted on or before June 2, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (VDBCS). Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to "2900–New (VDBCS).

SUPPLEMENTARY INFORMATION:

Title: Veterans' Disability Benefits Commission Survey.

OMB Control Number: 2900–New (VDBCS).

Type of Review: New Collection.

Abstract: The data collected on the Veterans' Disability Benefits Commission Survey will be used to determine whether disabled veterans and their survivors are properly compensated for their loss of quality of life under the current disability rating system. VA will use the data collected to develop an overall measure of disabled veterans and their survivors' quality of life and to modify existing policies already in place for implementing service-connected disability rating scale.

Affected Public: Individuals or households and Not-for-Profit-Institutions.

Estimated Total Annual Burden: 12,703 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 24,739.

Dated: April 21, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–6703 Filed 5–2–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
May 3, 2006

Part II

The President

Federal Register
Vol. 71, No. 85
Wednesday, May 3, 2006

Presidential Documents

Title 3—

The President

Proclamation 8009 of April 28, 2006

Older Americans Month, 2006

By the President of the United States of America

A Proclamation

Older Americans represent the finest qualities of our Nation. During Older Americans Month, we honor our older citizens, celebrate their many accomplishments, and learn from their experiences.

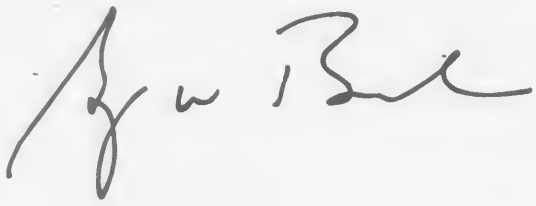
Across our country, older Americans are demonstrating personal strength and compassion and are redefining the experience of aging. They are leading active lives, serving in their communities, and reaching out to their fellow Americans. Through organizations like Senior Corps, they are mentoring children, helping victims of natural disasters, and caring for citizens with disabilities. Their good works are changing the lives of many individuals and contributing to the strength of America.

This year's theme, "Choices for Independence," reflects the importance of our citizens making retirement, lifestyle, and health choices that enhance their quality of life as they grow older. My Administration is committed to strengthening senior programs and ensuring the health and retirement security of older Americans. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provides for the biggest improvement in health care for our seniors in nearly 40 years. In addition, the Medicare Prescription Drug Benefit, Medicare Part D, is helping seniors receive the prescription drugs they need at reduced costs.

Our Nation is blessed by our seniors. These individuals teach us lessons of the past, set an example for younger generations, and demonstrate the generosity and love for which Americans are known. This month, I encourage all our citizens to spend time with America's seniors.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2006 as Older Americans Month. I appreciate our senior citizens for their achievements and contributions to our Nation. I also commend the Federal, State, local, and tribal organizations, service and health care providers, caregivers, and volunteers who dedicate their time and talents to our seniors. I urge all citizens to honor their elders and reaffirm our country's commitment to their well-being this month and throughout the year.

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



[FR Doc. 06–4204
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Presidential Documents

Proclamation 8010 of April 28, 2006

Law Day, U.S.A., 2006

By the President of the United States of America

A Proclamation

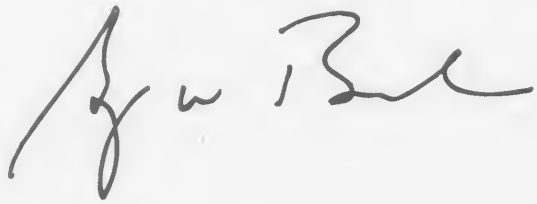
America's legal system is central to protecting the constitutional principles on which our Nation was founded. As we observe Law Day, we celebrate our heritage of freedom, justice, and equality under the law.

This year's Law Day theme, "Liberty Under Law: Separate Branches, Balanced Powers," honors the wisdom of the separation of powers that the Framers of our Constitution established for the Federal Government. Delegates to the Constitutional Convention recognized the risks that accompany the concentration of power and devised a system in which the Federal Government's authorities are divided among three independent branches. James Madison highlighted the importance of our Constitution's separation of powers when he wrote, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny."

