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WHEN: Tuesday, December 12, 2006
9:00 a.m.–Noon

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 71, No. 229

Wednesday, November 29, 2006

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
National cooperative research notifications:
Institute of Electrical and Electronics Engineers, 69146

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 69100

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69134

Commerce Department
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Potomac River Generating Station, VA, 69102–69103

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Site remediation, 69011–69022
Air programs:
Ambient air quality standards, national—
Air quality designations and classifications; 8-hour ozone; early action compact areas with deferred effective dates, 69022–69028
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Diflubenzuron, 69028–69033
NOTICES
Pesticide programs:
Risk assessments—
Chloropicrin, 69112–69114
Pesticide registration, cancellation, etc.:
Malathion, 69114–69116
Pentachloronitrobenzene, 69116–69117
Reports and guidance documents; availability, etc.:
National ambient air quality standards for lead; policy assessment of scientific and technical information, 69117–69118

Federal Aviation Administration
RULES
Airworthiness directives:
Air Tractor, Inc.; correction, 68999
Hartzell Propeller Inc., 68999–69009
Stemme GmbH & Co., 68997–68999
Standard instrument approach procedures, 69009–69010
PROPOSED RULES
Airworthiness directives:
Turbomecca, 69083–69085

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69146–69147

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
Public Safety And Homeland Security Bureau; establishment, 69034–69039
Radio frequency devices:
Wi-Fi antenna installation and use within Continental Airlines' lounge at Boston-Logan International Airport, MA, 69052–69054
Radio services; special:
Fixed microwave services—
Rechannelization of the 17.7-19.7 GHz frequency band, 69039–69052
PROPOSED RULES
Common carrier services:
Calling party number rules; waivers, 69094–69096
Regulatory review, 69085–69094
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69118–69125
Common carrier services:
Wireless telecommunications services—
Broadband personal communications services auction; competitive bidding procedures, 69125–69130

Federal Energy Regulatory Commission
NOTICES
Complaints filed:
Long Island Power Authority et al., 69106–69107
Electric rate and corporate regulation combined filings, 69107–69110
Hydroelectric applications, 69110–69111
Meetings:
Electric Quarterly Reports Users Group, 69111–69112
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 69103
CenterPoint Energy Gas Transmission Co., 69103–69104
Destin Pipeline Co., L.L.C, 69104
Eastern Shore Natural Gas Co., 69104–69105
East Tennessee Natural Gas, LLC, 69104
Enbridge Pipelines, 69105
Northern Natural Gas Co., 69105
Tennessee Gas Pipeline Co., 69105–69106
Trailblazer Pipeline Co., 69106
Transcontinental Gas Pipe Line Corp., 69106

Federal Highway Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69177–69178
Environmental statements; notice of intent:
Osage, Maries, and Phelps Counties, MO, 69178–69179

Federal Mediation and Conciliation Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69130–69132

Federal Motor Carrier Safety Administration
NOTICES
Meetings:
Medical Review Board, 69179–69180

Federal Railroad Administration
NOTICES
Exemption petitions; etc.:
Union Pacific Railroad, 69180

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 69132
Formations, acquisitions, and mergers, 69132

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Baldwin County, AL; Alabama beach mouse, 69141

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Mylan Bertek Pharmaceuticals, Inc., 69010–69011
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69134
Meetings:
Transmissible Spongiform Encephalopathies Advisory Committee, 69134–69135

Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Opal Creek Scenic Recreation Area Advisory Council, 69097
Environmental statements; notice of intent:
South Tahoe Greenway Multi-Use Trail Project, CA, 69097–69099
Recreation fee areas:
Willamette National Forest, OR; six recreational sites fees, 69099–69100

General Services Administration
NOTICES
Privacy Act; systems of records, 69132–69133

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Primary Health Care Bureau, 69135–69137

Homeland Security Department
See U.S. Citizenship and Immigration Services
NOTICES
Meetings:
Homeland Security Advisory Council, 69139

Interior Department
See Fish and Wildlife Service
See National Park Service

International Trade Commission
NOTICES
Import investigations:
Modified vaccinia ankara viruses, vaccines, and pharmaceutical compositions, 69143–69144

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69144–69146

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 69137
National Institute of Diabetes and Digestive and Kidney Diseases, 69138
National Institute of Mental Health, 69138
National Institute on Drug Abuse, 69138
National Library of Medicine, 69138–69139

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Critical habitat designations—
Southern Resident killer whale, 69054–69070
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop, 69073–69076
Multispecies fishery, 69070–69073
West Coast States and Western Pacific Fisheries—
Pacific Coast groundfish, 69076–69082
NOTICES
Endangered and threatened species:
Caribbean monk seal; 5-year review, 69100–69101
Recovery plans—
Southern Resident killer whales, 69101–69102
Marine mammal permit applications, determinations, etc., 69102

National Park Service
NOTICES
Environmental statements; record of decision:
Point Reyes National Seashore, CA; non-native deer management plan, 69141–69142
Meetings:
Cape Cod National Seashore Advisory Commission, 69142
Chesapeake and Ohio Canal National Historical Park Advisory Commission, 69142–69143

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 69102

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Van Eck Worldwide Insurance Trust et al., 69147–69149
Meetings; Sunshine Act, 69149–69150
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 69150–69153
Fixed Income Clearing Corp., 69153–69154

International Securities Exchange, LLC, 69154–69155
National Association of Securities Dealers, Inc., 69156–69162
National Stock Exchange, Inc., 69163–69165
New York Stock Exchange LLC, 69165–69166
NYSE Arca, Inc., 69166–69172
Options Clearing Corp., 69172–69173
Philadelphia Stock Exchange, Inc., 69173–69176

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 69176–69177
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 69177

U.S. Citizenship and Immigration Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69139–69141

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.

14 CFR
39 (3 documents) 68997, 68999
97.....69009
Proposed Rules:
39.....69083

21 CFR
510.....69010

40 CFR
63.....69011
81.....69022
180.....69028

47 CFR
0.....69034
1.....69039
2.....69039
4.....69034
11.....69034
15.....69052
22.....69034
64.....69034
74.....69039
78.....69039
90.....69034
97.....69034
101.....69039
Proposed Rules:
Ch. I.....69085
64.....69094

50 CFR
226.....69054
648 (2 documents) 69070, 69073
660.....69076

Rules and Regulations

Federal Register
Vol. 71, No. 229
Wednesday, November 29, 2006

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24956; Directorate Identifier 2006–CE–32–AD; Amendment 39–14835; AD 2006–24–06]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. AG Model STEMME S10–VT Sailplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as ripped pressure lines between Airbox-Carburetor-Differential fuel pressure sensor. We are issuing this AD to require actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 3, 2007.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD as of January 3, 2007.

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.

FOR FURTHER INFORMATION CONTACT: Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 9, 2006 (71 FR 45471). That NPRM proposed to require that you inspect and replace the pressure lines. The MCAI states that ripped pressure lines between Airbox-Carburetor-Differential fuel pressure sensor were found during a requested maintenance event after engine trouble in the range between maximum continuous power and take off power. The cracks can be a result of non-complete temperature resistance.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Jack Buster with the Modification and Replacement Parts Association provides comments on the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempt to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the Stemme service bulletin.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action; instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, Stemme F&D Design Org. Service Bulletin A31–10–073, Am. Index 01.a, dated June 22, 2005, is incorporated by reference.

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Conclusion

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

Differences Between this AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 43 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $10 per product. Where the service information lists required parts

costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $14,190 or $330 per product.

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 in 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 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 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 follow:

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

§ 39.13 [Amended]

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

2006–24–06 STEMME GMBH & CO. AG: Amendment 39–14835; Docket No. FAA–2006–24956; Directorate Identifier 2006–CD–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to STEMME Model S10–VT sailplanes; certificated in any U.S. category:

(1) Serial numbers (S/Ns) 11–89 through 11–096; and

(2) All S/Ns where pressure lines were replaced between July 27, 2004, and June 22, 2005, inclusive, and the parts were provided by Stemme Gmbh & Co. AG (Stemme).

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that ripped pressure lines betweeen Airbox-Carburator-Differential fuel pressure sensor were found during a requested maintenance event after engine trouble in the range between maximum continuous power and take off power. The cracks can be a result of non complete temperature resistance. This type of pressure line was installed since July 27, 2004. It was used for serial production and spare parts.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, inspect all 0.15 – 0.27 inch (4 x 7mm) pressure lines for porousness or cracks in particular areas of T-splits parts, clamps, or connections. The free areas between the white plastic covers must also be checked. If cracks or porosity are found, before further flight, replace all pressure lines with ROTAX part number (P/N) 860 660 or Stemme P/N HZ–KLS041 (or FAA-approved equivalent P/Ns) pressure lines following STEMME F&D Design Org. Service Bulletin A31–10–73, Am. Index 01.a, dated June 22, 2005.

Within 60 days after the effective date of this AD, unless already done, replace all installed 0.15 x 0.27 inch (4 x 7 mm) pressure lines with ROTAX P/N 860 660 or Stemme P/N HZ–KLS041 (or FAA-approved equivalent P/Ns) pressure lines following STEMME F&D Design Org. Service Bulletin A31–10–073, Am. Index 01.a, dated June 22, 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, ATTN: Gregory A. Davison, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locuse, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Return to Airworthiness: When complying with this AD, do the FAA-approved corrective actions before returning the product to an airworthy condition.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) This AD is related to MCAI Luftfahrt-Bundesamt AD D–2005–228, dated June 24, 2005, which references STEMME F & D Design Org. Service Bulletin A31–10–073, Am.-Index 01.a, dated June 22, 2005.

Material Incorporated by Reference

(i) You must use STEMME F&D Design Org. Service Bulletin A31–10–073, Am.-Index 01.a, dated June 22, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Stemme GmbH & Co. AG, Flugplatzstraβe F 2, Nr. 7, D–15344 Strausberg, Germany; telephone + 49 33 41 36 12 0; facsimile: + 49 33 41 36 12 30.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on November 20, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–9428 Filed 11–28–06; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–20007; Directorate Identifier 2004–CE–50–AD; Amendment 39–14798; AD 2006–23–09]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Model AT–602 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2006–23–09, which published in the **Federal Register** on November 9, 2006 (71 FR 65719), and applies to all Air Tractor, Inc. Model AT–602 airplanes. AD 2006–23–09 requires you to repetitively inspect (using the eddy current method) the wing center splice joint two outboard fastener holes on both of the wing main spar lower caps for fatigue cracking; repair or replace any wing main spar lower cap where fatigue cracking is found; and report any fatigue cracking found. This AD results from fatigue cracking at the wing center splice joint outboard fastener hole in one of the wing main spar lower caps. The AD number in the AD is incorrectly referenced as ''2006–23–01'' instead of ''2006–23–09'' in two places. This document corrects these references.

DATES: The effective date of this AD (2006–23–09) remains December 14, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On October 26, 2006, the FAA issued AD 2006–23–09, Amendment 39–14798 (71 FR 65719, November 9, 2006), which applies to Air Tractor, Inc. Model AT–602 airplanes. AD 2006–23–09 requires you to repetitively inspect (using the eddy current method) the wing center splice joint two outboard fastener holes on both of the wing main spar lower caps for fatigue cracking; repair or replace any wing main spar lower cap where fatigue cracking is found; and report any fatigue cracking found.

The AD number in the AD is incorrectly referenced as ''2006–23–01'' instead of ''2006–23–09'' in two places.

Need for the Correction

This correction is needed to assure that the airplane records and documentation shows that the applicable AD is complied with.

Correction of Publication

Accordingly, the publication of November 9, 2006 (71 FR 65719), of Amendment 39–14798; AD 2006–23–09, which was the subject of FR Doc. 06–18688, is corrected as follows:

Section 39.13 [Corrected]

On page 65719, in the first column and sixth line of the document, replace ''2006–23–01'' with ''2006–23–09.''

On page 65721, in the first column and fourth line, replace ''2006–23–01'' with ''2006–23–09.''

Action is taken herein to correct this reference in AD 2006–23–09 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains December 14, 2006.

Issued in Kansas City, Missouri, on November 20, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20123 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20141; Directorate Identifier 2005–NE–01–AD; Amendment 39–14836; AD 2006–24–07]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Propellers and McCauley Propeller Systems Controllable Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Hartzell Propeller Inc. HC, BHC, and PHC series propellers; and McCauley Propeller Systems controllable propellers serviced by Oxford Aviation Services Limited, doing business as CSE Aviation, in the United Kingdom between September 1998 and October 2003. This AD requires inspecting the propeller blades and other critical propeller parts for wear and mechanical damage. This AD results from findings that CSE Aviation failed to perform some specific inspections and repairs. We are issuing this AD to detect unsafe conditions that could result in a propeller blade separating from the hub and loss of control of the airplane.

DATES: This AD becomes effective Janauary 3, 2007.

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

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7132; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain Hartzell Propeller Inc. HC, BHC, and PHC series propellers; and McCauley Propeller Systems controllable propellers serviced by Oxford Aviation Services Limited, doing business as CSE Aviation, in the United Kingdom between September 1998 and October 2003. We published the proposed AD in the **Federal Register** on June 15, 2005 (70 FR 34714). That action proposed to require inspecting the propeller blades and other critical propeller parts for wear and mechanical damage.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket 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 **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the

development of this AD. We have considered the comments received.

Request To Clarify Reason for the AD

CSE Aviation requests that we clarify the statement ''This (proposed) AD results from findings that CSE Aviation failed to perform specific inspections and repairs'', to read ''This (proposed) AD results from findings that CSE Aviation failed to perform some specific inspections and repairs''. The commenter states that adding this word more clearly defines the conditions existing in the field. We agree and added the word ''some'' in this sentence of the AD.

Request To Clarify the Discussion

CSE Aviation requests that we clarify the Discussion paragraph in the proposed AD to state the following: ''The investigators believe the discrepancies date from about 1998 until November 2003 when CSE Aviation stopped updating their internal procedures to reflect the latest version of the manufacturers' maintenance manuals. The audit also showed that CSE Aviation did not perform some specific inspections required by the maintenance manual. CSE Aviation conducted an internal investigation and confirmed that they did not perform some inspections and rework procedures such as:'' We disagree the discussion paragraph needs change. We find it adequate as drafted. We did not change the AD.

Requests To Clarify Costs of Compliance

CSE Aviation requests that we clarify the Costs of Compliance paragraph by specifying that about 49 affected Hartzell propellers and about 24 affected McCauley propellers are installed on U.S.-registered airplanes. We agree. We changed the Costs of Compliance paragraph in the AD to reflect that about 49 affected Hartzell propellers and 24 affected McCauley propellers are installed on U.S.-registered airplanes.

CSE Aviation also suggests that our estimate for part cost replacement of $2,350 per propeller, is too high. They suggest a part cost per propeller of $200 per propeller, and suggest that our estimate might lead to other repair facilities replacing parts that are airworthy. They also suggest that the actual total cost for U.S.-registered installations is about $62,050, with a total worldwide cost of about $437,750. We do not agree. The cost numbers provided by CSE Aviation do not include a proper range for defective parts, or include improper repairs that might be found during the inspections. We did not change the AD.

Request To Clarify the Unsafe Condition Statement

CSE Aviation requests that we clarify the unsafe condition statement to state that we are issuing this AD to detect potentially unsafe conditions that could result in a propeller blade separating from the hub and loss of control of the airplane. We agree and added the word ''potentially'' in this sentence of the AD.

Request To Change Compliance Paragraph (f)

CSE Aviation requests that we change the words '' FAA-approved'' with ''appropriately approved'' in compliance paragraph (f), since the affected propeller population is worldwide. We do not agree. Our authority to mandate airworthiness actions is limited to FAA-approved repair facilities and operators, and not foreign country-approved facilities and operators.

Conclusion

We have carefully reviewed the available data, including the comment[s] 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

We estimate that about 49 Hartzell Propeller Inc. HC series propellers and about 24 McCauley Propeller Systems controllable propellers of the affected design installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about 10 work hours per propeller to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts will cost about $2,350 per propeller. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,545,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–24–07 Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) and McCauley Propeller Systems (formerly Cessna Aircraft Co.): Amendment 39–14836. Docket No. FAA–2005–20141; Directorate Identifier 2005–NE–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) and McCauley Propeller Systems (formerly Cessna Aircraft Co.) propellers that have a part number (P/N) and serial number (SN) listed in Table 1 or Table 2 of this AD, serviced by Oxford Aviation Limited, doing business as CSE Aviation. These propellers are installed on, but not limited to airplanes used in general aviation, agricultural, flight training, and charter businesses.

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y03516	HC–E2YL–2BSF	BG2848
Y03517	HC–E2YL–2BSF	BG4112
Y04052	HC–82VL–2C1	942R
Y02965	BHC–C2YF–1BF	AM2854
Y02778	BHC–C2YF–2CKUF	AN1881
Y03382	BHC–C2YF–2CKUF	AN1968
Y04132	BHC–C2YF–2CKUF	AN2528
Y05097	BHC–C2YF–2CKUF	AN3274
Y05048	HC–C2YK–2CUF	AN3906
Y05047	HC–C2YK–2CUF	AN4033
Y03016	BHC–C2YF–2CKUF	AN4271
Y03983	BHC–C2YF–2CLKUF	AN4289
Y03166	BHC–C2YF–2CKUF	AN5248
Y02607	BHC–C2YF–2CKLUF	AN5832
Y04855	BHC–C2YF–2CKLUF	AN6857
Y04391	BHC–C2YF–2CKUF	AN6981A
Y05102	BHC–C2YF–2CLKUF	AN6998A
Y04709	BHC–C2YF–2CKUF	AN7006A
Y05070	BHC–C2YF–2CLKUF	AN7018A
Y03863	BHC–C2YF–CLKUF	AN7019A
Y04108	BHC–C2YF–2CKUF	AN7025A
Y03206	BHC–C2YK–2CLKUF	AN7168B
Y04592	BHC–C2YF–2CKUF	AN7071B
Y04865	BHC–C2YF–2CLKUF	AN7168B
Y04846	BHC–C2YF–2CKUF	AN7184B
Y04808	BHC–C2YF–2CLKUF	AN7199B
Y03185	BHC–C2YF–2CLKUF	AN7209B
Y03186	BHC–C2YF–2CKUF	AN7215B
Y04975	BHC–C2YF–2CKUF	AN7249B
Y04974	BHC–C2YF–2CLKUF	AN7279B
Y04818	BHC–C2YF–2CKUF	AN7280B
Y04532	BHC–C2YF–2CKUF	AN7540B
Y04561	BHC–C2YF–2CKUF	AN7552B
Y04638	BHC–C2YF–2CLKUF	AN7567B
Y04639	BHC–C2YF–2CKUF	AN7568B
Y04658	BHC–C2YF–2CLKUF	AN7581B
Y02866	HC–A3VF–2D	AT376
Y02867	HC–A3VF–2D	AT431
Y04053	HC–C2YK–2CUF	AU10008B
Y04096	HC–C2YK–2CUF	AU10023B
Y04143	HC–C2YK–2CUF	AU10126B
Y04171	HC–C2YK–2CUF	AU10139B
Y04283	HC–C2YK–2CUF	AU10165B
Y04274	HC–C2YK–2CUF	AU10178B
Y04416	HC–C2YK–2CUF	AU10401B
Y04415	HC–C2YK–2CUF	AU10402B
Y04478	HC–C2YK–2CUF	AU10462B
Y04518	HC–C2YK–2CUF	AU10541B
Y04479	HC–C2YK–2CUF	AU10542B
Y04563	HC–C2YK–4BF	AU10614B
Y04564	HC–C2YK–4BF	AU10615B
Y04560	HC–C2YK–2CUF	AU10616B
Y04610	HC–C2YK–2CUF	AU10696B
Y04565	HC–C2YF–2CUF	AU10729B
Y04566	HC–C2YK–2CUF	AU10730B
Y04632	HC–C2YK–4BF	AU10733B
Y04636	HC–C2YK–2CUF	AU10771B
Y04651	HC–C2YK–4BF	AU10790B
Y04659	HC–C2YK–2CUF	AU10817B
Y04681	HC–C2YK–4BF	AU10827B
Y04701	HC–C2YK–2CUF	AU10923B
Y04785	HC–C2YK–2CUF	AU10952B
Y04786	HC–C2YK–2CUF	AU11050B
Y04736	HC–C2YK–2CUF	AU11117B

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y04826	HC–C2YK–4BF	AU11145B
Y04871	HC–C2YK–1BF	AU11279B
Y04890	HC–C2YK–4BF	AU11343B
Y05000	HC–C2YK–4CF	AU11591B
Y05050	HC–C2YK–2CUF	AU11731B
Y04410	HC–C2YK–2CGUF	AU1533
Y04409	HC–C2YK–2CGUF	AU1603
Y04344	HC–C2YK–2CLGUF	AU2892E
Y03377	HC–C2YK–2CGUF	AU2955
Y03688	HC–C2YK–2CU	AU354
Y02769	HC–C2YK–2CUF	AU9013B
Y04343	HC–C2YR–2CGUF	AU508E
Y03110	HC–C2YK–2CUF	AU5236
Y04400	HC–C2YK–2CLEUF	AU5974E
Y04652	HC–C2YK–1B	AU6120
Y04321	HC–C2YR–2CLEUF	AU6163
Y03200	HC–C2YK–2CUF	AU7153E
Y03838	HC–C2YK–2CUF	AU7357
Y04362	BHC–C2YF–2CLKUF	AU7491B
Y04219	HC–C2YK–2CLGUF	AU7662
Y02598	HC–C2YK–CUF	AU8212A
Y02770	HC–C2YK–2CUF	AU822
Y03482	HC–C2YK–2CUF	AU8233A
Y03564	HC–C2YK–2CUF	AU8299A
Y03773	HC–C2YK–2CUF	AU8318A
Y03674	HC–C2YK–2CUF	AU8338A
Y02991	HC–C2YK–2CUF	AU8339A
Y03137	HC–C2YK–2CUF	AU8347A
Y03018	HC–C2YK–2CUF	AU8349A
Y02805	HC–C2YK–2CUF	AU8354A
Y02703	HC–C2YK–2CUF	AU8417A
Y02664	HC–C2YK–2CUF	AU8859A
Y04095	HC–C2YK–2CUF	AU8923B
Y03761	HC–C2YK–CUF	AU8968B
Y02792	HC–C2YK–2CUF	AU9012B
Y02848	HC–C2YK–2CUF	AU9014B
Y03597	HC–C2YK–2CUF	AU9015B
Y04735	HC–C2YK–2CUF	AU9041B
Y03229	HC–C2YK–2CGUF	AU9135B
Y02943	HC–C2YK–2CUF	AU9136B
Y03197	HC–C2YK–2CUF	AU9150B
Y04675	HC–C2YK–2CUF	AU9182B
Y03352	HC–C2YK–2CUF	AU9241B
Y03354	HC–C2YK–2CUF	AU9243B
Y03097	HC–C2YK–2CUF	AU9246B
Y03201	HC–C2YK–2CUF	AU9247B
Y03686	HC–C2YK–2CUF	AU9312B
Y03607	HC–C2YK–2CUF	AU9332B
Y03614	HC–C2YK–2CGUF	AU9393B
Y03606	HC–C2YK–2CUF	AU9394B
Y03791	HC–C2YK–2CUF	AU9395B
Y03866	HC–C2YK–CUF	AU9396B
Y03888	HC–C2YK–CUF	AU9509B
Y04948	HC–C2YK–2CUF	AU9511B
Y03891	HC–C2YK–2CUF	AU9518B
Y03797	HC–C2YK–2CUF	AU9520B
Y04001	HC–C2YK–2CGUF	AU9593B
Y05083	HC–C2YK–2CUF	AU9599B
Y03694	HC–C2YK–4BF	AU9616B
Y03696	HC–C2YK–4BF	AU9618B
Y03695	HC–C2YK–4BF	AU9630B
Y03620	HC–C2YK–4BF	AU9631B
Y03627	HC–C2YK–4BF	AU9638B
Y03625	HC–C2YK–4BF	AU9649B
Y04047	HC–C2YK–2CUF	AU9985B
Y04376	HC–C2YL–1BF	AX522
Y05051	HC–C2YR–1BF	AX527
Y02908	HC–C2YL–1BF	AX841B
Y04763	HC–C2YL–1BF	AX720A
Y04731	HC–E2YR–2RBSF	BB6694
Y04900	HC–E2YL–2BSF	BG2122

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y04738	HC–E2YL–2BSF	BG2923
Y04547	HC–E2YL–2BSF	BG3219
Y03153	HC–E2YL–2BSF	BG3287
Y04061	HC–E2YL–2BSF	BG3363
Y04917	HC–E2YL–2BSF	BG372
Y04062	HC–E2YL–2BSF	BG434
Y04190	HC–E2YL–2BSF	BG4344
Y04901	HC–E2YL–2BSF	BG4557
Y04737	HC–E2YL–2BSF	BG648
Y04898	HC–E2YR–2RBSF	BP3287
Y03327	HC–E2YR–2RBS	BP5179
Y03680	HC–E2YR–2RBSF	BP6199
Y04167	HC–E2YR–2RBSF	BP6206
Y03138	HC–E2YR–2RBSF	BP6606
Y02709	HC–E2YR–2RBSF	BP6838
Y04899	HC–E2YR–2RBSF	BP9158
Y03913	HC–E2YR–2RBSF	BP9159
Y03139	HC–E2YR–2RBSF	BP9168
Y04780	PHC–A3VF–2B	BR834
Y02939	HC–B3TN–3DY	BUA22056
Y02971	HC–B3TN–3DY	BU12462
Y04089	HC–B3TN–3C	BU14589
Y03948	HC–BCTN–3B	BU16789
Y02767	HC–B3TN–5FL	BV3382
Y02768	HC–B3TN–5FL	BV3540
Y02946	HC–B3TN–3DY	BUA22136
Y03726	HC–B3TN–3G	BUA21467
Y03727	HC–B3TN–3G	BUA23284
Y03928	HC–B3TN–3D	BUA24401
Y04429	HC–B3TN–3N	BUA24852
Y04430	HC–B3TN–3N	BUA24992
Y05019	HC–B3TN–3G	BUA27325
Y03719	HC–B3TN–5E	BVA7456
Y03718	HC–B3TN–5E	BVA7457
Y04443	HC–B3TN–5FL	BVA7770
Y04444	HC–B3TN–5FL	BVA7771
Y03304	HC–B4TN–5ML	CD1746
Y03165	HC–B4TN–5ML	CD1752
Y03164	HC–B4TN–5ML	CD1973
Y04535	HC–B4TN–S	CDA3529M1
Y04787	HC–B4N–ML	CDA3703
Y04788	HC–B4TN–5ML	CDA3704
Y03351	HC–B4TN–5ML	CDA4424
Y04644	HC–B4TN–5ML	CDA4819
Y04534	HC–B4TN–S	CDA5047M1
Y04399	HC–C2YK–1BF	CH11322
Y03764	HC–C2YK–1BF	CH1614B
Y02124	HC–C2YK–1BF	CH23470
Y02897	HC–C2YK–1BF	CH32119A
Y04516	HC–C2YK–1BF	CH20231
Y04371	HC–C2YK–1BF	CH21618
Y04260	HC–C2YK–1BF	CH23621
Y02641	HC–C2YK–1BF	CH23890(E)
Y03969	HC–C2YK–1BF	CH25517
Y02648	HC–C2YK–1BF	CH26145
Y02896	HC–C2YK–1BF	CH32118A
Y04244	HC–C2YR–1BF	CH27227
Y03763	HC–C2YK–1BF	CH27235
Y03704	HC–C2YK–1BF	CH28190
Y03141	HC–C2YK–1BF	CH29976
Y05015	HC–C2YK–1BF	CH30451
Y04153	HC–C2YK–1BF	CH32838B
Y03949	HC–C2YK–1BF	CH32683B
Y05124	HC–C2YKR–1BF	CH33316B
Y03205	HC–C2YK–1BF	CH33520B
Y03850	HC–C2YK–1BF	CH33777B
Y03843	HC–C2YK–1BF	CH34179B
Y04230	HC–C2YK–1BF	CH34607B
Y04014	HC–C2YR–1BF	CH34638B
Y05078	HC–C2YK–1BF	CH35009B
Y04361	HC–C2YK–1BF	CH35037B

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y04587	HC–C2YK–1BF	CH35445B
Y04588	HC–C2YK–1BF	CH35466B
Y05076	HC–C2YK–1BF	CH37285B
Y05079	HC–C2YK–1BF	CH37286B
Y05056	HC–C2YK–1BF	CH3730B
Y04891	HC–C3YR–2LUF	CH4488A
Y03425	HC–C2YK–1BF	CH5073
Y03428	HC–C2YK–1B	CH617
Y04126	HC–E2YL–2BTF	CJ514
Y03027	HC–C3YR–2UF	CK3633A
Y02594	HC–C3YR–2UF	CK3634A
Y03429	HC–C3YR–2UF	CK3651A
Y03168	HC–C3YR–2UF	CK3662A
Y03995	HC–C3YR–2UF	CK3663A
Y03573	HC–C3YR–2UF	CK3678A
Y03611	HC–C3YR–2UF	CK3705A
Y03707	HC–C3YR–2UF	CK3706A
Y03513	HC–E3YR–2UF	CK3719A
Y03937	HC–C3YR–2UF	CK3872A
Y03794	HC–C3YR–2UF	CK3873A
Y03921	HC–C3YR–2UF	CK3874A
Y04892	HC–C3YR–2UF	CK4263A
Y03317	HC–C3YR–2UF	CK4459A
Y02871	HC–C3YR–2UF	CK4460A
Y02704	HC–C3YR–2UF	CK4645A
Y03522	HC–C3YR–2UF	CK4682A
Y04770	HC–F2YR–1F	CM535
Y05039	HC–C2YK–4BF	DH687E
Y04872	HC–E3YR–2ATF	DJ10539A
Y04873	HC–E3YR–2ALTF	DJ10542A
Y03975	HC–E3YR–2ALTF	DJ10585A
Y03974	HC–E3YR–2ATF	DJ10832A
Y03023	HC–E3YR–2ATF	DJ8092A
Y03998	HC–E3YR–2ATF	DJ8105A
Y03997	HC–E3YR–2ATF	DJ8106A
Y02865	HC–E3YR–2ALTF	DJ8128A
Y04149	HC–E3YR–2ATF	DJ8137A
Y04150	HC–E3YR–2ALTF	DJ8139A
Y04911	HC–E3YR–2ALTF	DJ8151A
Y02580	HC–E3YR–2ALTF	DJ8154A
Y04912	HC–E3YR–2ATF	DJ8157A
Y02864	HC–E3YR–2ATF	DJ8161A
Y02581	HC–E3YR–2AFT	DJ8180A
Y04775	HC–E3YR–2ATF	DJ8326A
Y04774	HC–E3YR–2ALTF	DJ8329A
Y03760	HC–E3YR–2ATF	DJ8872A
Y03022	HC–E3YR–2ALTF	DJ9503A
Y02120	HC–E2YR–1BF	DK1068
Y04375	HC–E2YR–1BF	DK155
Y03331	HC–E2YR–1BF	DK1902B
Y04373	HC–E2YR–1BF	DK611
Y04168	HC–E2YR–1BF	DK620
Y04471	HC–C2YK–1BF	DK669
Y03040	HC–C2YK–4BF	DN4101A
Y03590	HC–C2YK–4BF	AU8619A
Y03129	HC–C2YK–4BF	DN4111A
Y03442	HC–C2YK–4BF	DN4112A
Y03003	HC–C2YK–2CEUF	DN4126A
Y03630	HC–C2YK–4BF	DN4127A
Y02620	HC–C2YK–4FC7666A	DN4168A
Y02680	HC–C2YK–4FC7666A	DN4171A
Y02786	HC–C2YK–4FC7666A	DN4172A
Y02619	HC–C2YK–4FC7666A	DN4175A
Y03588	HC–C2YK–4BF	DN4187A
Y03116	HC–C2YK–4CF	DN4216A
Y02679	HC–C2YK–4FC7666A	DN4231A
Y03209	HC–C2YK–4BF	AU9643B
Y02677	HC–C2YK–4FC7666A	DN4249A
Y02667	HC–C2YK–4FC7666A	DN4263A
Y03253	HC–C2YK–4BF	DN4265A
Y03592	HC–C2YK–4BF	DN4268

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y02796	HC–C2YK–4FC7666A	DN4279A
Y02788	HC–C2YK–4FC7666A	DN4280A
Y03210	HC–C2YK–4BF	DN4284A
Y03212	HC–C2YK–4BF	DN4299A
Y03574	HC–C2YK–4BF	DN9650B
Y03260	HC–C2YK–4BF	DN4340A
Y03254	HC–C2YK–4BF	DN4341A
Y02665	HC–C2YK–4FC7666A	DN4351A
Y02681	HC–C2YK–4FC7666A	DN4364A
Y03208	HC–C2YK–4BF	DN4371A
Y02787	HC–C2YK–4FC7666A	DN4380A
Y03621	HC–C2YK–4BF	DN4510A
Y02666	HC–C2YK–4FC7666A	DN4521A
Y03589	HC–C2YK–4BF	DN4514A
Y03619	HC–C2YK–4BF	DN4515A
Y02678	HC–C2YK–4FC7666A	DN4516A
Y02618	HC–C2YK–4FC7666A	DN4522A
Y02615	HC–C2YK–4FC7666A	DN4524A
Y02614	HC–C2YK–4FC7666A	DN4712A
Y02616	HC–C2YK–4FC7666A	DN4716A
Y03439	HC–C2YK–4BF	DN4719A
Y02662	HC–C2YK–4FC7666A	DN4955A
Y03626	HC–C2YK–4BF	DN4957A
Y03252	HC–C2YK–4BF	DN4963A
Y02668	HC–C2YK–4FC7666A	DN4965A
Y04191	HC–E2YL–2BLSF	DP94
Y02832	HC–C3YR–1RF	DY2464A
Y04175	PHC–C3YF–2UF	EB171
Y04174	PHC–C3YF–2UF	EB173
Y03788	PHC–C3YF–2UF	EB1977
Y03787	PHC–C3YF–2UF	EB1978
Y02779	HC–M2YR–2CEUF	FB379
Y04943	PHC–C3YF–1RF	EE1354
Y03959	PHC–C3YF–1RF	EE1369
Y03754	HC–C2YR–1RF	EE227
Y04730	PHC–C3YF–1RF	EE2322A
Y03767	HC–C3YF–1RF	EE351
Y04246	HC–BM5P–3C	EVA2226
Y04246	HC–BM5P–3C	EVA2246
Y04169	HC–B5MP–3C	EVA2281
Y02634	HC–M2YR–2CLEUF	FB102
Y02732	HC–M2YR–2CEUF	FB1061A
Y04252	HC–M2YR–2CEUF	FB1064A
Y02733	HC–M2YR–2CLEUF	FB1066A
Y04253	HC–M2YR–2CLEUF	FB1067A
Y03332	HC–M2YR–2CLEUF	FB1177B
Y04170	HC–M2YR–2CLEUF	FB1196B
Y02719	HC–M2YR–2CLEUF	FB1167B
Y02708	HC–M2YR–2CEUF	FB409
Y04492	HC–M2YR–2CEUF	FB454
Y03043	HC–M2YR–2CEUF	FB99
Y02905	HC–F2YL–2UF	FE11
Y02917	HC–F2YL–2UF	FE229
Y03753	HC–F2YL–2UF	FE282B
Y03827	HC–F2YL–2UF	FE285B
Y03453	HC–F2YL–2UF	FE58
Y04876	HC–C3YF–5F	FR101
Y04725	HC–C3YF–5F	FR185A
Y04726	HC–C3YF–5F	FR186A
Y04829	HC–C3YF–5F	FR187A
Y04830	HC–C3YF–5F	FR188A
Y05110	HC–C3YF–5F	FR192A
Y05111	HC–C3YF–5F	FR193A
Y04971	HC–C3YF–5F	FR206A
Y03814	HC–C3YF–5F	FR207A
Y04878	HC–C3YF–5F	FR39
Y03125	HC–C3YF–5F	FR206A
Y02715	HC–C3YF–5F	FR58
Y04448	HC–C3YF–5F	FR68
Y02716	HC–C3YF–5F	FR72
Y04450	HC–C3YF–5F	FR73

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order No.	Hartzell propeller P/N	Hartzell propeller SN
Y04569	HC–C3YF–5F	FR74
Y04449	HC–C3YF–5F	FR78
Y04085	HC–C3YF–5F	FR79
Y04970	HC–C3YF–5F	FR80
Y02600	HC–C3YF–5F	FR82
Y03527	HC–C3YF–5F	FR83
Y04877	HC–C3YF–5F	FR86
Y04570	HC–C3YF–5F	FR87
Y04752	HC–C3YF–5F	FR92
Y05008	HC–C3YF–5F	FR94
Y03605	HC–B4MP–3B	FWA3209
Y03604	HC–B4MP–3B	FWA3201
Y03987	HC–B4MP–3A	FWA3043
Y03902	HC–B4MP–3A	FWA3216
Y03903	HC–B4MP–3A	FWA3217
Y04351	HC–B4MP–3A	FWA3270
Y03911	HC–B4MP–3A	FWA3444
Y03910	HC–B4MP–3A	FWA3445
Y03986	HC–B4MP–3A	FWA3538
Y04352	HC–B4MP–3A	FWA3732
Y04465	HC–B4MP–3A	FWA3760
Y04466	HC–B4MP–3A	FWA3761
Y03647	HC–A6A–3A	GP135
Y03647	HC–A6A–3A	GP135
Y02882	HC–A2VK–2	H238
Y02883	HC–A2VK–2	H2472
Y04864	HC–A2YK–2	H392
Y04863	HC–A2YK–2	H396
Y04979	HC–E4N–3G	HH1739
Y04980	HC–E4N–3G	HH360
Y04977	HC–E4N–3G	HH378
Y04978	HC–E4N–3G	HH379
Y03667	HC–E4N–3	HH43
Y04125	HC–E4A–3J	HJ1050
Y04124	HC–E4A–3J	HJ1079
Y04123	HC–E4A–3J	HJ1213
Y04874	HC–I3YR–1RF	HK127A
Y04597	HC–A2VK–1	J1153
Y04783	BHC–C2YF–2CLKUF	JS11B
Y04687	BHC–C2YF–CLKUF	JS70B
Y04051	HC–82VL–2C	K2624N

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN

CSE work order No.	McCauley propeller P/N	McCauley propeller SN
Y04664	D2A34C67–NP	714384
Y04665	D2A34C67–NP	714390
Y03274	D2A34C67–NP	723093
Y04543	D2A34C67–NP	723094
Y02754	D2A34C67–NP	723112
Y04360	D3A32C90–MN	739415
Y02989	2A34C50–NP	743482
Y04285	2A34C203–C	744591
Y04467	D2A34C58–NO	745446
Y04279	3FF32L501–A	757134
Y04278	3FF32C501–A	757204
Y02802	3AF32C87–N	757861
Y04250	3FF32C501–A	761008
Y03294	2A36C23–P–E–G	761063
Y03724	D2A34C67–NP	766297
Y04251	3FF32C501–A	768699
Y03855	D2AF34C81–0	772113
Y04261	B2D34C214	775347
Y03963	B2D34C213	776696
Y04996	B2D34C213–B	783689
Y03060	D3A34C402	785093
Y04396	3FF32C501	787591
Y03058	C2A34C204	788168