Throughout our Nation's history, we have been reminded repeatedly of the wisdom of the Framers' design. Our system of separation of powers has safeguarded our liberties and helped ensure that we remain a government of laws. Law Day is an occasion for us to celebrate our Constitution and to honor those in the judiciary and legal profession who work to uphold and serve its principles.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2006, as Law Day, U.S.A. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

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



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Presidential Documents

Proclamation 8011 of April 28, 2006

Loyalty Day, 2006

By the President of the United States of America

A Proclamation

Our Nation is blessed and bound together by a creed of freedom and equality that is entrusted to all Americans. Preserving the ideals of our founding requires the service and sacrifice of every generation, and on Loyalty Day, we celebrate the gift of liberty and remember our own obligation to this great Nation.

The dedication and selflessness of America's soldiers and their families inspire us all. Some of our Nation's finest men and women have given their lives in freedom's cause. By their sacrifices they have given us a legacy of liberty and brought honor to the uniform, our flag, and our country. The American people are grateful to the brave men and women of our military for their service and we will always stand behind them. I encourage all Americans to learn more about opportunities to thank and support our troops, from sending a care package to writing a message, by visiting www.americasupportsyou.mil.

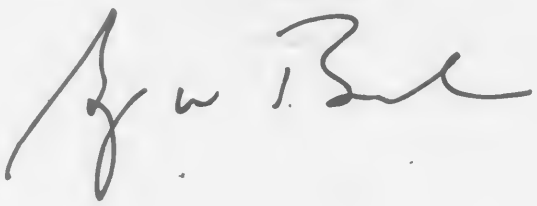
Loyalty Day is also a time for us to reflect on our responsibilities to our country as we work to show the world the meaning and promise of liberty. The right to vote is one of our most cherished rights and voting is one of our most fundamental duties. By making a commitment to be good citizens, flying the American flag, or taking the time to learn about our Nation's history, we show our gratitude for the blessings of freedom.

The greatest strength of America is in the heart and soul of its people, and every time a volunteer reaches out to a neighbor in need, our Nation grows stronger and more hopeful. Thousands of Americans are serving a higher calling by mentoring, coaching, serving in Senior Corps, and by participating in many other programs that enrich lives and help build a better tomorrow. The light of freedom shines brightly because of compassionate people who care about others. Their dedication to a cause greater than self gives all Americans confidence in the future of our Nation.

The Congress, by Public Law 85–529, as amended, has designated May 1 of each year as "Loyalty Day." I ask all Americans to join me in this day of celebration and in reaffirming our allegiance to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 1, 2006, as Loyalty Day. I call upon all the people of the United States to join in support of this national observance, and to display the flag of the United States on Loyalty Day.

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



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Wednesday, May 3, 2006

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FEDERAL REGISTER PAGES AND DATE, MAY

25483–25738..... 1
25739–25918..... 2
25919–26188..... 3

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8007.....25735
8008.....25917
8009.....26183
8010.....26185
8011.....26187

Executive Orders:
12820 (Revoked by EO 13401).....25737
13067 (See EO 13400).....25483
13400.....25483
13401.....25737

7 CFR

305.....25487
319.....25487
1001.....25495
1005.....25495
1006.....25495
1007.....25495
1030.....25495
1032.....25495
1033.....25495
1124.....25495
1126.....25475
1131.....25495
1924.....25739

10 CFR

72.....25740

Proposed Rules:
72.....25782

12 CFR

611.....25919
612.....25919
614.....25919
615.....25919
620.....25919
1412.....25743

14 CFR

39.....25744, 25919, 25921, 25924, 25926, 25928, 25930
97.....25932

Proposed Rules:
39.....25510, 25783, 25785, 25787, 25789, 25793, 25984, 25987

15 CFR

774.....25746

16 CFR

Proposed Rules:
310.....25512

21 CFR

210.....25747

22 CFR

1100.....25934

23 CFR

Proposed Rules:
657.....25516
658.....25516

26 CFR

1.....25747

27 CFR

4.....25748
19.....25752
40.....25752

Proposed Rules:
9.....25795

30 CFR

Proposed Rules:
917.....25989
942.....25992

33 CFR

207.....25502

Proposed Rules:
100.....25523, 25526
151.....25798

36 CFR

Proposed Rules:
Ch. I.....25528
242.....25528

40 CFR

Ch. I.....25504
63.....25753
80.....25706
180.....25935, 25942, 25946, 25952, 25956, 25962

Proposed Rules:
52.....25800
63.....25531, 25802
80.....25727
180.....25993, 26000, 26001

42 CFR

Proposed Rules:
411.....25654
414.....25654
424.....25654

47 CFR

64.....25967
73.....25980, 25981
97.....25981

Proposed Rules:
15.....26004
73.....26006

48 CFR

52.....25507

Ch. 30 25759

49 CFR

Proposed Rules:

27 25544
37 25544
38 25544
541 25803

50 CFR

648 25781
679 ..... 25508, 25781

Proposed Rules:

13 25894
17 26007
23 25894
100 25528
216 25544
660 25558
680 25808

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 3, 2006

AGRICULTURE DEPARTMENT
Forest Service
National Forest System lands; special uses:
Cabin User Fee Fairness Act—
Recreation residence lots appraisal procedures and recreation residence uses management; published 4-3-06
Recreation residences management and fee assessment; published 4-3-06

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; emergency exemptions, etc.:
Dimethenamid-p; published 5-3-06
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin; published 5-3-06
Boscalid; published 5-3-06
Flumioxazin; published 5-3-06
Fomesafen; published 5-3-06
Glufosinate ammonium; published 5-3-06

FARM CREDIT ADMINISTRATION
Farm credit system:
Preferred stock; regulatory capital treatment; published 5-3-06

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Amateur services—
International regulations; published 5-3-06

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Georgia; published 4-3-06
Great Lakes pilotage regulations:
Rate adjustments; published 4-3-06

STATE DEPARTMENT
Federal claims collection standards:
Debt collection procedures; published 4-3-06

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Standard instrument approach procedures; published 5-3-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
National Organic Program:
Organic and nonorganic product use (livestock) Harvey v. Johanns; revisions; comments due by 5-12-06; published 4-27-06 [FR 06-04006]
Olives grown in California; comments due by 5-12-06; published 3-13-06 [FR 06-02367]
Potato research and promotion plan; comments due by 5-8-06; published 3-7-06 [FR 06-02117]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Export programs:
Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Freedom of information and public information:
Meat or poultry product recalls; retail consignees; lists availability; comments due by 5-8-06; published 3-7-06 [FR 06-02125]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands king and tanner crab; comments due by 5-9-06; published 4-24-06 [FR E6-06030]
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, crab, salmon and scallop; comments due by 5-8-06; published 3-22-06 [FR 06-02706]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 5-11-06; published 4-11-06 [FR 06-03468]

COMMODITY FUTURES TRADING COMMISSION
Securities futures products:
Debt securities indexes and security futures on debt securities; application of narrow-based security index definition; comments due by 5-10-06; published 4-10-06 [FR 06-03188]

ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Simplified acquisition procedures financing; comments due by 5-12-06; published 3-13-06 [FR E6-03518]
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors; comments due by 5-8-06; published 3-23-06 [FR 06-02703]
Air programs:
Ambient air quality standards, national—
Exceptional events; data treatment; comments due by 5-9-06; published 3-10-06 [FR 06-02179]
Stratospheric ozone protection—
Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03461]
Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03462]
Essential use allowances allocation; comments due by 5-11-06; published 4-11-06 [FR E6-05329]
Air quality implementation plans:
Preparation, adoption, and submittal—
8-hour ozone national ambient air quality standard; implementation; public hearing; comments due by 5-12-06; published 3-27-06 [FR 06-02909]
Preparation, adoption, submittal—
Corn milling facilities; prevention of significant deterioration, nonattainment new source review; comments due by 5-8-06; published 3-9-06 [FR 06-02148]
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 5-12-06; published 4-12-06 [FR 06-03405]
California; comments due by 5-11-06; published 4-11-06 [FR 06-03401]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethylenediaminetetraacetic acid chemicals; comments due by 5-8-06; published 3-8-06 [FR 06-02106]
Flumiclorac pentyl; comments due by 5-8-06; published 3-8-06 [FR 06-02151]
Spinosad; comments due by 5-8-06; published 3-8-06 [FR 06-01939]
Toxic substances:
Chemicals of interest to Occupational Safety and Health Administration; in vitro dermal absorbtion rate testing requirements; comments due by 5-12-06; published 4-12-06 [FR 06-03491]
Polymer premanufacture notification exemption rule—
Perfluorinated polymers; exclusion; comments due by 5-8-06; published 3-7-06 [FR 06-02152]
Significant new uses—
Perfluoroalkyl sulfonates; comments due by 5-10-06; published 4-10-06 [FR 06-03400]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telephone Consumer Protection Act; implementation; comments

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H.R. 4979/P.L. 109–218

Local Community Recovery Act of 2006 (Apr. 20, 2006; 120 Stat. 333)