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN—Continued

CSE work order No.	McCauley propeller P/N	McCauley propeller SN
Y04100	3AF34C503	793041
Y04183	3AF34C503–B	794440
Y04084	2D34C215	795642
Y02771	B2D34C220	795939
Y03924	3AF34C502	798390
Y03202	2A34C216	798602
Y04255	3AF34C503	798788
Y04663	3AF34C503	798978
Y01682	B2D34C214–A	800359
Y04067	3AF34C502	801561
Y04256	3AF34C502	801583
Y02605	3AF34C502	801584
Y04459	2D34C215	801873
Y04959	3AF32C93–NR	803586
Y04112	3FF32C501A	803966
Y03725	2A34C203–C	805071
Y05013	C2A34C204	805223
Y05053	3AF34C503	805387
Y05052	3AF34C502	805405
Y03297	2AF34C55–0	805970
Y04113	3FF32C501A	806424
Y02575	3FF32C501A	961655
Y03923	2D34C215–B	808006
Y03824	3AF32C509	811678
Y04008	3AF32C508	811912
Y04782	3AF32C509	812482
Y04322	D2AF34C302–A	812874
Y05073	3AF32C509–B	814111
Y05087	3AF32C506	820138
Y02810	3AF32C506	820811
Y02809	3AF32C507	820812
Y03692	C2A34C204–BC	821916
Y04402	3AF32C508	823133
Y02248	3AF32C507	970209
Y05032	3AF32C508–B	840763
Y04033	3AF32C509–B	841002
Y04495	B2D34C213B	851122
Y04397	3FF32C501	860047
Y04680	3AF34C502–B	860142
Y03847	D3A34C403–C	861694
Y04087	3A32C406–C	870695
Y03848	D3A32C90–R	881455
Y01748	D3A32C409	881583
Y05072	3AF32C508–C	890018
Y03723	D2A34C67–0	890108
Y05104	C3D36C415–C	890669
Y05032	D3A32C90–R	890683
Y05034	B3D34C405–C	891388
Y03410	3AF32C508–C	891956
Y04540	3AF34C502	891996
Y04063	2A34C203–B	900028
Y03196	3GFR34C701–DF	900684
Y04653	3A32C406–C	901189
Y03524	B2D3AC207–B	902858
Y04499	3AF32C509–C	911526
Y04498	3AF32C508–C	912012
Y04924	3AF32C509	912323
Y04305	3AF34C502	912386
Y04473	3AF32C508–C	921236
Y04474	3AF32C509–C	921239
Y04099	2D34C215–B	921659
Y04425	3AF32C509–C	930215
Y04991	D3A32C411–C	930228
Y02387	5JFR36C1003	930291
Y02386	5JFR36C1003	930294
Y03011	B2D37C229–B	930318
Y02632	B3D32C419	930644
Y03523	C2A34C204–BC	930703
Y03404	B2D34C213–B	931938
Y03474	4HFR34C762–H	940651
Y04116	3AF32C512–C	941278

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN—Continued

CSE work order No.	McCauley propeller P/N	McCauley propeller SN
Y04117	3AF32C512–C	941284
Y03475	4HFR34C762–H	941528
Y04941	3AF32C515	942101
Y03756	3AF32C515	942106
Y04825	B3D32C419–C	950588
Y04813	3FF34C501A	961655
Y02608	D3A34C403–C	962466
Y04454	3AF32C508–C	962536
Y04757	3AF34C502–C	962541
Y04550	3AF32C509–C	970276
Y02583	3AF32C522	971311
Y02582	3AF32C523	971324
Y05082	B3D36C424–C	980136
Y02914	B2D34C214	980409
Y03894	3AF32C87–R	981955
Y03893	3AF32C87–R	982877
Y02752	B2D34C213	983395
Y03538	B2D34C213–B	983396
Y04137	B3D36C432–C	992420
Y04595	B2D34C214–B	7710604
Y02895	B2D34C213	7710613
Y03403	3AF34C503	7810116
Y04621	D2A34C98–0	7810684
Y05054	3AF34C503	7910085
Y04821	3AF34C503	7910363
Y02889	3AF32C87NR	7910688
Y02890	3AF32C87NR	7910690
Y04721	C2A34C204–C	000679
Y04452	D3A32C88	010463
Y04216	2A34C209	010522
Y04942	3AF32C523	020312
Y05007	2A34C201–C	022421

Unsafe Condition

(d) This AD results from findings that CSE Aviation failed to perform some specific inspections and repairs. We are issuing this AD to detect potentially unsafe conditions that could result in a propeller blade separating from the hub and 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.

(f) For propellers listed by SN in Table 1 or Table 2 overhauled or repaired by CSE after November 2003, or overhauled by an FAA-approved propeller repair facility after October 2003, no further action is required.

All Propellers Listed by SN in Table 1 or Table 2

(g) Before further flight, perform a document search of airplane and propeller records to determine if the propeller was involved in a ground strike.

(h) If the propeller was involved in a ground strike, perform the requirements specified in paragraph (j) or paragraph (k) of this AD within 10 flight hours (FH) time-in-service (TIS) after the effective date of this AD, or 2 years after the effective date of this AD, whichever is earlier.

(i) For all propellers listed by SN in Table 1 or Table 2 of this AD, not involved in a ground strike, use the compliance schedule in the following Table 3 to perform the requirements specified in paragraph (j) or paragraph (k) of this AD as applicable.

TABLE 3.—COMPLIANCE SCHEDULE

If the time-since-overhaul (TSO) for the propeller on the effective date of this AD is * * *	Then perform the requirements of paragraph (j) or paragraph (k) of this AD within * * *
(1) 1,500 FH TSO or more	200 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.
(2) More than 1,000 FH TSO, but fewer than 1,500 FH TIS	350 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.
(3) 1,000 FH TSO or fewer	500 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.

Hartzell Propellers

(j) For Hartzell propellers listed by SN in Table 1 of this AD, do the following:

(1) Disassemble the propeller.

(2) Clean all disassembled propeller parts.

(3) Perform a visual inspection for the following conditions:

(i) Wear or damage such as cracks, corrosion, scratches, or nicks.

(ii) Except for blades installed new at the last CSE maintenance action, examine for:

(A) Bent or damaged pitch change knobs.

(B) Damage in the bore area of the blade shank.

(C) Damage in the blade balance hole.

(iii) Damage that indicates a previous ground strike (if applicable).

(iv) Unacceptable wear or damage in areas where shot peening is required. It is not necessary to strip the paint and corrosion protective coatings from the external surface of the blade. It is also not necessary to perform dimensional measurements on the

external surface of the blade unless there is evidence of damage that has occurred since CSE returned the propeller to service.

(v) Confirm that CSE Aviation correctly performed the repairs listed in the manufacturers maintenance manuals. An example of a maintenance manual repair is chamfering of the hub grease fitting hole on Hartzell ''Y'' shank series propellers.

(4) Perform all Eddy Current inspections applicable.

(5) Repair and replace with serviceable parts, as necessary.

(6) Assemble and test.

(7) Confirm that hubs affected by AD 2001–23–08 are returned to service only on aircraft affected by that AD.

McCauley Propellers

(k) For McCauley propellers listed by SN in Table 2 of this AD, do the following:

(1) Disassemble the propeller.

(2) Clean all disassembled propeller parts.

(3) Perform a visual inspection for the following conditions:

(i) Wear or damage such as cracks, corrosion, scratches or nicks.

(ii) Damage that indicates a previous ground strike (if applicable).

(iii) Unacceptable wear or damage in areas where shot peening is required, paying particular attention to hub internal shot peened surfaces and blade shank peening. It is not necessary to strip the paint and corrosion protective coatings from the external surface of the blade. It is also not necessary to perform dimensional measurements on the external surface of the blade unless there is evidence of damage that has occurred since CSE returned the propeller to service.

(4) Inspect threaded surfaces of threaded blade shanks with a 10X magnifying glass for scratches parallel to retention threads in the thread root of the first four outboard blade threads. If the retention threads are scratched, repair is not allowed.

(5) Confirm that CSE Aviation correctly performed repairs or modifications listed in the manufacturer's maintenance instructions.

(6) Repair and replace with serviceable parts, as necessary.

(7) Assemble and test.

Definitions

(l) For the purposes of this AD:

(1) Overhauling a propeller is not necessary to comply with the requirements specified in paragraph (j) or paragraph (k) of this AD. If you do not overhaul the propeller, the TSO does not change.

(2) Unacceptable wear is wear or damage that can penetrate the shotpeen compressive layer.

Alternative Methods of Compliance

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

Related Information

(n) The applicable Hartzell Propeller Inc. or McCauley Overhaul Manuals and Service Documents contain information on performing the inspections specified in this AD.

Issued in Burlington, Massachusetts, on November 21, 2006.

Peter A. White,

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

[FR Doc. E6–20206 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30523 Amdt. No. 3194]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or 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 November 29, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums 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 November 29, 2006.

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

For Examination—

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

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

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

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 and Weather Takeoff Minimums 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 and Weather Takeoff Minimums 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 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, 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 and/or Weather Takeoff Minimums but refer to their 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 and/or Weather Takeoff Minimums

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 and/or Weather Takeoff Minimums. 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 and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums 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 November 17, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums 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:

Effective 21 December 2006

Huntsville, AL, Madison County Executive, RNAV (GPS) RWY 36, Orig
Leesburg, FL, Leesburg Regional, RNAV (GPS) RWY 3, Orig
Leesburg, FL, Leesburg Regional, RNAV (GPS) RWY 13, Orig
Leesburg, FL, Leesburg Regional, RNAV (GPS) RWY 31, Orig
Leesburg, FL, Leesburg Regional, GPS RWY 13, Amdt 1, CANCELLED
Leesburg, FL, Leesburg Regional, GPS RWY 31, Amdt 1, CANCELLED
Leesburg, FL, Leesburg Regional, Takeoff Minimums and Textual DP, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 32, Orig-A
Willmar, MN, Willmar Muni, RNAV (GPS) RWY 13, Orig
Willmar, MN, Willmar Muni, RNAV (GPS) RWY 31, Orig
New Orleans, LA, Lakefront, RNAV (GPS) RWY 18R, Orig
New Orleans, LA, Lakefront, GPS RWY 18R, Orig-A CANCELLED
Harrisburg, PA, Capital City, RNAV (GPS) RWY 26, Orig-A
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 23, Amdt 3

Effective 18 January 2007

New Orleans, LA, Lakefront, ILS RWY 18R, Amdt 12B, CANCELLED
Monroe, NC, Monroe Regional, ILS OR LOC/NDB RWY 5, Amdt 1
Monroe, NC, Monroe Regional, RNAV (GPS) RWY 5, Amdt 1
Monroe, NC, Monroe Regional, RNAV (GPS) RWY 23, Orig
Monroe, NC, Monroe, VOR OR GPS–A, Amdt 11C, CANCELLED
Monroe, NC, Monroe, VOR/DME OR GPS–B, Amdt 6C, CANCELLED
Monroe, NC, Monroe Regional, Takeoff Minimums and Textual DP, Orig
Muskogee, OK, Davis Field, VOR RWY 31, Amdt 4, CANCELLED
Gettysburg, SD, Gettysburg Muni, RNAV (GPS) RWY 13, Orig
Gettysburg, SD, Gettysburg Muni, RNAV (GPS) RWY 31, Orig
Gettysburg, SD, Gettysburg Muni, GPS RWY 31, Orig-A, CANCELLED
Gettysburg, SD, Gettysburg Muni, Takeoff Minimums and Textual DPs, Amdt 1
Seattle, WA, Boeing Field/King County Intl, Takeoff Minimums and Textual DP, Amdt 6

The FAA published an Amendment in Docket No. 30513, Amdt No. 3184 to Part 97 of the Federal Aviation Regulations (Vol 71, FR No. 220, Page 66447; dated November 15, 2006) under section 97.27, effective 18 January 2007, published in TL 06–25 are hereby RESCINDED as follows:

Dayton, OH, Green County-Lewis A Jackson Regional, RNAV (GPS) RWY 7, Orig
Dayton, OH, Greene County-Lewis A Jackson Regional, RNAV (GPS) RWY 25, Orig
Dayton, OH, Greene County-Lewis A Jackson Regional, NDB RWY 25, Amdt 1
Dayton, OH, Greene County-Lewis A Jackson Regional, GPS RWY 7, Orig-A, CANCELLED
Dayton, OH, Greene County-Lewis A Jackson Regional, Takeoff Minimums and Textual DP, Amdt 1

[FR Doc. E6–20154 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Bertek Pharmaceuticals, Inc., to Mylan Bertek Pharmaceuticals, Inc.

DATES: This rule is effective November 29, 2006.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478, has informed FDA that it has changed its name to Mylan Bertek Pharmaceuticals, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change.

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

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600 in the table in paragraph (c)(1) remove the entry for ''Bertek Pharmaceuticals, Inc.'' and alphabetically add a new entry for ''Mylan Bertek Pharmaceuticals, Inc.''; and in the table in paragraph (c)(2) revise the entry for ''062794'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	

Firm name and address	Drug labeler code
Mylan Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478.	062794
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* *	* * * *
062794	Mylan Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478
* *	* * * *

Dated: November 16, 2006.

Bernadette Dunham,

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

[FR Doc. E6–20250 Filed 11–28–06; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0021; FRL–8249–3]

RIN 2060–AM30

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for site remediation activities. This final rule revises specific provisions in the rule to resolve issues and questions subsequent to promulgation; correct technical omissions; and correct typographical, cross-reference, and grammatical errors.

DATES: This final rule is effective on November 29, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0021. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air & Radiation Docket, Docket ID No. EPA–HQ–OAR–2002–0021, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Ready Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Chemicals and Coatings Group, Sector Policies and Programs Division (E143–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–3078, facsimile number: (919) 541–0246, electronic mail (e-mail) address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the NESHAP include:

Category	NAICS [1]	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271.	Site remediation activities at businesses at which materials containing organic HAP currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with co-located site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities to clean up materials contaminated with organic HAP.

Category	NAICS [1]	Examples of regulated entities
State/ Local/ Tribal Government	.....	Tribal governments that conduct site remediation activities to clean up materials contaminated with organic HAP.

[1] North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to this final rule. This final rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic hazardous air pollutant (HAP) and other hazardous material. Thus, for many businesses and facilities subject to the rule, the regulated sources (*i.e.*, the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation at the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx), and plastic materials and synthetics manufacturing (NAICS code 3252xx).

However, we are also aware of site remediation activities potentially subject to the rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the 40 CFR part 63, subpart GGGGG-National Emissions Standards for Hazardous Air Pollutants: Site Remediation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 29, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Background
II. Final Amendments to Rule
A. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities
B. 1 Megagram (Mg) Site Remediation Applicability Exemption
C. Short-Term Site Remediation Exemption (30-day)
D. Point of Determination of Remediation Material VOHAP Concentration
E. Requirements for Equipment Leaks
F. Other Rule Corrections
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

On October 8, 2003 (68 FR 58172), we issued a NESHAP for site remediation activities (40 CFR part 63, subpart GGGGG). This NESHAP implements section 112(d) of the CAA by requiring owners and operators of facilities that are major sources of HAP emissions and where a site remediation is conducted, that meets the definitions and conditions specified in this rule, to comply with emission standards and work practices for control of HAP reflecting application of the maximum achievable control technology.

After promulgation of subpart 40 CFR part 63, GGGGG, we received questions about our intent and interpretation of specific provisions in the rule. To clarify these issues, we decided that technical amendments to the rule are appropriate. We proposed on May 1, 2006, (71 FR 25531) amendments to subpart GGGGG to clarify certain provisions of the rule and to correct unintentional technical omissions and terminology, typographical, printing, and grammatical errors that we have identified since promulgation of the original rule. A 60-day period, which ended on June 30, 2006, was provided to accept public comments on the proposed amendments to subpart GGGGG. We received comments on the proposed amendments from 12 commenters.

A petition for reconsideration for 40 CFR part, subpart GGGGG was filed by the Sierra Club on December 8, 2003. The amendments to subpart GGGGG promulgated by this action do not address any issues cited in the Sierra Club's petition. We are still reviewing the items for reconsideration and will address them in a future notice.

II. Final Amendments to Rule

We are amending 40 CFR part 63, subpart GGGGG to clarify our intent for applying and implementing specific rule requirements and to correct unintentional technical omissions and editorial errors. This action promulgates our proposed regulatory language for the amendments to subpart GGGGG except

for those provisions, as noted below, for which modifications were made to the regulatory language for the final amendments in response to specific public comments. Our original projections for the subpart GGGGG compliance costs, environmental benefits, burden on industry, or the number of affected facilities are not changed by these final amendments.

This final rule promulgated by this action reflects our full consideration of all the comments we received on the amendment proposal. Our responses to all of the substantive public comments on the proposal are presented in a comment summary and response document available in Docket ID No. EPA–HQ–OAR–2002–0021 and at *http://www.epa.gov/ttn/atw/siterm/sitermpg.html.*

A. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities

The major source determination requirements used for determining the applicability of 40 CFR part 63, subpart GGGGG are amended for certain facilities involved with oil and natural gas production to be consistent with special directives for these facilities in CAA section 112(n)(4)(A). As discussed in the preamble for the proposed amendments (71 FR 25536), in the Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH) we address the provisions of CAA section 112(n)(4)(A) by limiting the emission points that are aggregated for the major source status determination of a production field facility to only the glycol dehydration units and storage vessels with flash emission potential, as defined in the rule (see 40 CFR 63.761). Consistent with our approach used for subpart HH, we are amending subpart GGGGG to specify that for a major source status determination of a production field facility, only the HAP emissions from the glycol dehydration units and storage vessels with the potential for flash emissions, as defined in subpart HH, are to be aggregated with the HAP emissions from the site remediation activities at the facility.

Several commenters on the proposed amendments stated that in compliance with the CAA section 112(n)(4) statutory directives, EPA should provide a similar applicability provision in 40 CFR part 63, subpart GGGGG for natural gas transmission and storage facilities consistent with the major source definition in the Natural Gas Transmission and Storage Facilities NESHAP (40 CFR part 63, subpart HHH). We agree that such a provision is appropriate, and are amending subpart GGGGG to specify that for natural gas transmission and storage facilities, HAP emissions are to be aggregated according to the definition of major source in § 63.1271 for a major source determination.

B. 1 Megagram (Mg) Site Remediation Applicability Exemption

The final amendments clarify the 40 CFR part 63, subpart GGGGG language with respect to how the 1 Mg applicability exemption is to be applied at a facility. Under this applicability exemption, site remediation activities conducted at your facility are not subject to the requirements of subpart GGGGG (except for certain recordkeeping requirements) if you determine that the total quantity of the HAP that is contained in the remediation material excavated, extracted, pumped, or otherwise removed during all of the site remediations conducted at your facility is less than 1 Mg annually. This final rule language for the exemption provisions does not change how the 1 Mg limit is applied nor change the documentation requirements for the exemption, but adds clarifying language stating that the 1 Mg limit applies on a facility-wide, annual basis and that there is no restriction to the number of site remediations that can be conducted under the exemption. Also, in response to public comments on the proposed regulatory language, the term ''annual'' was substituted for ''calendar year'', and language was added to the final rule stating that a Title V permit does not have to be reopened or revised solely to include the recordkeeping requirement required for the 1 Mg exemption. However, the recordkeeping requirement must be included in the facility's Title V permit the next time the permit is renewed, reopened, or revised for another reason.

C. Short-Term Site Remediation Exemption (30-Day)

Subpart GGGGG of 40 CFR part 63 is amended to clarify the rule language with respect to our intent for application of the 30-day site remediation exemption, including those situations when the remediation material is transferred off-site. Under this exemption, site remediations at your facility with affected sources subject to regulation under subpart GGGGG that can be completed within 30 days are exempted from having to meet the air emission control requirements specified in this final rule. The final rule language explicitly defines the beginning and end of the 30-day period for the purpose of qualifying for the exemption.

The first day of the 30-day exemption period is defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. Certain activities that you perform to prepare for the actual cleanup of the contaminated media are not counted as part of the 30-day period. The period of time (*i.e.,* number days) that you are required to perform the following activities are not counted as part of the 30-day interval that cannot be exceeded in order to qualify for the exemption provided that these activities are completed before the actual site cleanup begins: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

The last day of the 30-day exemption period is defined as the day on which all of the remediation materials generated by the cleanup have been treated or disposed of in a manner such that the organic HAP in the material no longer have a reasonable potential for volatilizing and being released to the atmosphere (*e.g.,* placed in a landfill). The exemption does not apply to a site remediation where the only activities completed during the 30-day period are excavating, pumping, or otherwise removing the remediation material from the contaminated area, and then storing this material on-site (*e.g.,* in waste piles, tanks, or containers) to be treated or disposed at some later date after the end of the 30-day period. In this case, the processes and equipment used for site remediation need to meet the applicable air emission control requirement in 40 CFR part 63, subpart GGGGG (unless the site remediation qualifies for another exemption allowed under the rule).

It was our intent that this exemption be used for those short-term site remediations for which all of the remediation materials generated by the cleanup are treated or disposed within the 30-day period to meet the requirement that the organic HAP constituents in the materials no longer have a reasonable potential for volatilizing and subsequent release to the atmosphere. However, we recognize that in some situations where the remediation materials are shipped off-site for treatment or disposal, unexpected special circumstances

beyond the direct control of the facility owner or operator may not allow the final treatment or disposal of the remediation material sent to the off-site location to be completed within the 30-day period required to qualify for the exemption. To address these situations, this final rule includes a provision allowing you to qualify for the exemption provided that all of the remediation material generated by your cleanup is transferred off-site within the 30-day exemption period according to the existing requirements specified in section 63.7936 of subpart GGGGG for remediation material transferred to another party or shipped to another facility. The requirements in section 63.7936 apply to the off-site transfer of remediation materials that have an average total average volatile organic HAP (VOHAP) concentration equal to or greater than 10 parts per million by weight (ppmw), and provide the owner or operator of the affected facility from which the remediation material is transferred with several compliance options. This final rule adds the requirement that you must include in the applicable shipping documentation used to transfer the remediation material off-site, in addition to any notifications and certifications required under section 63.7936, a statement that the shipped material was generated by a site remediation activity subject to the conditions specified for the 30-day exemption. The statement must include the date on which you initiated the site remediation activity generating the shipped remediation materials and the date 30 calendar days following your initiation date.

D. Point of Determination of Remediation Material VOHAP Concentration

Subpart GGGGG of 40 CFR part 63 applies the air emission control requirements for remediation material management units (*i.e.,* tanks, surface impoundments, containers, oil/water separators, organic/water separators and transfer systems) to those units that manage remediation material with an average VOHAP concentration equal to or greater than 500 ppmw. The final rule revises the applicable regulatory language in subpart GGGGG referring to the point at which the facility owner or operator determines the average VOHAP concentration of a remediation material. The final rule implements our original intended VOHAP determination procedure by reinstating the regulatory language and terminology we originally proposed for rule, and removing the term ''point-of-extraction'' from the rule.

Under the amended 40 CFR part 63, subpart GGGGG, you are required to determine the average total VOHAP concentration of the remediation material at a point prior to or within a remediation material management unit. Thus, once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination that manage this material are no longer required to meet the air emission control requirements in subpart GGGGG unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material increases to 500 ppmw or more. The amended regulatory language also clarifies that any free product returned to a manufacturing process is no longer subject to the air emission control requirements in subpart GGGGG.

E. Requirements for Equipment Leaks

The final rule adds a compliance option to 40 CFR part 63, subpart GGGGG, air emission control requirements for those affected equipment leak sources already using air pollution controls or work practices to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. Under this option, the affected source is in compliance with subpart GGGGG if the HAP emissions from the affected equipment leak source are controlled in compliance with the applicable standards specified in the other subpart in part 61 or 63 that the affected source is subject. This final rule extends the same compliance option that subpart GGGGG already allows for process vents and remediation material management units to equipment leak sources.

If you choose to comply with this option, you must comply with all of the applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you implement leak detection and control measures to reduce HAP emissions as specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

F. Other Rule Corrections

For purposes of implementing the requirements of subpart GGGGG, Table 1 in the rule lists the specific organic chemical compounds, isomers, and mixtures that are HAP. The final rule updates this table to be consistent with EPA's current HAP list. The final rule removes from Table 1 the listings for 1,1-dimethyl hydrazine and methyl ethyl ketone. Both of these organic chemical compounds have been delisted as HAP.

Provisions in 40 CFR part 63, subpart GGGGG related to startup, shutdown, and malfunction plan requirements have been revised, as appropriate, to be consistent with the amendments to the General Provisions under subpart A to 40 CFR part 63 that we promulgated on April 20, 2006 (71 FR 20446).

The final rule includes changes to the cross-reference citations in §§ 63.7938(b)(2), 63.7938(d)(2), 63.7938(d)(3), 63.7941(h), 63.7950(c), 63.7884(b)(2), and Table 3 of the rule to cite the correct provision in 40 CFR part 63, subpart GGGGG that we had intended to be referenced. Also, the final amendments correct terminology, typographical, and grammatical errors in specific provisions of subpart GGGGG that have been identified since the rule was originally promulgated. The final rule replaces the rule language with the correct cross-reference citation, term, or wording, but do not change any of the technical or administrative requirements of the rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule results in no changes to the information collection requirements of the existing rule. OMB has previously approved the information collection requirements contained in 40 CFR part 63, subpart GGGGG, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0534, EPA ICR number 2062.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby; Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW.; Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of the final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities that may be directly regulated by the rule include small businesses and small governmental jurisdictions. We have determined that there is little or no impact on any affected small entities because the final rule amends existing regulations to clarify specific provisions and to correct technical omissions and editorial errors.

D. Unfunded Mandates Reform Act

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

EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule does not add any new requirements to the current rule, they only clarify our intent and correct errors. Thus, Executive Order 13132 does not apply to the final amendments.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175. This action does not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final rule.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory

actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to the Executive Order because they are based on control technology and not on health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it only clarifies our intent and corrects errors in the existing rule. Further, we have concluded that the final rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of VCS is not relevant to this action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). These final amendments are effective on November 29, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: November 22, 2006.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart GGGGG—[Amended]

■ 2. Section 63.7881 is amended by revising paragraphs (a)(3) and (c) to read as follows:

§ 63.7881 Am I subject to this subpart?

(a) * * *

(3) Your facility is a major source of HAP as defined in § 63.2, except as specified in paragraph (a)(3)(i) or (ii) of this section. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(i) For production field facilities, as defined in § 63.761, only the HAP emissions from the glycol dehydration units and storage vessels with the potential for flash emissions (both as defined in § 63.761) shall be aggregated with the HAP emissions from the site remediation activities at the facility for a major source determination.

(ii) For natural gas transmission and storage facilities, HAP emissions shall be aggregated in accordance with the definition of major source in § 63.1271 for a major source determination.

* * * * *

(c) Your site remediation activities are not subject to the requirements of this subpart, except for the recordkeeping requirements in this paragraph, provided that you meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) You determine that the total quantity of the HAP listed in Table 1 to this subpart that is contained in the remediation material excavated, extracted, pumped, or otherwise removed during all of the site remediations conducted at your facility is less than 1 megagram (Mg) annually. This exemption applies the 1 Mg limit on a facility-wide, annual basis, and there is no restriction to the number of site remediations that can be conducted during this period.

(2) You must prepare and maintain at your facility written documentation to support your determination that the total HAP quantity in your remediation materials for the year is less than 1 Mg. The documentation must include a description of your methodology and data used for determining the total HAP content of the remediation material.

(3) Your Title V permit does not have to be reopened or revised solely to include the recordkeeping requirement specified in paragraph (c)(2) of this section. However, the requirement must be included in your permit the next time the permit is renewed, reopened, or revised for another reason.

* * * * *

■ 3. Section 63.7884 is revised to read as follows:

§ 63.7884 What are the general standards I must meet for each site remediation with affected sources?

(a) For each site remediation with an affected source designated under § 63.7882, you must meet the standards specified in §§ 63.7885 through 63.7955, as applicable to your affected source, unless your site remediation meets the requirements for an exemption under paragraph (b) of this section.

(b) A site remediation that is completed within 30 consecutive calendar days according to the conditions in paragraphs (b)(1) through (3) of this section is not subject to the standards under paragraph (a) of this section. This exemption cannot be used for a site remediation involving the staged or intermittent cleanup of remediation material whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals, with durations less than 30-days per interval, when the time period from the beginning of the first interval to the end of the last interval exceeds 30 days.

(1) The 30 consecutive calendar day period for a site remediation that qualifies for this exemption is determined according to actions taken by you as defined in paragraphs (b)(1)(i) through (iii) of this section.

(i) The first day of the 30-day period is defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the

remediation materials. The following activities, when completed before beginning this initial action, are not counted as part of the 30-day period: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

(ii) The last day of the 30-day period is defined as the day on which treatment or disposal of all of the remediation materials generated by the cleanup is completed such that the organic constituents in these materials no longer have a reasonable potential for volatilizing and being released to the atmosphere.

(iii) If treatment or disposal of the remediation materials is conducted at an off-site facility where the final treatment or disposal of the material cannot, or may not, be completed within the 30-day exemption period, then the shipment of all of the remediation material generated from your cleanup that is transferred to another party, or shipped to another facility, within the 30-day period, must be performed according to the applicable requirements specified in § 63.7936.

(2) For the purpose of complying with paragraph (b)(1) of this section, if you ship or otherwise transfer the remediation material off-site you must include in the applicable shipping documentation, in addition to any notifications and certifications required under § 63.7936, a statement that the shipped material was generated by a site remediation activity subject to the conditions of this exemption. The statement must include the date on which you initiated the site remediation activity generating the shipped remediation materials, as specified in paragraph (b)(1)(i) of this section, and the date 30 calendar days following your initiation date.

(3) You must prepare and maintain at your facility written documentation describing the exempted site remediation, and listing the initiation and completion dates for the site remediation.

■ 4. Section 63.7886 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7886 What are the general standards I must meet for my affected remediation material management units?

* * * * *

(b) * * *

(2) You determine that the average total VOHAP concentration, as defined in § 63.7957, of the remediation material managed in the remediation material management unit material is less than 500 ppmw. You must follow the requirements in § 63.7943 to demonstrate that the VOHAP concentration of the remediation material is less than 500 ppmw. Once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination managing this material meet the requirements of this paragraph unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material could increase. Any free product returned to the manufacturing process (*e.g.*, recovered oil returned to a storage tank at a refinery) is no longer subject to this subpart.

* * * * *

■ 5. Section 63.7887 is revised to read as follows:

§ 63.7887 What are the general standards I must meet for my affected equipment leak sources?

(a) You must control HAP emissions from equipment leaks from each equipment component that is part of the affected source by implementing leak detection and control measures according to the standards specified in §§ 63.7920 through 63.7922 unless you elect to meet the requirements in paragraph (b) of this section.

(b) If the affected equipment leak source is also subject to another subpart in 40 CFR part 61 or 40 CFR part 63, you may control emissions of the HAP listed in Table 1 to this subpart from the affected equipment leak source in compliance with the standards specified in the other applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you implement leak detection and control measures to reduce HAP emissions as specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

■ 6. Section 63.7890 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7890 What emissions limitations and work practice standards must I meet for process vents?

* * * * *

(b) * * *

(2) Reduce from all affected process vents the emissions of total organic compounds (TOC) (minus methane and ethane) to a level below 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy); or

* * * * *

■ 7. Section 63.7893 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.7893 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for process vents?

* * * * *

(b) You must maintain emission levels from all of your affected process vents to meet the facilitywide emission limits in § 63.7890(b) that apply to you, as specified in paragraphs (b)(1) through (4) of this section.

* * * * *

■ 8. Section 63.7896 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(b) * * *

(2) You have determined, according to the procedures in § 63.7944, and recorded the maximum HAP vapor pressure of the remediation material placed in each affected tank subject to § 63.7886(b)(1)(i) that does not use Tank Level 2 controls.

* * * * *

■ 9. Section 63.7898 is amended by revising paragraph (e)(2) to read as follows:

§ 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(e) * * *

(2) Visually inspecting the external floating roof according to the requirements in § 63.1063(d)(1) and inspecting the seals according to the requirements in § 63.1063(d)(2) and (3).

* * * * *

■ 10. Section 63.7913 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

* * * * *

(c) You must demonstrate continuous compliance for each separator using a fixed roof vented through a closed vent system to a control device according to § 63.7910(b)(2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

* * * * *

■ 11. Section 63.7915 is amended by revising paragraph (c)(2) to read as follows:

§ 63.7915 What emissions limitations and work practice standards must I meet for transfer systems?

* * * * *

(c) * * *

(2) A transfer system that consists of continuous hard piping. All joints or seams between the pipe sections must be permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

* * * * *

■ 12. Section 63.7917 is amended by revising paragraph (c) to read as follows:

§ 63.7917 What are my inspection and monitoring requirements for transfer systems?

* * * * *

(c) If you operate a transfer system consisting of hard piping according to § 63.7915(c)(2), you must annually inspect the unburied portion of pipeline and all joints for leaks and other defects. In the event that a defect is detected, you must repair the leak or defect according to the requirements of paragraph (e) of this section.

* * * * *

■ 13. Section 63.7918 is amended by revising paragraphs (d) and (e) introductory text to read as follows:

§ 63.7918 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for transfer systems?

* * * * *

(d) You must demonstrate continuous compliance for each transfer system that consists of hard piping according to § 63.7915(c)(2) by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Operating and maintaining the pipeline to ensure that all joints or seams between the pipe sections remain permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(2) Inspecting the pipeline for defects at least annually according to the requirements in § 63.7917(c).

(3) Repairing defects according to the requirements in § 63.7917(e).

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each transfer system that is enclosed and vented to a control device according to § 63.7915(c)(3) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

* * * * *

■ 14. Section 63.7927 is amended by revising paragraph (b)(3) to read as follows:

§ 63.7927 What are my inspection and monitoring requirements for closed vent systems and control devices?

* * * * *

(b) * * *

(3) Use a CPMS to measure and record the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle).

* * * * *

■ 15. Section 63.7928 is amended by revising paragraphs (b)(6) and (7) and (c) introductory text to read as follows:

§ 63.7928 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for closed vent systems and control devices?

* * * * *

(b) * * *

(6) If the closed vent system is equipped with a flow indicator, recording the information in § 63.693(c)(2)(i).

(7) If the closed vent system is equipped with a seal or locking device, visually inspecting the seal or closure mechanism at least monthly according to the requirements in § 63.693(c)(2)(ii), and recording the results of each inspection.

(c) You must demonstrate continuous compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) by meeting the requirements in paragraph (c)(1) or (2) of this section.

* * * * *

■ 16. Section 63.7935 is amended by revising paragraphs (c) and (f) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

* * * * *

■ 17. Section 63.7937 is amended by revising paragraphs (c)(2) and (c)(4)(ii) to read as follows:

§ 63.7937 How do I demonstrate initial compliance with the general standards?

* * * * *

(c) * * *

(2) If the remediation material managed in the affected remediation material management unit has an average total VOHAP concentration less than 500 ppmw according to § 63.7886(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures in § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

* * * * *

(4) * * *

(ii) You will monitor the biological treatment process conducted in each unit according to the requirements in § 63.684(e)(4).

* * * * *

■ 18. Section 63.7938 is amended by revising paragraphs (b)(2) and (c)(4)(ii) to read as follows:

63.7938 How do I demonstrate continuous compliance with the general standards?

* * * * *

(b) * * *

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(c)(1), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7885(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 10 ppmw.

(c) * * *

(4) * * *

(ii) Monitoring the biological treatment process conducted in each

unit according to the requirements in § 63.7886(4)(i).

* * * * *

■ 19. Section 63.7940 is amended by revising paragraph (c) to read as follows:

§ 63.7940 By what date must I conduct performance tests or other initial compliance demonstrations?

* * * * *

(c) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2).

■ 20. Section 63.7941 is amended as follows:

■ a. By revising paragraph (c);

■ b. By revising paragraph (g); and

■ c. By removing and reserving paragraph (h):

§ 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

* * * * *

(c) If you use a carbon adsorption system, condenser, vapor incinerator, boiler, or process heater to meet an emission limit in this subpart, you may choose to perform a design evaluation to demonstrate initial compliance instead of a performance test. You must perform a design evaluation according to the general requirements in § 63.693(b)(8) and the specific requirements in § 63.693(d)(2)(ii) for a carbon adsorption system (including establishing carbon replacement schedules and associated requirements), § 63.693(e)(2)(ii) for a condenser, § 63.693(f)(2)(ii) for a vapor incinerator, or § 63.693(g)(2)(i)(B) for a boiler or process heater.

* * * * *

(g) If you are required to conduct a visual inspection of an affected source, you must conduct the inspection according to the procedures in § 63.906(a)(1) for Tank Level 1 controls, § 63.1063(d) for Tank Level 2 controls, § 63.926(a) for Container Level 1 controls, § 63.946(a) for a surface impoundment equipped with a floating membrane cover, § 63.946(b) for a surface impoundment equipped with a cover and vented to a control device, § 63.1047(a) for a separator with a fixed roof, § 63.1047(c) for a separator equipped with a fixed roof and vented to a control device, § 63.695(c)(1)(i) or (c)(2)(i) for a closed vent system, and § 63.964(a) for individual drain systems.

* * * * *

(h) [Reserved]

* * * * *

■ 21. Section 63.7943 is amended as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b) introductory text;

■ c. By revising paragraphs (b)(1) introductory text and (b)(3); and

■ d. By revising paragraph (c) introductory text.

§ 63.7943 How do I determine the average VOHAP concentration of my remediation material?

(a) General requirements. You must determine the average total VOHAP concentration of a remediation material using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section. These methods may be used to determine the average VOHAP concentration of any material listed in (a)(1) through (3) of this section.

(1) A single remediation material stream; or

(2) Two or more remediation material streams that are combined prior to, or within, a remediation material management unit or treatment process; or

(3) Remediation material that is combined with one or more non-remediation material streams prior to, or within, a remediation material management unit or treatment process.

(b) Direct measurement. To determine the average total VOHAP concentration of a remediation material using direct measurement, you must use the procedures in paragraphs (b)(1) through (3) of this section.

(1) Sampling. Samples of each material stream must be collected from the container, pipeline, or other device used to deliver each material stream prior to entering the remediation material management unit or treatment process in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

* * * * *

(3) Calculations. The average total VOHAP concentration ($\bar{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed according to paragraph (b)(2) of this section and Equation 1 of this section as follows:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i) \qquad \text{(Eq. 1)}$$

Where:

$\bar{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i = Individual sample ''i'' of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample ''i'' as determined according to the requirements of paragraph (b)(2) of this section, ppmw.

(c) Knowledge of the material. To determine the average total VOHAP concentration of a remediation material using knowledge, you must use the procedures in paragraphs (c)(1) through (3) of this section.

* * * * *

■ 22. Section 63.7950 is amended by revising paragraph (c) to read as follows:

§ 63.7950 What notifications must I submit and when?

* * * * *

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification no later than 120 calendar days after initial startup.

* * * * *

■ 23. Section 63.7956 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7956 Who implements and enforces this subpart?

* * * * *

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

* * * * *

■ 24. Section 63.7957 is amended by removing the definition of ''Point-of-extraction'' and revising the definitions of ''deviation'' and ''transfer system'' to read as follows:

§ 63.7957 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation, (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

* * * * *

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within a waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined for this subpart) or a self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

* * * * *

■ 25. Table 1 to Subpart GGGGG of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS

CAS No.[a]	Compound name	$F_{m\ 305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	B1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethylether)	0.757
542756	1,3-Dichloropropene	1.000
64675	Diethyl sulfate	0.0025
79447	Dimethyl carbamoyl chloride[c]	0.150
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law Constant value equal to or greater than 0.01 Y/X(1.8×10^{-6} atm/gm-mole/m^3) at 25°C.	[e]
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound name	$F_{m\ 305}$
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyltrichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.0108
88062	2,4,6-Trichlorophenol	0.0132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:
$F_{m\ 305}$ Fraction measure factor in Method 305, 40 CFR 305 part 63, appendix A.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The $F_{m\ 305}$ factors for some of the more common glycol 305 ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

■ 26. Table 3 is amended by revising the entries for ''63.7(c)'', ''63.8(c)(1)(i)'', and ''63.8(c)(6)'' to read as follows:

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

* * * * *

Citation	Subject	Brief description	Applies to subpart GGGGG
*	*	*	*
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	Keep parts for routine repairs available; reporting requirements for SSM when action is described in SSM plan.	Yes.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
*	*	*	*
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	Yes. However requirements for CPMS are addressed in § 63.7927.
*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2003–0090; FRL–8249–4]

RIN 2060–AN90

Final Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts until September 30, 2005. On August 29, 2005, EPA deferred the nonattainment designation for these areas a second time until December 31, 2006. The EPA is now extending the deferred effective date of the nonattainment designation for 13 Early Action Compact areas until April 15, 2008, and for the Denver Early Action Compact area until July 1, 2007.

EFFECTIVE DATE: This final rule is effective on December 29, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID no. EPA–HQ–OAR–2003–0090. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *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 through *http://www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials relevant to Early Action Compact areas on EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 54l–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–05, Research Triangle Park, NC 27711, phone number (919) 54l–5565 or by e-mail at: *cole.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Does This Action Apply to Me?

This action applies only to the 14 areas that entered into Early Action compacts and for which the effective date of the nonattainment designation was deferred. A list of these areas is included in Table 1.

The information presented in this preamble is organized as follows:

Outline

I. General Information
Does this Action Apply to Me?
II. What Is the Purpose of This Document?
III. What Action has EPA Taken to Date for Early Action Compact Areas?
A. What progress are compact areas making toward completing their milestones?
B. What is this final action for compact areas?
C. What is EPA's schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?
D. What comments did EPA receive on the August 3, 2006 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act
L. Petitions for Judicial Review

II. What is the Purpose of This Document?

The purpose of this document is to finalize the extension of the deferred effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. The new effective designation date for 13 areas is April 15, 2008. The effective date of designation for the Denver EAC area is extended until July 1, 2007.