Last List April 17, 2006

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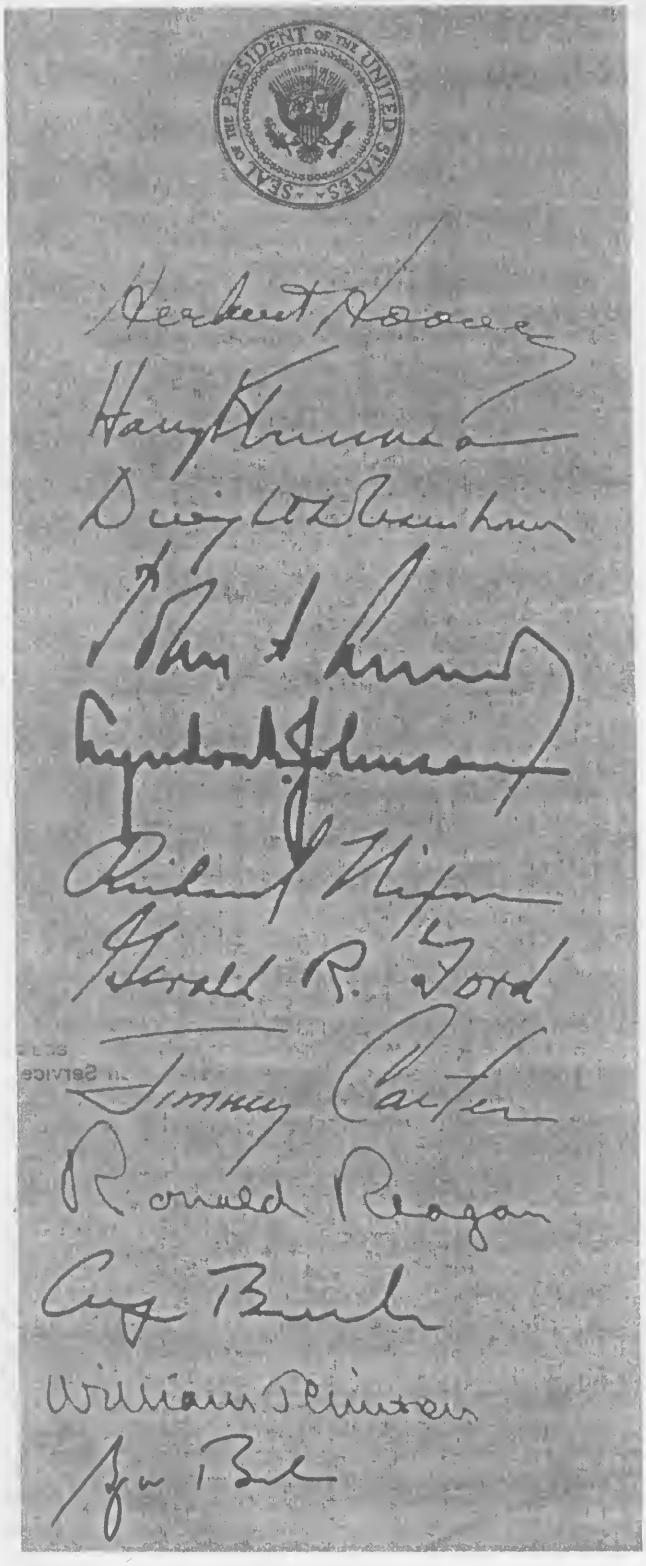

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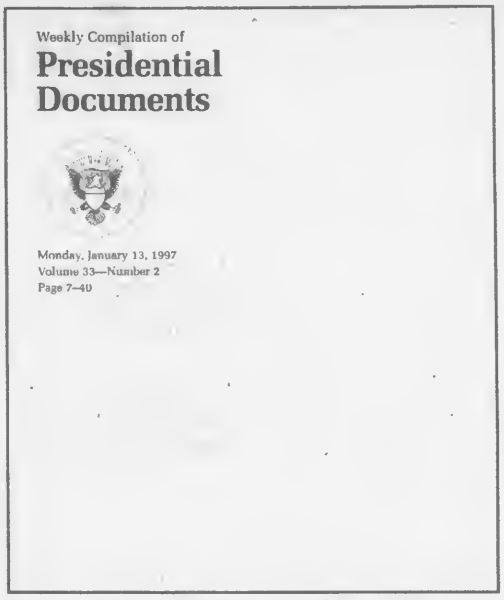

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