III. What Action has EPA Taken to Date for Early Action Compact Areas?

This section discusses EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the Early Action Compact program. The EPA's April 30, 2004 air quality designation rule (69 FR 23858) provides a description of the compact approach, the requirements for areas participating in the program and the impacts of the program on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these Early Action Compact areas agreed to reduce ground-level ozone pollution earlier than the CAA would require. On December 16, 2003 (68 FR 70108), we published a proposed rule to defer until September 30, 2005, the effective date of designation for Early Action Compact areas that did not meet the 8-hour ozone NAAQS. Fourteen of the 33 compact areas did not meet the 8-hour ozone NAAQS.

The final designation rule published April 30, 2004 (69 FR 23858), as amended June 18, 2004 (69 FR 34080), included the following actions for compact areas: Deferred the effective date of nonattainment designation for 14 compact areas until September 30, 2005; detailed the progress compact areas had made toward completing their milestones; described the actions required for compact areas in order to remain eligible for a deferred effective date for a nonattainment designation; detailed EPA's schedule for taking further action to determine whether to further defer the effective date of nonattainment designations; and described the consequences for compact areas that do not meet a milestone. In the April 2004, action, we also discussed three compact areas which did not meet the March 31, 2004, milestone; Knoxville, Memphis, and Chattanooga, Tennessee. Knoxville and Memphis were designated nonattainment effective June 15, 2004. Chattanooga was later determined to have met the March 31, 2004, milestone, and we deferred the designation date until September 30, 2005, (69 FR 34080). This brought the number of participating compact areas to 31. Since then 2 additional areas, Haywood and Putnam Counties, Tennessee have withdrawn from the program leaving the participating number of compact areas at 29.

On August 29, 2005, we published a final rule extending the deferred effective date of designation from September 30, 2005, to December 31, 2006, for the same 14 compact areas. In order to receive the second deferral, Early Action Compact areas needed to submit a State Implementation Plan with locally adopted measures by December 31, 2004. The EPA approved the SIP revisions as meeting the EAC Protocol and EPA's EAC regulations at 40 CFR 81.300, and these approvals were the basis for extending the deferred effective date until December 31, 2006. Information on local measures, SIP submittals and background on the Early Action Compact program may be found on EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

A. What progress are compact areas making toward completing their milestones?

In general, the remaining 29 compact areas have made satisfactory progress toward timely completion of their milestones. All compact areas were required to submit two progress reports, one by December 30, 2005, and the other by June 30, 2006. In these progress reports, the States provided information on progress towards implementing local control measures that were incorporated in their SIPs. Each of the EAC areas submitted the required progress reports and these reports are available at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

After review by EPA, all the EAC areas were found to be in compliance with the requirements of the EAC Protocol and the individual State Implementation Plans, however, issues were noted by the State of Colorado with the Denver area regarding emissions from oil and gas exploration and production condensate tanks. Based on a report and action plan submitted by the State of Colorado to EPA, dated June 2, 2006, the State provided information that indicated volatile organic compound (VOC) emissions from oil and gas operations within the Denver EAC area were higher than had been estimated in the attainment demonstration modeling. Subsequent to this June 2, 2006 report, the State of Colorado has embarked on rulemaking activities to amend Colorado's Regulation No. 7 (the State's regulation for the control of VOCs) to require additional emission reductions from oil and gas exploration and production condensate tanks to achieve the level of reductions the State relied on in the EPA-approved modeled attainment demonstration. Further discussion on this issue is provided below in section D (response to comments).

B. What is this final action for compact areas?

We are extending the deferred effective date of the nonattainment designation for 14 compact areas. In consideration of the progress reported by the EAC areas, we have concluded that 13 of the 14 areas are eligible for a final deferral of their nonattainment designation for the 8-hour ozone NAAQS to April 15, 2008. See 40 CFR 81.300(e)(4)(ii). Therefore, we are further extending until April 15, 2008 the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 1 below, with the exception of the Denver EAC area, which is extended only to July 1, 2007. We are revising 40 CFR part 81 to reflect these extensions.

TABLE 1.—COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF APRIL 15, 2008 [1]

[**Note:** Name of designated 8-hour ozone nonattainment area is in parentheses]

State	Compact area (designated area)	Counties with designation deferred to April 15, 2008	Counties which are part of compacts and are designated unclassifiable/attainment
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC–MD–VA.	Winchester City, Frederick County.	

TABLE 1.—COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF APRIL 15, 2008 [1]—Continued

[**Note:** Name of designated 8-hour ozone nonattainment area is in parentheses]

State	Compact area (designated area)	Counties with designation deferred to April 15, 2008	Counties which are part of compacts and are designated unclassifiable/attainment
VA	Roanoke Area (Roanoke, VA)	Roanoke County, Botetourt County, Roanoke City, Salem City.	
MD	Washington County (Washington County (Hagerstown, MD), adjacent to Washington, DC–MD–VA.	Washington County.	
WV	The Eastern Pan Handle Region, (Berkeley & Jefferson Counties, WV), Martinsburg area.	Berkeley County, Jefferson County.	
EPA Region 4			
NC	Unifour (Hickory-Morganton-Lenoir, NC)	Catawba County, Alexander County, Burke County (part), Caldwell County (part).	
NC	Triad (Greensboro-Winston-Salem-High Point, NC).	Randolph County, Forsyth County, Davie County, Alamance County, Caswell County, Davidson County, Guilford County, Rockingham County.	Surry County,Yadkin County, Stokes County.
NC	Cumberland County (Fayetteville, NC)	Cumberland County.	
SC	Appalachian—A (Greenville-Spartanburg-Anderson, SC).	Spartanburg County, Greenville County, Anderson County.	Cherokee County, Pickens County, Oconee County.
SC	Central Midlands—I Columbia area	Richland County (part), Lexington County (part).	Newberry County, Fairfield County.
TN/GA	Chattanooga (Chattanooga, TN–GA)	Hamilton County, TN, Meigs County, TN, Catoosa County, GA.	Marion County, TN, Walker County, GA.
TN	Nashville (Nashville, TN)	Davidson County, Rutherford County, Williamson County, Wilson County, Sumner County.	Robertson County, Cheatham County, Dickson County.
TN	Johnson City-Kingsport-Bristol Area (TN portion only).	Sullivan Co, TN, Hawkins County, TN	Washington Co, TN, Unicoi County, TN, Carter County, TN, Johnson County, TN.
EPA Region 6			
TX	San Antonio	Bexar County, Comal County, Guadalupe County.	Wilson County.
EPA Region 8			
CO	Denver [1] (Denver-Boulder-Greeley-Ft. Collins-Love, CO).	Denver County, Boulder County (includes part of Rocky Mtn Nat.Park), Jefferson County, Douglas County, Broomfield, Adams County, Arapahoe County, Larimer County (part), Weld County (part).	

[1] Effective date of nonattainment designation for Denver EAC is extended to July 1, 2007.

C. What is EPA's schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?

The EAC areas have one remaining milestone which is to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. No later than April 15, 2008, we will determine whether the compact areas that received a deferred effective date of April 15, 2008, have attained the 8-hour ozone NAAQS by December 31, 2007, and have met all compact milestones. If the area has not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will designate the area as attainment. Any compact area that has not attained the NAAQS and thus has an effective nonattainment designation will be subject to the full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of designation. As provided above, the State of Colorado is undertaking rulemaking to address shortfalls in VOC emission reductions for the Denver EAC. These rulemaking activities are designed to achieve greater VOC emission reductions from the oil and gas industry and we also note, the rule revisions contain a compliance date of May 1, 2007, which is just before the beginning of the Colorado high ozone season. Once the State's rulemaking actions are complete, the rule revisions will be submitted to EPA for our approval.

D. What comments did EPA receive on the August 3, 2006 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?

We received six comments on the proposed rule to extend the deferred effective date of the nonattainment designations for 14 Early Action Compact areas to April 15, 2008. We have responded to the comments in this section.

Comment: Two commenters expressed support for the compact

process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the Early Action Compact program. Several of these commenters expressed concern about various legal aspects of the program, primarily the deferral of the effective date of the nonattainment designation for these areas. Although some of these commenters were supportive of the goal of proactively addressing the public health concerns associated with ozone pollution, the commenters state that the program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into Early Action Compacts with areas and lacks authority to allow areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard.

Response: We have determined that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard. The participating communities are serious in their commitment and have made good progress implementing State and local measures for controlling emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens groups, a number of these communities are, for the first time, cooperating on a regional basis to solve environmental problems that affect the health and welfare of their citizens. People living in these areas realize reductions in pollution levels sooner and will enjoy the health benefits of cleaner air sooner than might otherwise occur. With respect to the commenter who attached comments that were submitted on EPA's initial proposal to defer the effective date of a nonattainment designation of EAC areas meeting compact milestones, we refer back to our response to those comments in the April 2004 designation rule (69 FR 23858).

Comment: Three commenters expressed specific concerns about deferring the effective date of the nonattainment designation for the Denver metropolitan EAC area. The commenters noted that the Denver EAC area does not comply with its commitments to address ozone-forming pollution from the oil and gas sector. Two of these commenters stated that emissions from these operations are higher than the State originally projected; however, they acknowledged that Colorado is currently taking steps to revise control requirements for these operations to address the problem. Commenters believed that it was inappropriate for EPA to proceed at this time with granting the Denver EAC area a final deferred nonattainment effective date to April 15, 2008, while the necessary revisions to Regulation No. 7, the State of Colorado's regulation for the control of VOCs which are designed to require additional VOC emission reductions from oil and gas condensate tanks would still be under consideration by both the Colorado Air Quality Control Commission (AQCC) and State Legislature. In addition, the commenters noted that air quality monitoring data for the 2006 ozone season indicate that the area may not be complying with the 8-hour ozone standard through 2007.

Response: The commenters were concerned with increased VOC emissions from oil and gas exploration and production condensate tanks. Based on a report and action plan submitted by the State of Colorado to EPA, dated June 2, 2006, the State provided information that indicated VOC emissions from oil and gas operations within the Denver EAC area were higher than had been relied on in the attainment demonstration modeling. With rule revisions being proposed before the Colorado AQCC on August 17, 2006, the State of Colorado has initiated public rulemaking activities to amend Colorado's Regulation No. 7 to require additional emission reductions from oil and gas exploration and production condensate tanks to achieve the level of reductions relied on in the EPA-approved modeled attainment demonstration. However, by State rulemaking procedures, the Regulation No. 7 revisions will not be considered for adoption by the AQCC until November 16 or 17, 2006, and by Colorado State law, the Regulation No. 7 revisions will then have to be considered for adoption by the Colorado State Legislature which will only be in session between January 1, 2007 to the first week of May, 2007. This presents a potential dilemma for EPA, as we currently consider granting the Denver EAC area a final deferred nonattainment effective date to April 15, 2008, in that the necessary revisions to Regulation No. 7, that are designed to require additional VOC emission reductions from oil and gas condensate tanks, would still be under consideration by both the AQCC and State Legislature.

The EPA agrees with the commenters' concern regarding the timing of a final deferral of the Denver EAC's nonattainment effective date and potential conflict with the State's fall 2006 and spring 2007 State Implementation Plan (SIP) rulemaking process time frame. However, we also believe that beginning the rulemaking process to address the shortfall in reductions, the area has demonstrated its commitment to ensuring the terms of the EAC process will be met. Therefore, to accommodate the public rulemaking activities of the Colorado AQCC and Colorado State Legislature and to allow the Denver area to remain in the EAC program, with this final rule EPA is granting the Denver area a deferred effective date of nonattainment only to July 1, 2007. Following the rulemaking actions by the Colorado AQCC and Colorado State Legislature, EPA anticipates that it will undertake further rulemaking action for the Denver EAC to determine whether to extend the deferred nonattainment effective date beyond July 1, 2007. A likely schedule for EPA's subsequent rulemaking action is:

—March 1, 2007; EPA proposes whether to extend the final deferred effective date for the Denver EAC to April 15, 2008. This proposed rule would reflect the actions taken by the Colorado AQCC and then current actions by the Colorado State Legislature. This proposal would open a 30-day public comment period.
—April 1, 2007; the 30-day public comment period closes.
—April 2007; EPA evaluates all public comments.
—May 1, 2007; EPA prepares a final rule and starts its internal concurrence process.
—On or about May 25, 2007; Signature on the final rule by the Administrator.
—June 1, 2007; Publication in the **Federal Register** of the final rule and that rule will have a 30-day effective date.

The above schedule would allow both the Colorado AQCC and Colorado State Legislature until late April to complete their respective functions and also allow EPA appropriate time to complete a final deferral of the Denver EAC nonattainment effective date to April 15, 2008, if EPA determines that is the appropriate action to take.

With respect to the commenters' concerns regarding the ambient air quality monitoring data for the Denver

EAC area, EPA agrees that several exceedances of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) were observed in 2006. However, even with these exceedances none of the ambient air quality monitors in the 8-hour ozone monitoring network recorded a violation of the 8-hour ozone NAAQS. Further, we note that the ambient air quality monitors for the Denver EAC area have shown attainment of the 8-hour ozone NAAQS for the periods, 2002 through 2004, 2003 through 2005, and 2004 through 2006. Although Denver has not violated the standard for the past three 3-year periods, EPA notes that air quality in the area remains very close to the standard, indicating that the additional emission reductions being considered now by the State are important to ensure that air quality in the area remains below the level of the standard. EPA notes and appreciates commenters' concerns for the potential for a violation of the 8-hour ozone NAAQS during the upcoming ozone season of 2007.

IV. Statutory and Executive Order Reviews

This action finalizes the extension of the deferred effective date of the nonattainment designation for 13 compact areas until April 15, 2008. This action also finalizes the extension of the deferred effective date of the nonattainment designation for the Denver compact area until July 1, 2007.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not require the collection of any information.

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

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule would extend the deferred effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS.

D. Unfunded Mandates Reform Act

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

The EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In this final rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. Thus, this final rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This final rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have ''Tribal implications'' as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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

This final rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this final rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

K. 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 29, 2006.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 29, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA Section 307(b)(2).

List of Subjects in 40 CFR Part 81

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

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: November 22, 2006.

Stephen L. Johnson,

Administrator.

■ 40 CFR Part 81 is amended as follows:

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.300 is amended by revising paragraphs (e)(3)(i) and (e)(3)(ii)(B) and (C) to read as follows:

§ 81.300 Scope.

* * * * *

(e) * * *

(3) * * *

(i) *General.* With the exception of the Denver area subject to a compact and notwithstanding clauses (i) through (iv)

of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until April 15, 2008 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) through (iii) of this section. The Administrator shall defer until July 1, 2007 the effective date of a nonattainment designation of the Denver area.

* * * * *

(ii) * * *

(B) Prior to expiration of the deferred effective date on April 15, 2008, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(iv) and (v) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iv) through (vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

* * * * *

■ 3. In § 81.306, the table entitled ''Colorado-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.306 Colorado.

* * * * *

Colorado-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until July 1, 2007.

* * * * *

■ 4. In § 81.311, the table entitled ''Georgia-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.311 Georgia.

Georgia-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

[2] Effective date of nonattainment designation for Denver EAC is extended to July 1, 2007.

■ 5. In § 81.321, the table entitled ''Maryland-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.321 Maryland.

* * * * *

Maryland-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 6. In § 81.334, the table entitled ''North Carolina-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.334 North Carolina.

* * * * *

North Carolina-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 7. In § 81.341, the table entitled ''South Carolina-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.341 South Carolina.

* * * * *

South Carolina-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 8. In § 81.343, the table entitled ''Tennessee-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.343 Tennessee.

* * * * *

Tennessee-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 9. In § 81.344, the table entitled ''Texas-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.344 Texas.

* * * * *

Texas-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 10. In § 81.347, the table entitled ''Virginia-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.347 Virginia.

* * * * *

Virginia-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

■ 11. In § 81.349, the table entitled ''West Virginia-Ozone (8–Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.349 West Virginia.

* * * * *

West Virginia-Ozone (8–Hour Standard)

* * * * *

[2] Early Action Compact Area, effective date deferred until April 15, 2008.

* * * * *

[FR Doc. E6–20221 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0181; FRL–8103–8]

Diflubenzuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of diflubenzuron and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on brassica, leafy greens subgroup 5B, turnip greens, peanut, peanut hay, peanut oil, barley grain, barley hay, barley straw, oat grain, oat forage, oat hay, oat straw, wheat grain, wheat forage, wheat hay, wheat straw, aspirated grain fractions, and pummelo. The Interregional Research Project #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 November 29, 2006. Objections and requests for hearings must be received on or before January 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0181. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0181 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 January 29, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0181, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2006 (71 FR 18742) (FRL–7773–6), 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 5E6965, PP 5E6966, and PP 5E6967) by Interregional Project Number 4, 681 Highway 1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.377 be amended by establishing tolerances for residues of diflubenzuron, (N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and metabolites convertible to p-chloroaniline expressed as diflubenzuron in or on the raw agricultural commodities barley grain, oat grain, wheat grain at 0.06 ppm; forage of barley, oat and wheat at 5.0 ppm; hay of barley, oat and wheat at 2.0 ppm; straw of barley, oat and wheat at 2.0 ppm; aspirated grain fractions of barley, oat and wheat at 3.0 ppm; and pummelo at 0.5 ppm (PP 5E6965), brassica, leafy greens subgroup 5B and turnip greens at 8.0 ppm, eggplant and okra at 1.0 ppm (PP 5E6966), and peanut at 0.2 ppm (PP 5E6967). That notice included a summary of the petition prepared by IR-4. There were no comments received in response to the notice of filing.

Tolerances were later amended by IR-4 as follows: Barley, hay at 3.0 ppm; barley, straw at 1.8 ppm; oat forage at 7.0 ppm; oat hay at 6.0 ppm; oat straw at 3.5 ppm; wheat, forage at 7.0 ppm, wheat, hay at 6.0 ppm, wheat, straw at 3.5 ppm; grain, aspirated fractions at 11 ppm (PP 5E6965); brassica, leafy greens, subgroup 5B and turnip greens at 9.0 ppm (PP 5E6966); peanut at 0.10 ppm; peanut, hay at 55 ppm; peanut, refined oil at 0.20 ppm (PP 5E6967).

In addition, the proposed tolerance for barley, forage (PP 5E6965) was deleted by IR-4 because this is not a raw agricultural commodity (RAC) of barley. Also, the proposed tolerances for eggplant and okra (PP 5E6966) were withdrawn by IR-4 because the Agency concluded that there are insufficient data to establish tolerances for

diflubenzuron residues in or on these commodities at this time.

EPA is also deleting several established tolerances in § 180.377 (b) that are no longer needed as a result of this action. The tolerance deletions under § 180.377 (b) are time-limited tolerances established under section 18 emergency exemptions that are superceded by the establishment of general tolerances for diflubenzuron and its metabolites under § 180.377 (a)(2).

The revisions to § 180.377 (b) are as follows:

1. Delete the time-limited tolerance for barley, grain at 0.05 ppm. A tolerance for barley, grain at 0.06 ppm is established by this action under § 180.377(a)(2).

2. Delete the time-limited tolerance for barley, hay at 1.0 ppm. A tolerance for barley, hay at 3.0 ppm is established by this action under § 180.377(a)(2).

3. Delete the time-limited tolerance for barley, straw at 0.50 ppm. A tolerance for barley, straw at 1.8 ppm is established by this action under § 180.377 (a)(2).

4. Delete the time-limited tolerance for wheat, grain at 0.05 ppm. A tolerance for wheat, grain at 0.06 ppm is established by this action under § 180.377(a)(2).

5. Delete the time-limited tolerance for wheat, hay at 1.0 ppm. A tolerance for wheat, hay at 6.0 ppm is established by this action under § 180.377(a)(2).

6. Delete the time-limited tolerance for wheat, straw at 0.50 ppm. A tolerance for wheat, straw at 3.5 ppm is established by this action under § 180.377 (a)(2).

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(a)(2) of FFDCA, for tolerances for combined residues of diflubenzuron, (N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on the raw agricultural commodities barley, grain at 0.06 ppm; barley, hay at 3.0 ppm; barley, straw at 1.8 ppm; oat, grain at 0.06 ppm; oat forage at 7.0 ppm; oat hay at 6.0 ppm; oat straw at 3.5 ppm; wheat, grain at 0.06 ppm; wheat, forage at 7.0 ppm, wheat, hay at 6.0 ppm, wheat, straw at 3.5 ppm; grain, aspirated fractions at 11 ppm; pummelo at 0.50 ppm; brassica, leafy greens, subgroup 5B at 9.0 ppm; turnip greens at 9.0 ppm; peanut at 0.10 ppm; peanut, hay at 55 ppm; peanut, refined oil at 0.20 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 diflubenzuron 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/2002/September/Day-19/p23818.htm* (67 FR 59006).

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 diflubenzuron used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 19, 2002 (67 FR 59006) (FRL–7200–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances for residues of diflubenzuron are established under 40 CFR 180.377. Tolerances listed in 40 CFR 180.377(a)(1) are expressed in terms of diflubenzuron per se. Under this section, tolerances of 0.05-6.0 ppm are established for residues in/on eggs; milk; fat and meat of cattle, goat, hog, horse, poultry, and sheep; poultry meat byproducts; cottonseed; mushroom; grapefruit, orange (sweet); tangerine; soybean hulls; and globe artichoke. Tolerances listed in 40 CFR 180.377(a)(2) are expressed in terms of the combined residues of diflubenzuron and its metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA). Under this section, tolerances of 0.02-6.0 ppm are established for residues in/on rice grain; tree nuts (group 14); pistachios; fruit, stone (group 12) except cherry; meat byproducts of cattle, goat, hog, horse, and sheep; pear; rice straw; pepper; and almond hulls. Time-limited tolerances listed in 40 CFR 180.377(b) are expressed in terms of the combined residues of diflubenzuron and its metabolites CPU and PCA, expressed as the parent diflubenzuron, in connection with use of the pesticide under Section 18 Emergency Exemptions granted by EPA. Risk assessments were conducted by EPA to assess dietary exposures from diflubenzuron in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The diflubenzuron toxicology studies indicated no possibility of such an effect for either the general U.S. population (including infants and children) or the females 13-50 years old population subgroup for diflubenzuron; therefore, an acute dietary exposure analysis was not performed.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analysis a Tier 1 chronic dietary-exposure assessment was conducted using the established/recommended tolerances for all food commodities, 100% CT information for all proposed and existing uses, and DEEM(™) Version 7.81 default processing factors for some processed commodities.

iii. *Cancer*. The Agency has classified diflubenzuron as ''Group E,'' evidence of non-carcinogenicity for humans, based on lack of evidence of carcinogenicity in rats and mice. There are also two metabolites of diflubenzuron; PCA and CPU. PCA tested positive for splenic tumors in male rats and hepatocellular adenomas/carcinomas in male mice in a National Toxicology Program (NTP) study. Therefore, EPA classified PCA as a ''Group B2'' probable human carcinogen. The Agency determined for those commodities that contained PCA and CPU, the Q1* of PCA should be used to calculate the cancer risk from the sum of these two metabolites.

Based on the submitted metabolism studies, there are two possible sources for dietary exposure to PCA and CPU: residues in mushrooms and residues in milk and liver. Because human exposure to PCA and CPU will not be affected by the proposed new uses, and EPA has previously concluded that exposure to these compounds is safe, therefore, the cancer dietary risk from PCA and CPU will not be addressed in this document. For a detailed discussion on the exposure and risks to PCA and CPU, please refer to the September, 2002 **Federal Register** document titled Diflubenzuron; Pesticide Tolerances (September 19, 2002, FR 67 59006); *http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm*.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for diflubenzuron 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 diflubenzuron. 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 Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentrations in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of diflubenzuron and the major degradate CPU for chronic exposures are estimated to be 2.76 ppb for surface water and 0.208 ppb for ground water.Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For chronic dietary risk assessment, the annual average concentration of 2.76 ppb was used to assess 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).

Although there are no registered homeowner uses, there are registered uses for professional applications to outdoor residential and recreational areas to control mosquitoes, moths, and other insects. However, the potential for post-application residential exposure is expected to be limited, due to the low dermal absorption rate (0.5%) of diflubenzuron, and since it is only applied to the tree canopy, minimal bystander contact is expected.

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 diflubenzuron and any other substances and diflubenzuron 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 diflubenzuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

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*. Based on the developmental and reproductive toxicity studies, there is no indication of increased susceptibility of rats or rabbits to *in utero* or postnatal exposure.

3. *Conclusion*. Based on the reliable data available on diflubenzuron, EPA determined that the additional FQPA 10X safety factor to protect infants and children was not needed. This decision was based on the following:

i. There is a complete toxicity data base for diflubenzuron

ii. There is no indication of increased susceptibility of rats or rabbits to *in utero* or postnatal exposure;

iii. A developmental neurotoxicity study (DNT) with diflubenzuron is not required;

iv. Food and drinking water exposure assessments will not underestimate the potential exposure for infants and children; and

v. There are currently no registered or proposed residential (non-occupational) uses of diflubenzuron for homeowners. Although there are no registered homeowner uses, there is potential for professional applications to outdoor residential and recreational areas to control mosquitoes, moths, and other insects. However, the potential for post-application residential exposures are expected to be limited. Due to the low dermal absorption rate (0.5%) of diflubenzuron, and since it is only applied to the tree canopy to control gypsy moths and mosquitoes, minimal bystander contact is expected.

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 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. The risk assessment for diflubenzuron used in this tolerance document uses this approach of incorporating water exposure directly into the dietary exposure analysis.

1. *Acute risk*. Because there were no toxic effects attributable to a single dose of diflubenzuron, it is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to diflubenzuron from food and water will utilize 11% of the cPAD for the U.S. population, 12% of the cPAD for all infants less than 1 year old, and 37% of the cPAD for children 1-2 years old. There are no residential uses for diflubenzuron that result in chronic residential exposure to diflubenzuron. 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).

Diflubenzuron 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. *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).

Diflubenzuron 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.

5. *Aggregate cancer risk for U.S. population*. Based on the available evidence, which included adequate carcinogenicity studies in rats and mice, and battery of negative mutagenicity studies, diflubenzuron has been classified as ''Group E,'' evidence of non-carcinogenicity for humans, by the Agency.

As noted in Unit III.C.1.iii. of this document, the Agency has concluded that human exposure to PCA and CPU (metabolites of diflubenzuron) will not be affected by the proposed new uses. EPA has previously found aggregate exposure to these compounds to be safe. (September 19, 2002, 67 FR 59006); *http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm*

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 diflubenzuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

There are adequate enforcement methods, published in the Pesticide Analytical Manual (PAM, Vol. II), for determining diflubenzuron residues of concern. In addition, a new analytical methodology for plant commodities was successfully validated by an independent laboratory as well as by Agency chemists at the Analytical Chemistry Branch (ACB)/Biological and Economics Analysis Division (BEAD) in conjunction with the approved rice petition (PP#8F4925). The new methods were forwarded to the Food and Drug Administration (FDA) for publication in PAM Vol. II as Roman Numeral Methods. These methods can separately determine residues of diflubenzuron by gas chromatography/electron-capture detection (GC/ECD), CPU by GC/ECD, and PCA by GC/mass spectrometry (MS). The reported limit of quantitation (LOQ) for diflubenzuron in/on rice grain, straw, and bran is 0.01 ppm, and is 0.05 ppm in/on rice hull. In rice straw, the LOQ for CPU is 0.01 ppm and 0.005 ppm for PCA.

B. International Residue Limits

The Codex Alimentarius has established maximum residue limits (MRL), expressed in terms of diflubenzuron per se, for many commodities including: apple (5 ppm), citrus fruits (0.5 ppm), edible offal (mammalian) (0.1 ppm), eggs (0.05 ppm), meat (from mammals other than marine mammals) (0.1 ppm), milks (0.02 ppm), mushrooms (0.3 ppm), pear (5 ppm), pome fruits (5 ppm), poultry meat (0.05 ppm), rice (0.01 ppm), and rice straw and fodder (dry) 0.7 ppm). As the U.S. residue definition includes CPU and PCA, compatibility is not possible with the proposed tolerances.

V. Conclusion

Therefore, tolerances are established for combined residues of diflubenzuron, (N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on the raw agricultural commodities barley, grain at 0.06 ppm; barley, hay at 3.0 ppm; barley, straw at 1.8 ppm; oat, grain at 0.06 ppm; oat forage at 7.0 ppm; oat hay at 6.0 ppm; oat straw at 3.5 ppm; wheat, grain at 0.06 ppm; wheat, forage at 7.0 ppm, wheat, hay at 6.0 ppm, wheat, straw at 3.5 ppm; grain, aspirated fractions at 11 ppm; pummelo at 0.50 ppm; brassica, leafy greens, subgroup 5B

at 9.0 ppm; turnip greens at 9.0 ppm; peanut at 0.10 ppm; peanut, hay at 55 ppm; peanut, refined oil at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 16, 2006.

Donald R. Stubbs,

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 180.377 is amended by alphabetically adding commodities to the table in paragraph (a)(2) and removing from the table in paragraph (b), the commodities ''barley, grain''; ''barley, hay''; barley, straw''; ''wheat, grain''; ''wheat, hay''; and ''wheat, straw'' to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * *	*
Barley, grain	0.06
Barley, hay	3.0
Barley, straw	1.8
Brassica, leafy greens, subgroup 5B	9.0
* * * *	*
Grain, aspirated fractions	11
* * * *	*
Oat, forage	7.0
Oat, grain	0.06
Oat, hay	6.0
Oat, straw	3.5
Peanut	0.10
Peanut, hay	55
Peanut, refined oil	0.20
* * * *	*
Pummelo	0.50
* * * *	*
Turnip greens	9.0
Wheat, forage	7.0
Wheat, grain	0.06
Wheat, hay	6.0
Wheat, straw	3.5

* * * * *

[FR Doc. E6–20147 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 4, 11, 22, 64, 90, and 97

[FCC 06–35]

Establishment of the Public Safety and Homeland Security Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 17, 2006, the Commission adopted an Order revising its rules to establish the Public Safety and Homeland Security Bureau. By establishing this bureau the Commission believes it will be better able to address and promote public safety and homeland security.

DATES: Effective September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Timothy Peterson, Public Safety and Homeland Security Bureau, at 202–418–1575, or via the Internet at *timothy.peterson@fcc.gov*.

SUPPLEMENTARY INFORMATION: To promote a more efficient, effective and responsive organizational structure and to better promote and address public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues, the Commission has concluded that the proper dispatch of its business and the public interest will be served by creating a Public Safety and Homeland Security Bureau. In this Order, we amend the Commission's Rules to reflect the new structure, describe the new Bureau's functions and delegated authority, and make other conforming changes.

Authority for the adoption of the foregoing revisions is contained in Sections 1, 4(i), 4(j), 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j), 155(b), 155(c), and 303(r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) are inapplicable.

Accordingly, it is ordered that Parts 0, 4, 11, 22, 64, 90, and 97 of the Commission Rules, set forth in Title 47 of the Code of Federal Regulations, are amended as set forth in the Appendix attached to this Order, to be effective upon release of this Order.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

47 CFR Part 4

Communications common carrier, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 11

Radio, Television.

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 64

Civil defense, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 90

Business and industry, Common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 97

Civil defense, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 4, 11, 22, 64, 90, and 97 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.5 is amended by adding paragraph (a)(17) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) * * *

(17) Public Safety and Homeland Security Bureau.

* * * * *

§ 0.11 [Amended]

■ 3. Section 0.11 is amended by removing paragraph (a)(11).

■ 4. Section 0.31 is amended by revising paragraph (d) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(d) To advise the Commission concerning engineering matters, including (in consultation with the Public Safety and Homeland Security Bureau where appropriate) privacy and security of communications, involved in making or implementing policy or in resolving specific cases.

* * * * *

■ 5. Section 0.51 is amended by adding paragraph (s) to read as follows:

§ 0.51 Functions of the Bureau.

* * * * *

(s) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 6. Section 0.61 is amended by adding paragraph (l) to read as follows:

§ 0.61 Functions of the Bureau.

* * * * *

(l) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 7. Section 0.91 is amended by adding paragraph (o) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(o) Coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 8. Amend § 0.111 as follows:

■ a. Revise paragraph (a)(22);

■ b. Remove paragraphs (c), (f), and (h) and redesignate paragraphs (d), (e), (g), and (i) through (l) as (c) through (i).

■ c. Revise newly redesignated paragraph (g); The revisions read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(22) Advise the Commission or responsible Bureau or Office regarding the enforcement implications of existing and proposed rules.

* * * * *

(g) Handle congressional and other correspondence relating to or requesting specific enforcement actions, specific complaints or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Consumer and Governmental Affairs

Bureau, the Office of General Counsel (impermissible ex parte presentations) or another Bureau or Office;

* * * * *

■ 9. Section 0.131 is amended by adding paragraph (q) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(q) Coordinates with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 10. Section 0.181 is amended by revising paragraphs (b) and (f) and adding paragraph (j) to read as follows:

§ 0.181 The Defense Commissioner.

* * * * *

(b) To represent the Commission in public safety, homeland security, national security, emergency preparedness, disaster management, defense and related matters requiring conferences or communications with other governmental officers, departments, or agencies.

* * * * *

(f) To take such measures as will assure continuity of the Commission's functions under any foreseeable circumstances with a minimum of interruption. In the event of an emergency, the Defense Commissioner, in consultation with the Chief, Public Safety and Homeland Security Bureau, will decide whether to activate the Commission's Continuity of Operations (COOP) plan and/or initiate the Commission's emergency response procedures.

* * * * *

(j) The Commission may designate an Alternate Defense Commissioner who is authorized to perform the functions of the Defense Commissioner if he or she is not available.

§ 0.182 [Removed]

■ 11. Section 0.182 is removed.

■ 12. Section 0.185 is amended by revising the introductory paragraph and paragraphs (a), (b), (d), and (e) to read as follows:

§ 0.185 Responsibilities of the bureaus and staff offices.

The head of each of the bureaus and staff offices, in rendering assistance to the Chief, Public Safety and Homeland Security Bureau in the performance of that person's duties with respect to homeland security, national security, emergency management and preparedness, disaster management, defense, and related activities will have the following duties and responsibilities:

(a) To keep the Chief, Public Safety and Homeland Security Bureau informed of the investigation, progress, and completion of programs, plans, or activities with respect to homeland security, national security and emergency preparedness, and defense in which they are engaged or have been requested to engage.

(b) To render assistance and advice to the Chief, Public Safety and Homeland Security Bureau, on matters which relate to the functions of their respective bureaus or staff offices.

* * * * *

(d) To perform such other duties related to the Commission's homeland security, national security, emergency management and preparedness, disaster management, defense, and related activities as may be assigned to them by the Commission.

(e) To serve as Public Safety/Homeland Security Liaison to the Public Safety and Homeland Security Bureau or designate a Deputy Chief of the Bureau or Office as such liaison.

■ 13. Part 0, Subpart A, is amended by adding an undesignated center heading and § 0.191 to read as follows:

Public Safety and Homeland Security Bureau

§ 0.191 Functions of the Bureau.

The Public Safety and Homeland Security Bureau advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to public safety, homeland security, national security, emergency management and preparedness, disaster management, and ancillary operations. The Bureau has responsibility for coordinating public safety, homeland security, national security, emergency management and preparedness, disaster management, and related activities within the Commission. The Bureau also performs the following functions.

(a) Develops, recommends, and administers policy goals, objectives, rules, regulations, programs and plans for the Commission to promote effective and reliable communications for public safety, homeland security, national security, emergency management and preparedness, disaster management and related activities, including public safety communications (including 911, enhanced 911, and other emergency number issues), priority emergency communications, alert and warning systems (including the Emergency Alert System), continuity of government operations, implementation of Homeland Security Presidential Directives and Orders, disaster management coordination and outreach, communications infrastructure protection, reliability, operability and interoperability of networks and communications systems, the Communications Assistance for Law Enforcement Act (CALEA), and network security. Recommends policies and procedures for public safety, homeland security, national security, emergency management and preparedness, and recommends national emergency plans and preparedness programs covering Commission functions during national emergency conditions. Conducts outreach and coordination activities with, among others, state and local governmental agencies, hospitals and other emergency health care providers, and public safety organizations. Recommends national emergency plans, policies, and preparedness programs covering the provision of service by communications service providers, including telecommunications service providers, information service providers, common carriers, and non-common carriers; broadcasting and cable facilities; satellite and wireless radio services; radio frequency assignment; electro-magnetic radiation; investigation and enforcement.

(b) Under the general direction of the Defense Commissioner, coordinates the public safety, homeland security, national security, emergency management and preparedness, disaster management, and related activities of the Commission, including national security and emergency preparedness and defense mobilization, Continuity of Government (COG) planning, alert and warning systems (including the Emergency Alert System), and other functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act. Provides support to the Defense Commissioner, including with respect to his or her participation in the Joint Telecommunications Resources Board, and the National Security Telecommunications Advisory Committee and other public safety and homeland security organizations and committees. Represents the Defense Commissioner with other Government agencies and organizations, the communications industry, and Commission licensees on public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues. Keeps the Defense Commissioner informed as to significant

developments in the fields of public safety, homeland security, national security, emergency management, and disaster management activities, and related areas.

(c) Develops and administers rules, regulations, and policies for priority emergency communications, including the Telecommunications Service Priority System. Supports the Chiefs of the Wireline Competition, International and Wireless Telecommunications Bureaus on matters involving assignment of Telecommunications Service Priority System priorities and in administration of that system.

(d) The Chief, Public Safety and Homeland Security Bureau, or that person's designee, acts as FCC Alternate Homeland Security and Defense Coordinator and principal to the National Communications System, and the Chief, Public Safety and Homeland Security Bureau, or that person's designee, shall serve as the Commission's representative on National Communications Systems Committees.

(e) Conducts rulemaking proceedings and acts on requests for interpretation or waiver of rules.

(f) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of public safety, homeland security, national security, emergency management and preparedness, and disaster management wireless telecommunications, including ancillary operations related to the provision or use of such services. These activities include: policy development and coordination; conducting rulemaking and adjudicatory proceedings, including complaint proceedings for matters not within the responsibility of the Enforcement Bureau; acting on waivers of rules; acting on applications for service and facility authorizations; compliance and enforcement activities for matters not within the responsibility of the Enforcement Bureau; determining resource impacts of existing, planned or recommended Commission activities concerning wireless telecommunications, and developing and recommending resource deployment priorities. In addition, advises and assists public safety entities on wireless telecommunications issues and matters related thereto. Administers all authority previously delegated to the Wireless Telecommunications Bureau (including those delegations expressly provided to the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau) in Improving Public Safety Communications in the 800 MHz Band, WT Docket 02–55.

(g) Conducts studies of public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues. Develops and administers recordkeeping and reporting requirements for communications companies pertaining to these issues. Administers any Commission information collection requirements pertaining to public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues.

(h) Interacts with the public, local, state, and other governmental agencies and industry groups (including advisory committees and public safety organizations and associations) on public safety, homeland security, national security, emergency management, disaster management and related issues. As requested, represents the Commission at meetings and conferences. Serves as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding and interference resolution; and oversees coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

(i) Maintains and operates the Commission's public safety, homeland security, national security, emergency management and preparedness, and disaster management facilities and operations, including the Communications Center, the establishment of any Emergency Operations Center (EOC), and any liaison activities with other federal, state, or local government organizations.

(j) Reviews and coordinates orders, programs and actions initiated by other Bureaus and Offices in matters affecting public safety, homeland security, national security, emergency management and preparedness, disaster management and related issues to ensure consistency with overall Commission policy. Provides advice to the Commission and other Bureaus and offices regarding the public safety, homeland security, national security, emergency management, and disaster management implications of existing and proposed rules.

(k) Develops and recommends responses to legislative, regulatory or judicial inquiries and proposals concerning or affecting public safety, homeland security, national security, emergency management, disaster management and related issues. Responses to judicial inquiries should be developed with and recommended to the Office of General Counsel.

(l) Develops and maintains the Commission's plans and procedures, including the oversight, preparation, and training of Commission personnel, for Continuity of Operations (COOP), Continuity of Government functions, and Commission activities and responses to national emergencies and other similar situations.

(m) Acts on emergency requests for Special Temporary Authority during non-business hours when the other Offices and Bureaus of the Commission are closed. Such actions shall be coordinated with, if possible, and promptly reported to the responsible Bureau or Office.

(n) Maintains liaison with other Bureaus and Offices concerning matters affecting public safety, homeland security, national security, emergency management and preparedness, disaster management and related issues.

(o) Is authorized to declare that a temporary state of communications emergency exists pursuant to § 97.401(b) of this chapter and to act on behalf of the Commission with respect to the operation of amateur stations during such temporary state of communications emergency.

(p) Performs such other functions and duties as may be assigned or referred to it by the Commission or the Defense Commissioner.

§ 0.284 [Amended]

■ 14. Section 0.284 is amended by removing paragraphs (a)(3) and (a)(7), and redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(3) through (a)(5).

§ 0.311 [Amended]

■ 15. Section 0.311 is amended by removing paragraph (c) and the note to paragraph (c).

■ 16. Section 0.314 is amended by revising paragraph (c) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(c) To act on and make determinations on behalf of the Commission regarding requests for assignments and reassignments of priorities under the Telecommunications Service Priority System, part 64 of the rules, when circumstances require immediate action and the common carrier seeking to provide service states that it cannot contact the National Communications System or the Commission office normally responsible for such assignments. To the extent possible, all

such actions and determinations shall be made in coordination with the Public Safety and Homeland Security Bureau.

* * * * *

■ 17. Section 0.332 is amended by revising paragraph (c) to read as follows:

§ 0.332 Actions taken under delegated authority.

* * * * *

(c) Matters involving public safety, homeland security, national security, emergency management and preparedness, and disaster management communications—the Public Safety and Homeland Security Bureau.

* * * * *

■ 18. Section 0.387 is revised to read as follows:

§ 0.387 Other national security and emergency preparedness delegations; cross reference.

For authority of the Chief of the Public Safety and Homeland Security Bureau to declare a temporary communications emergency, see § 0.191(o).

■ 19. Part 0 is amended by adding an undesignated center heading and § 0.392 to read as follows:

Public Safety and Homeland Security Bureau

§ 0.392 Authority delegated.

The Chief, Public Safety and Homeland Security Bureau, is hereby delegated authority to perform all functions of the Bureau, described in § 0.191, subject to the following exceptions and limitations in paragraphs (a) through (e) of this section.

(a) The Chief, Public Safety and Homeland Security Bureau shall not have authority to act on any applications or requests that present novel questions of fact, law or policy that cannot be resolved under outstanding precedents and guidelines.

(b) The Public Safety and Homeland Security Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Public Safety and Homeland Security Bureau, pursuant to any delegated authority.

(c) The Public Safety and Homeland Security Bureau shall not have authority to act upon any formal or informal radio application or section 214 application for common carrier services which is in hearing status.

(d) The Public Safety and Homeland Security Bureau shall not have authority to impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $80,000 for common carrier providers and $20,000 for non-common carrier providers.

(e) The Chief, Public Safety and Homeland Security Bureau shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing.

(f) The Chief, Public Safety and Homeland Security Bureau or her/his designee has the authority to rule on emergency requests for Special Temporary Authority during non-business hours. Action on emergency requests for Special Temporary Authority during non-business hours shall be promptly reported to the responsible Bureau or Office.

(g) The Chief, Public Safety and Homeland Security Bureau is authorized to declare that a temporary state of communications emergency exists pursuant to § 97.401(b) of this chapter and to act on behalf of the Commission with respect to the operation of amateur stations during such temporary state of communications emergency.

(h) The Chief, Public Safety and Homeland Security Bureau or her/his designee is authorized to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Public Safety and Homeland Security Bureau. Before issuing a subpoena, the Bureau shall obtain the approval of the Office of General Counsel.

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), unless otherwise noted.

■ 21. Section 4.11 is revised to read as follows:

§ 4.11 Notification and initial and final communications outage reports that must be filed by communications providers.

Notification and Initial and Final Communications Outage Reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Notification shall provide: The name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service effects; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting entity. The Initial and Final Reports shall contain the information required in this part 4. The Initial report shall contain all pertinent information then available on the outage and shall be submitted in good faith. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report. The Notification and the Initial and Final Communications Outage Reports are to be submitted electronically to the Commission. ''Submitted electronically'' refers to submission of the information using Commission-approved Web-based outage report templates. If there are technical impediments to using the Web-based system during the Notification stage, then a written Notification to the Commission by e-mail, FAX, or courier may be used; such Notification shall contain the information required. All hand-delivered Notifications and Initial and Final Communications Outage Reports, shall be addressed to the Federal Communications Commission, The Office of Secretary, Attention: Chief, Public Safety & Homeland Security Bureau. Electronic filing shall be effectuated in accordance with procedures that are specified by the Commission by public notice.

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 22. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 23. Section 11.21 is amended by revising the introductory paragraph to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

* * * * *

■ 24. Section 11.43 is revised to read as follows:

§ 11.43 National level participation.

Entities that wish to voluntarily participate in the national level EAS may submit a written request to the Chief, Public Safety and Homeland Security Bureau.

■ 25. Section 11.47 is amended by revising paragraph (b) to read as follows:

§ 11.47 Optional use of other communications methods and systems.

* * * * *

(b) Other technologies and public service providers, such as DBS, low earth orbiting satellites, etc. that wish to participate in the EAS may contact the FCC's Chief, Public Safety and Homeland Security Bureau, or their State Emergency Communications Committee for information and guidance.

PART 22—PUBLIC MOBILE SERVICES

■ 26. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

■ 27. Section 22.879 is amended by revising paragraph (c)(3)(v) to read as follows:

§ 22.879 Interference resolution procedures.

* * * * *

(c) * * *

(3) * * *

(v) Has been approved by the Chief of the Public Safety and Homeland Security Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Public Safety and Homeland Security Bureau.

■ 28. Section 22.972 is amended by revising paragraph (c)(3)(v) to read as follows:

§ 22.972 Interference resolution procedures.

* * * * *

(c) * * *

(3) * * *

(v) Has been approved by the Chief of the Public Safety and Homeland Security Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Public Safety and Homeland Security Bureau.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 29. 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.

■ 30. Appendix A, 6.b.(2)(m) is revised to read as follows:

Appendix A to Part 64—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)

* * * * *

6. * * *

b. * * *

(2) * * *

(m) All reports submitted to the FCC should be directed to Chief, Public Safety and Homeland Security Bureau, Washington, DC 20554.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 31. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 32. Section 90.674 is amended by revising paragraph (c)(3)(v) to read as follows:

§ 90.674 Interference resolution procedures before, during and after band reconfiguration.

* * * * *

(c) * * *

(3) * * *

(v) Has been approved by the Chief of the Public Safety and Homeland Security Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Public Safety and Homeland Security Bureau.

■ 33. Section 90.676 is amended by revising paragraphs (a)(4), (b)(1), and (b)(4) to read as follows:

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(a) * * *

(4) Establishing a relocation schedule on a NPSPAC region-by-region basis, prioritizing the regions on the basis of population. However, should a given region be encountering unusually severe amounts of unacceptable interference, that region may be moved up in priority. Any party disputing such a change in priority may refer the matter to the Chief, Public Safety and Homeland Security Bureau, who hereby is delegated the authority to resolve such disputes. The Transition Administrator may direct that adjoining regions be reconfigured simultaneously when conditions so require.

(b) * * *

(1) Monitor the retuning schedule and resolve any schedule delays or refer same to the Chief, Public Safety and Homeland Security Bureau, for resolution;

* * * * *

(4) Provide the Chief, Public Safety and Homeland Security Bureau, with an annual audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator. The Transition Administrator may select the date for filing the annual audited statement;

* * * * *

§ 90.677 [Amended]

■ 34. Section 90.677 is amended by removing the words ''Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau'' and

''Chief of the Public Safety and Critical Infrastructure Division'' wherever they appear and adding, in their place, the words ''Chief, Public Safety and Homeland Security Bureau.''

PART 97—AMATEUR RADIO SERVICE

■ 35. 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.

■ 36. Section 97.401 is amended by revising paragraph (b) to read as follows:

§ 97.401 Operation during a disaster.

* * * * *

(b) When a disaster disrupts normal communication systems in a particular area, the FCC may declare a temporary state of communication emergency. The declaration will set forth any special conditions and special rules to be observed by stations during the communication emergency. A request for a declaration of a temporary state of emergency should be directed to the Chief, Public Safety and Homeland Security Bureau.

* * * * *

[FR Doc. E6–20240 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 74, 78, and 101

[WT Docket No. 04–143; FCC 06–141]

Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules that rechannelize Fixed Microwave Services (FS) channels in the terrestrial 18 GHz band. The Commission revises the rules in order to reduce the regulatory burden for the 18 GHz band by adding new channel-size options for FS operations along with channelization and emission flexibility for multichannel video programming distributors (MVPDs) below 18.3 GHz, thereby facilitating the relocation to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz. We believe these actions will encourage efficient use of the spectrum by all FS licensees and provide a regulatory environment that will allow MVPDs to provide competitive services while protecting Federal earth stations.

DATES: Effective December 29, 2006

FOR FURTHER INFORMATION CONTACT: Brian Michael Wondrack, (202) 418–0653, e-mail: *brian.wondrack@fcc.gov*, or via TTY (202) 418–7233, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted on September 22, 2006 and released on September 29, 2006, FCC 06–141. The full text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–488–5300 or 800–387–3160, e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC–06–141A1.doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary of Report and Order

I. Introduction

1. In this *Report and Order*, we revise our rules to reduce regulatory burdens for 18 GHz band [1] terrestrial Fixed Microwave Services (FS) licensees that are subject to involuntary relocation from the 18.3–19.3 GHz band pursuant to the Commission's reallocation of that band for exclusive satellite services use in IB Docket No. 98–172.[2] These FS licensees will relocate to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz, where 47 CFR part 101 currently designates channel sizes that are too large relative to the needs of some relocating point-to-point microwave licensees and too small relative to the needs of relocating private cable operators (PCOs) and other multichannel video programming distributors (MVPDs). The *Report and Order* revises the rules to add new channel sizes in both bands along with special rules for MVPDs within the 17.7–18.3 GHz band, thereby facilitating the relocation.

2. In this *Report and Order* we adopt the following actions regarding FS channels in the terrestrial 18 GHz band:

- We adopt a revised band plan for the FS paired and unpaired spectrum from 17.7–18.3 GHz and 19.3–19.7 GHz, consisting of a variety of channel bandwidths, primarily narrower bandwidths, and a block of unpaired spectrum from 17.7–17.74 GHz.
- We designate a contiguous 600 megahertz block of one-way spectrum from 17.7–18.3 GHz for use by MVPDs, who will have flexibility within such block to determine the appropriate bandwidths and other technical parameters of their MVPD operations.
- In the 17.7–17.8 GHz band, we protect Federal earth stations in the fixed-satellite service (space-to-Earth) that may be authorized in Denver, Colorado, and Washington, DC, and require all MVPD applications (under 47 CFR parts 74, 78, or 101) within the 17.7–17.8 GHz band near those areas to be coordinated with the Federal Government by the Commission before an authorization will be issued.[3]
- We provide channel flexibility to grandfathered MVPDs in the 18.3–18.58 GHz band, which was previously designated for non-primary use by MVPDs.

II. Background

3. *Reallocation from Terrestrial Services to Satellite Services* (*18 GHz*

[1] The term ''18 GHz band'' refers to those frequencies between 17.7 and 19.7 GHz. Herein, we use the term ''terrestrial 18 GHz band'' to refer to those frequencies between 17.7–18.3 GHz and between 19.3–19.7 GHz that are allocated on a co-primary basis for the following terrestrial services: Fixed Microwave Services (FS) under part 101, Cable Television Relay Service (''CARS'') under part 78, and Broadcast Auxiliary Services (''BAS'') under part 74. We recognize that 17.7–18.3 GHz and 19.3–19.7 GHz are also allocated on a co-primary basis for satellite services; we are using the term ''*terrestrial* 18 GHz band'' herein for convenience only given that the instant re-channelization concerns terrestrial services under part 101.

[2] *See* Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, IB Docket No. 98–172, *Report and Order,* 15 FCC Rcd 13430 (2000) (*''18 GHz SAT R&O''*), *recon. granted in part, First Order on Reconsideration,* 16 FCC Rcd 19808 (2001), *further recon. granted in part, Second Order on Reconsideration,* 17 FCC Rcd 24248 (2002) *(''Second Order on Reconsideration''), further recon. denied, Third Order on Reconsideration,* 19 FCC Rcd 10777 (2003) *(''Third Order on Reconsideration'').*

[3] The National Telecommunications and Information Administration (NTIA) filed a letter with the Commission, dated March 3, 2006, requesting that we protect certain Federal operations. *See* paragraphs 18–21, *infra.*

SAT R&O). Previously, in a separate proceeding, the Commission reallocated portions of the 18 GHz band to accommodate sharing among the terrestrial, Geostationary Satellite Orbit Fixed-Satellite Service (''GSO/FSS''), Non-Geostationary Satellite Orbit Fixed-Satellite Service (''NGSO/FSS''), and Mobile-Satellite Service feeder links (''MSS/FL''). As part of that action, the Commission reallocated the one thousand megahertz of spectrum from 18.3–19.3 GHz solely to Fixed-Satellite Service (FSS). The terrestrial services, including FS, continue to have shared (co-primary) access to the terrestrial 18 GHz band and we revise the FS channel plan, under part 101, to ensure that the FS community can effectively and efficiently utilize this spectrum. Rechannelization of CARS and BAS, which share the terrestrial 18 GHz band with FS (as well as satellite services) will be addressed in a separate proceeding. Accordingly, the discussion below focuses on the terrestrial Fixed Microwave Services (FS) licensed under part 101, except where we address NTIA's request to protect certain Federal Government earth stations relative to all applications for new or modified MVPD operations whether under parts 74, 78, or 101.

4. The 18 GHz band currently serves a variety of terrestrial communications needs and is an important band for the growth of FS services. Prior to the rule changes adopted in the *18 GHz SAT R&O*, the 18 GHz band (two-thousand megahertz of spectrum at 17.7–19.7 GHz) was allocated on a co-primary basis for FS, CARS, BAS, and satellite services.[4] In the *18 GHz SAT R&O*, the Commission reallocated one-thousand megahertz of spectrum for FS use as follows: the 17.7–18.3 GHz band and the 19.3–19.7 GHz band, both on a co-primary basis with satellite services. The *18 GHz SAT R&O* also designated the 18.3–18.58 GHz band as co-primary between FS and GSO/FSS, but the Commission subsequently reallocated this sub-band exclusively for satellite services use.

5. *Ten-year relocation reimbursement sunset.* Recognizing the importance of existing FS systems in the 18 GHz band, the Commission adopted a ten-year transition plan that permits FS stations currently operating within the one-thousand megahertz of spectrum at 18.3–19.3 GHz, that was reallocated for exclusive satellite services use, to continue operating on a co-primary basis until the applicable sunset date.[5] Under these rules, satellite operators have the option to relocate FS stations in the event of interference and, during this ten-year period, existing FS stations may be relocated in accordance with the reimbursement and involuntary relocation procedures set forth in § 101.85 and § 101.91of the Commission's rules. After the sunset, existing FS stations may continue to operate on a non-interference basis, but FSS licensees are not required to pay relocation costs and may require an incumbent FS licensee to cease operations, provided that the FSS licensee intends to turn on a system within interference range of the incumbent FS licensee.[6]

6. The 18 GHz band spectrum available for FS containing the narrowest (five megahertz) paired channels (18.76–19.16 GHz band frequencies) was reallocated exclusively to satellite services. Under current rules, ten megahertz is the smallest channel size available for licensing to FS in the terrestrial 18 GHz band. As a result, under the existing band plan some FS operators will not be able to relocate to replacement channels in the terrestrial 18 GHz band of the same bandwidth as their currently licensed channels at 18.76–19.16 GHz. Moreover, some FS operators would not be able to be licensed without a waiver of the minimum efficiency requirements specified in part 101 of our rules. Under the efficiency rules in § 101.141 of the Commission's rules, a FS licensee must utilize its channel to the required limit. The *18 GHz Rechannelization NPRM (NPRM)*, 69 FR 40843 (July 7, 2004), set forth criteria for waiver of the channel-size rules pending the outcome of this proceeding. Requiring such licensees to be licensed for larger-than-necessary bandwidths would be spectrally inefficient.

7. The Commission recognized in the *18 GHz SAT R&O* that the already high demand for 18.14–18.58 GHz band will increase and stated that this portion of the 18 GHz band is vital to the success of FS relocation efforts and the continued viability of wireless cable providers that provide direct competition to traditional cable operators. However, most of the 18 GHz band spectrum from 18.142–18.58 GHz, which consists of six megahertz channels (the standard channel bandwidth used by almost all MVPDs to deliver analog channels and digital video streams) used mainly by private cable operators (''PCOs'') and other MVPDs, was reallocated to satellite services. Accordingly, when the Commission reallocated this portion of the 18 GHz band, it noted that PCOs and other MVPDs were eligible to use other spectrum either below 18.3 GHz in the terrestrial 18 GHz band[7] or in the CARS (12.7–13.2 GHz) band.[8] Although the *Second Order on Reconsideration* recognized that the *CARS Eligibility Order* allowed non-cable MVPDs access to the terrestrial 18 GHz band, the Commission did not, in those proceedings, remove the restriction for video in § 101.603 of the Commission's rules, nor amend the size of the channels in the terrestrial 18 GHz band below 18.142 GHz to accommodate such use. Rather, the Commission explained in the *First Order on Reconsideration* that it would undertake a separate proceeding to rechannelize the terrestrial 18 GHz band to facilitate the relocation. Accordingly, on April 19, 2004, the Commission released the *NPRM.*

III. Discussion

A. Adding Smaller Channels for FS Operations in the Terrestrial 18 GHz Band

8. In the *NPRM* (based largely on a filing by the Fixed Wireless Communications Coalition (FWCC)), the Commission proposed a revised FS channel plan for the terrestrial 18 GHz band that included paired and unpaired channels from 17.7–18.3 GHz and 19.3–19.7 GHz, as well as a variety of channel bandwidths including narrower bandwidths, *e.g.*, 1.25, 2.5 and 5 megahertz (as well as those of thirty and fifty megahertz) and a block of unpaired spectrum from 17.7–17.74 GHz.

9. All commenters generally support our efforts to provide relief to relocated point-to-point microwave FS licensees by modifying the existing FS channel plan in the terrestrial 18 GHz band.

[4] *See* 47 CFR 2.106 (1999); *see also* 47 CFR parts 21, 25, 74, 78, and 101. *See 18 GHz SAT R&O*, 15 FCC Rcd 13430.

[5] 47 CFR 101.85 (Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite services (FSS)). Certain FS operations in the 18.58–19.3 GHz band remain co-primary until June 8, 2010, while certain FS operations and low-power systems in the 19.26–19.3 GHz band remain co-primary until October 31, 2011, and certain FS operations in the 18.3–18.58 GHz band remain co-primary until November 19, 2012. *Id.*

[6] 47 CFR 101.95 (Sunset provisions for licensees in the 18.30–19.30 GHz Band). *See also 18 GHz SAT R&O,* 15 FCC Rcd at 1346 paragraph 63, *First Order on Reconsideration,* 16 FCC Rcd at 19821 paragraph 26.

[7] 18 GHz band spectrum is shared with CARS and BAS. MVPDs are eligible for CARS licenses.

[8] *Second Order on Reconsideration,* 17 FCC Rcd at 24250 paragraph 6. This ''enhanced eligibility'' was the result of the Commission's decision in another proceeding. *See* Amendment of Eligibility Requirements in part 78 Regarding 12 GHz Cable Television Relay Service, CS Docket No. 99–250, *Report and Order,* 17 FCC Rcd 9930, 9930 paragraph 1 (2002) *(''CARS Eligibility Order'').*

Based on the information available in the record, we conclude that our decisions will promote more efficient use of the terrestrial 18 GHz band by allowing FS licensees to request the amount of spectrum that they need, rather than having to request larger bandwidth channels or seek a waiver of the Commission's rules. This in turn promotes access to spectrum for FS operations, both by relocating incumbents and new entrants.

B. 220 Megahertz Channels

10. In the *NPRM,* the Commission recognized that the reallocation of the 18 GHz band eliminated portions of all three FS 220 megahertz channel pairs, and the Commission sought comments on whether a need exists to maintain any 220 megahertz channel pair. Commenters state that maintaining 220 megahertz channel pairs is no longer necessary because, due to advances in modulation, the services that were provided over these channel pairs are no longer used and, accordingly, the equipment needed to provide these services is no longer manufactured. Moreover, commenters maintain that the proposed assignment would effectively block the use of narrower channels for two-way links within the terrestrial 18 GHz band. We also note that the Commission's licensing records reflect that no incumbents are licensed for a 220 megahertz channel pair. Based on the record before us, we agree with the commenters and find that maintaining a 220 megahertz channel pair serves no useful purpose, especially given our decision below regarding aggregation. Accordingly, we change our rules to eliminate this size channel designation.

C. Aggregation

11. We also proposed, in the *NPRM,* to permit applicants to request any amount of available spectrum based on their specific needs, on the condition that aggregated channels are contiguous channels, except for channels that are already licensed to someone else in the area, and are thus blocked. Comsearch asks us to clarify whether applicants also may skip any segments that would be affected by interference with other links. We conclude that allowing aggregation conditioned upon the proposed requirement that aggregated channels be contiguous is necessary to prevent licensees from spacing their channels in a manner that effectively could prevent others from using the remaining spectrum in the same area. We also, however, agree with Comsearch that where an applicant seeks to operate in a particular segment that is unavailable in the relevant area, whether due to co-channel licenses or adjacent channel interference as determined under our rules (including requirements to comply with any applicable agreements with Canada or Mexico in these bands), then it is appropriate to allow the applicant to skip that ''blocked'' segment of spectrum.

D. Use of the 17.7–17.74 GHz Sub-band

12. The *NPRM* also proposed to permit unpaired use by any FS licensee of the 17.7–17.74 GHz sub-band, which was previously paired with the 19.26–19.3 GHz sub-band that was reallocated to FSS. We also asked whether to allow licensees to pair channels in the 17.7–17.74 GHz sub-band with other channels in the terrestrial 18 GHz band where, for example, the return pair is already in use and therefore blocked. Only one commenter, Independent Multi-Family Communications Council (IMCC), addressed these proposals and supported them. We conclude that these approaches will provide FS licensees additional operational flexibility within the terrestrial 18 GHz band without compromising our efforts to facilitate effective and expeditious relocation of those licensees from other portions of the 18 GHz band. We accordingly adopt these changes to our rules.

E. Multichannel Video Programming Distributors (MVPDs)

1. Background

13. Prior to the reallocation to satellite services in IB Docket No. 98–172, PCOs and other MVPDs had co-primary access to 438 megahertz of spectrum (18.142–18.58 GHz) and non-MVPDs had co-primary access to 442 megahertz of spectrum (17.7–18.142 GHz). Although MVPD and non-MVPD each shared spectrum with satellite and other terrestrial services, these part 101 licensees did not share with one another. In the *NPRM*, the Commission noted that MVPDs no longer will have primary access to the 18.3–18.58 GHz band frequencies, leaving MVPDs subject to involuntary relocation and access to only 158 megahertz of spectrum in the 18 GHz range. In this connection, the Commission proposed for MVPDs a contiguous 500 megahertz block of one-way spectrum, from 17.8–18.3 GHz, consisting of the 158 megahertz of spectrum at 18.142–18.3 GHz and 342 megahertz of spectrum immediately below 18.142 GHz which MVPDs and non-MVPDs would share. The Commission also proposed removing the prohibition on video operations [9] and allowing MVPDs to be licensed for up to all five-hundred megahertz of this spectrum, subject to coordination, along with flexibility to channelize contiguous segments of licensed spectrum as needed. The Commission further proposed emission flexibility for MVPDs within the 17.8 to 18.3 GHz band to accommodate and streamline conversions to digital transmissions. The *NPRM* did not propose to designate 17.7–17.8 GHz for MVPDs, which under the current rules would leave this one-hundred megahertz of spectrum designated for non-MVPDs. We discuss each proposal or issue below.

2. MVPD Designation at 17.8–18.3 GHz

14. Alcatel and Fixed Wireless Communications Coalition and the National Spectrum Managers Association (FWCC/NSMA) initially opposed designating the 17.8–18.3 GHz sub-band for use by MVPDs because MVPDs use one-way, hub-and-spoke architecture that these commenters contend will effectively block the use of the entire sub-band for more efficient two-way FS use in the vicinity of MVPDs systems. FWCC/NSMA further contended that the combination of MVPDs' widespread geographic dispersion and high occupied bandwidth resulting from low-efficiency modulation effectively prevents FS use over the entire bandwidth.

15. The main difference between non-MVPD use and MVPD use is that the latter often utilizes analog video channels, which are typically six megahertz, and have a larger amplitude (peak power) at the location of the main video carrier. As a result, the power is not spread as evenly across the bandwidth as is the case for most non-MVPD operations. Typically, MVPDs also use several contiguous channels to backhaul their services whereas non-MVPD operators usually meet their needs with one or two channels. After taking these differences into account, however, we reject any claim that these operational differences preclude sharing given that MVPDs are required to coordinate with other service providers, and thus will not be able to uniformly block or otherwise interfere with other, non-MVPD licensees. Moreover, given MVPDs' ''late arrival'' to this band, they will only operate where the spectrum is still available, *i.e.*, can be coordinated with existing licensees. We also note that in the *Second Order on*

[9] *See* 47 CFR 101.603(a)(1), 101.603(b) (prohibiting use of 18 GHz frequencies, other than 18.142–18.580 GHz, for the final link in the chain of transmission of program material).

Reconsideration, the Commission determined that if PCOs relocate to the 12.7–13.2 GHz and 17.7–18.3 GHz frequency bands, the geographic separation between the incumbent systems and the relocated PCOs would result in only rare instances where the frequency paths would intersect in a way that would require site shielding or other mitigating measures necessary to prevent mutually unacceptable interference. As such, the Commission determined in the *Second Order on Reconsideration* that MVPDs could relocate to either the CARS band (12.7–13.2 GHz) or to 17.7–18.3 GHz. In view of these prior determinations in the allocation proceeding, we conclude that it is not within the scope of the instant service-rules proceeding to reconsider wholesale determinations regarding acceptable designations of terrestrial operations for these bands made in IB Docket No. 98–172. In this connection, we note that Alcatel and FWCC/NSMA subsequently informed the Commission that they no longer oppose expanding 18 GHz spectrum for final video links. As such, and in accordance with the determination made in IB Docket No. 98–172 that terrestrial users, *e.g.*, MVPDs and other FS users, could and would share portions of the terrestrial 18 GHz band, we are adopting the proposal in the *NPRM* to allow the 17.8–18.3 GHz sub-band to be used for the final radio frequency link to distribute video.

3. MVPD Designation at 17.7–17.8 GHz

16. *MVPD Designation at 17.7–17.8 GHz.* As noted, the *NPRM* did not propose to designate for MVPDs the one-hundred megahertz of spectrum at 17.7–17.8 GHz, which is allocated on a shared, co-primary basis to FS (parts 74, 78, and 101) and FSS (Earth-to-space), with the FSS allocation limited to feeder links for broadcasting satellite service.[10] Coordination is required between FS and FSS because there is a potential for interference from FSS uplinks into receiving FS facilities. IMCC contends, however, that to have a reasonably cost effective transmission solution to compete with large telecommunications and cable companies, PCOs need access to the full 600 megahertz of spectrum contemplated for MVPDs in the *CARS Eligibility Order* and the *Second Order on Reconsideration.* This appears to be a reasonable assertion as cable systems usually use 550 MHz or more of spectrum. Moreover, in a particular location, even the full 600 megahertz may not be available contiguously due to the presence of other users.[11] Additionally, we acknowledge IMCC's point that the OET CARS Study (the Study) that found sufficient capacity (in the 12 GHz and the terrestrial 18 GHz bands) to accommodate the relocation of terrestrial licensees adopted in IB Docket No. 98–172 included the 100 megahertz of spectrum at 17.7–17.8 GHz.

17. As noted above, some commenters initially objected to use of spectrum below 18.142 MHz by video providers but these objections were subsequently withdrawn. IMCC has persuaded us that providing MVPDs access to the full 600 megahertz of spectrum, as contemplated in the OET CARS Band Study, is necessary and appropriate to promote competition in the video distribution industry.

4. Protection of Federal Government Operations Near Denver, CO, and Washington, DC

18. On March 3, 2006, the National Telecommunications and Information Administration (NTIA) filed a letter with the Commission in this proceeding stating concerns with the possibility of harmful interference to a limited number of Federal Government earth station facilities near Denver, Colorado and Washington, DC, from MVPD operations in the 17.7–17.8 GHz sub-band.[12]

19. NTIA requests that if the Commission chooses to permit MVPDs in the band, the Commission extend protection of these receiving Federal Government earth stations to the band 17.7–17.8 GHz in the geographic areas identified in § 1.924(e) of the Commission's rules for the 17.8–20.2 GHz band.[13] NTIA avers that this result would be implemented with minimum impact on MVPDs through the adoption of the following footnote to the Table of Allocations, 47 CFR 2.106, and the implementation of associated changes to existing rules in parts 1, 74, and 78, and § 101.31, the last by extending to MVPDs at 17.7–17.8 GHz the existing prohibition on the early commencement of operations at 17.8–19.7 GHz pending coordination with the Federal Government.

USXXX—In the band 17.7–17.8 GHz, Federal earth stations in the fixed-satellite service (space-to-Earth) may be authorized in the Denver, CO and Washington, DC areas on a primary basis. Before commencement of operations, non-Federal fixed service applications supporting Multichannel Video Programming Distributors (MVPD) shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee.

20. NTIA acknowledges that many fixed services with differing characteristics already operate in the band 17.7–17.8 GHz without coordination with the Federal Government earth stations in the specified locations. Accordingly, NTIA emphasizes that it does not seek to require coordination of fixed services already authorized in the band 17.7–17.8 GHz, for which coordination has not been previously required.[14]

21. Based on the record before us, we find that adopting the protections that NTIA has requested would serve the public interest. We find that NTIA's request is a reasonable mechanism to protect Federal Government earth stations that may be authorized in the Denver Colorado, and Washington, D.C. areas. Accordingly, we make changes to parts 1, 2, 74, 78, and 101 of the Commission's rules to implement NTIA's request with respect to applications for new (or major modifications to existing) MVPD operations. In this regard, we acknowledge that the *NPRM* stated that rechannelization of Broadcast Auxiliary Services (part 74) and Cable Television Relay Service (part 78) spectrum, which share the terrestrial 18 GHz band with FS (part 101) would be addressed in a separate proceeding. The Commission also, however, gave notice that licensees in parts 74 and 78 could be affected because of the shared use of these terrestrial services.[15] Given the important public policy objective of protecting federal facilities from interference, we are implementing NTIA's proposal for the 17.7–17.8 GHz

[10] *See* 47 CFR 2.106 (Table of Allocations) and US Footnote 271.

[11] ''Access to the full 600 [megahertz at] 17.7–18.3 GHz is necessary * * * if PCOs are to have * * * any chance of managing the 'patchwork quilt' of unblocked and blocked frequencies * * * as PCO services grow * * * and PCOs are forced to abandon use of the 18.3–18.58 band.'' IMCC Reply Comments at 7.

[12] *See* Letter from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA, U.S. Department of Commerce, to Julius Knapp, Deputy Chief, Office of Engineering and Technology, FCC, dated March 3, 2006 (*NTIA Letter*). NTIA explains that while the rechannelization proposed in the *18 GHz Rechannelization Notice* would not adversely impact Federal operations, comments in this proceeding from the fixed services community request that the Commission allow MVPD operations in the 17.7–17.8 GHz band. *NTIA Letter* at 1.

[13] NTIA Leter at 1, n2.

[14] *Id.* at 2–3.

[15] *See 18 GHz Rechannelization NPRM,* 19 FCC Rcd at 7265 paragraph 8. We also note that in the *Second Order on Reconsideration,* the Commission determined that MVPDs licensed under part 101 could relocate to specified bands that are administered under part 78 or part 101.

band for all three rule parts (parts 74, 78 and 101).

5. MVPD Flexibility at 17.7–18.3 GHz

22. In the *NPRM*, the Commission proposed rules permitting MVPD providers to use whatever size channels in contiguous spectrum that they deem necessary to accommodate analog or digital transmission techniques provided that they have properly coordinated the necessary emission designators and power criteria.[16] We adopt that proposal for the entire band 17.7–18.3 GHz for MVPD operators.

23. Comsearch disagrees with the Commission's flexibility approach and states that cable television distribution and MVPDs are closely tied to a 6 megahertz channel plan. Comsearch contends that orderly spectrum management demands that a 6 megahertz channel plan should be added to this segment to accommodate MVPDs. Comsearch further states that PCOs and MVPDs could use either this 6 megahertz plan or any of the other plans (5 megahertz, 10 megahertz, etc.), but should not have total flexibility to use whatever channels and bandwidth they choose.

24. We are not persuaded that adopting a six megahertz plan is necessary. In furtherance of our spectrum management goals for the terrestrial 18 GHz band, we adopt rules for permitting MVPD providers to use contiguous blocks of spectrum in order to accommodate their video delivery needs. The Commission recognizes that a de-facto six-megahertz channelization scheme exists because the current availability of both analog and digital video processing equipment, in-home set-top boxes, and television sets is designed for six megahertz channels. However, we do believe that providing MVPDs with channel flexibility does not inhibit them from still operating within the existing, de-facto channelization scheme if they so choose. Adding operational flexibility to accommodate operators who wish to use alternate channel plans, should the opportunity or need arise, does not prevent the continued use of the six megahertz scheme and is therefore in the public interest.

[16] As required by 47 CFR 1.924(e), modification of an existing station license in this band which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued. Compression techniques can be changed within certain emission designations without requiring an application.

6. 18.3–18.58 GHz

25. We find that it is in the public interest to adopt the proposal in the NPRM to retain the 18.3–18.58 GHz sub-band for grandfathered MVPDs given its adjacency to the 17.7–18.3 GHz band that we are designating for MVPDs today.[17] We believe this approach is appropriate because it preserves the status of the grandfathered terrestrial licensees in the 18.3–18.58 GHz sub-band and their ability to continue operating. Together with the 17.7–18.3 GHz band, this provides MVPDs with access to a total of 880 megahertz (17.7–18.58 GHz), albeit with 280 megahertz limited to grandfathered licensees that operate on a co-primary basis with FSS until 2012, after which they will operate on a non-protected and non-interfering basis to FSS.

26. In furtherance of our spectrum management goals of encouraging efficient use of spectrum for the 18 GHz band, we adopt rules allowing emission and channelization flexibility from 18.3 to 18.58 GHz for MVPDs. We find that extending emission and channelization flexibility will allow MVPDs to efficiently use spectrum in this sub-band without causing unacceptably high levels of interference with other licensees; however, certain stations that remain co-primary [in the 18.3–19.3 GHz band] may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate. In the event that a FSS licensee intends to turn on a system within interference range of the incumbent licensee, the incumbent licensee would have to cease operations or relocate in accordance with our rules. Also, incumbent licensees are cautioned that all major modifications and certain extensions of existing systems will render those links secondary to FSS operations pursuant to § 101.97(a) of the Commissions rules. We believe that providing emission and channelization flexibility in the 18.3 to 18.58 GHz segment, in conjunction with flexible usage rules for the 17.7–18.3 GHz band, will give MVPD licensees access to large blocks of spectrum to more effectively provide video services in an efficient manner for the duration of their grandfathered status. We note that IMCC filed comments supporting our proposal to extend flexible use to the 18.3–18.58 GHz sub-band. We conclude, based on the evidence available in the record, and the amount of spectrum available to MVPDs licensees, that such changes are necessary to fully effectuate the Commission's efforts to provide MVPD licensees additional operational flexibility and increased access to the terrestrial 18 GHz band.

[17] The Commission decided in IB Docket No. 98–172 that no applications for new part 101 stations in the 18.3–18.58 GHz band would be accepted after November 19, 2002. Then-existing part 101 applications and licenses were grandfathered.

7. Streamlined Process for MVPD Conversion to Digital Modulation

27. In furtherance of our goals to provide regulatory relief to licensees transitioning to the 18 GHz band and encourage efficient use of spectrum, we conclude that MVPD licensees should have flexibility to move from analog to digital emissions, choose the size of each channel, and use whatever compression techniques they wish. Our licensing records reflect that most of the MVPD operations subject to relocation are analog systems. As discussed above, we anticipate that many of these systems will convert to digital either at the end of their analog-equipment lifecycle or in response to market incentives. In this connection, we are concerned that MVPDs that must relocate prior to converting to digital could incur significant, duplicative costs associated with the coordination and licensing process for (1) spectral relocation and, later, (2) for digital conversion. To minimize the potential for duplicative costs, we conclude that MVPD licensees should have the option to specify analog and digital emission designators (each of which must be coordinated) on one application. In this connection, we are adopting a revision to § 101.63 of the Commission's rules to allow MVPD licensees to meet their construction requirement and not automatically surrender their license as long as they are operating a system using either an authorized analog or digital emissions. Accordingly, such MVPD licensees will be authorized to operate using one or both modulations, *e.g.,* the licensee can operate its analog system and later convert to digital without having to file another, coordinated application. Once the licensee has completed the transition to digital, the license can remove the unused analog emission designator(s) the next time a modification or renewal application is filed.[18] In adopting these measures we reduce the regulatory burden on licensees and encourage flexible and more efficient use of spectrum.

[18] Construction of any authorized facility or frequency must be completed by the date specified in the license as pursuant to § 1.946.

IV. Procedural Matters

28. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in WT Docket 04–143. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Report and Order

In this Report and Order, we revise our rules to reduce regulatory burdens for 18 GHz band terrestrial Fixed Microwave Services (FS) licensees that are subject to involuntary relocation from the 18.3–19.3 GHz band pursuant to the Commission's reallocation of that band for exclusive satellite services use in IB Docket No. 98–172. These FS licensees will relocate to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz, where part 101 currently designates channel sizes that are too large relative to the needs of some relocating point-to-point microwave licensees and too small relative to the needs of relocating private cable operators (PCOs) and other multichannel video programming distributors (MVPDs). The instant *Report and Order* revises the rules to add new channel sizes in both bands along with special rules for MVPDs within the 17.7–18.3 GHz band, thereby facilitating the relocation.

Specifically, we adopt a revised band plan for the FS paired and unpaired spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz, consisting of a variety of channel bandwidths, primarily by adding narrower bandwidths and a block of unpaired spectrum from 17.7–17.74 GHz. In addition, we designate a contiguous 600 megahertz block of one-way spectrum from 17.7–18.3 GHz for use by MVPDs, who will have flexibility within this block to determine the appropriate bandwidths and other technical parameters of their MVPD operations. We also provide channel flexibility to grandfathered MVPDs in the 18.3–18.58 GHz band, which was previously designated for non-primary use by MVPDs. In the 17.7–17.8 GHz band, we protect Federal earth stations in the fixed-satellite service (space-to-Earth) that may be authorized in Denver, Colorado, and Washington, D.C., and require all MVPD applications (under parts 74, 78, or 101) within the 17.7–17.8 GHz band near those areas to be coordinated with the Federal Government by the Commission before an authorization will be issued.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. 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 entities that will be affected by the rules. The RFA defines ''small entity'' as having the same meaning as the term ''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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

Fixed Microwave Services: The rechannelization will affect all common carrier and private operational fixed microwave licensees who are authorized under Part 101 of the Commission's rules for use of the 18 GHz spectrum. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies—*i.e.,* an entity with no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, a majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the fixed microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

Small MVPDs: SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $13.0 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems and open video systems (''OVS''). According to the Bureau of Census, there were 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We will address each service individually to provide as precise of an estimate of small entities as available data allows.

Cable Operator: The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Report and Order.* The Communications Act of 1934, as amended (Communications Act), also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 685,000 subscribers

shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Multichannel Multipoint Distribution Service (''MMDS''): MMDS Systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using microwave frequencies. In connection with the 1996 MMDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We conclude that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

Satellite Master Antenna Television (''SMATV'') Systems: The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $13.0 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

Open Video Systems (''OVS''): Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $13.0 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Under the decisions contained in the *Report and Order*, we are effecting a change wherein we will allow 18 GHz band applicants to operate on spectrum utilizing different bandwidth channels in addition to the ones already in existence. The decisions do not include any changes in the language of FCC Forms nor do they require extra filings. We are also allowing certain flexibility for some future modifications to be achieved without the necessity of filing further applications. To protect Federal Government earth stations that may be authorized in the Denver, Colorado, and Washington, DC, areas, we adopt provisions requested by the National Telecommunications and Information Administration (NTIA) whereby the Commission will coordinate through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee (IRAC) applications in the 17.7–17.8 GHz band for MVPD operations.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives 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 *Report and Order*, we revise our rules to reduce regulatory burdens for 18 GHz band terrestrial FS licensees that are subject to involuntary relocation from the 18.3–19.3 GHz band pursuant to the Commission's reallocation of that band for exclusive satellite services use in IB Docket No. 98–172. These FS licensees will relocate to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz, where part 101 currently designates channel sizes that are too large relative to the needs of some relocating point-to-point microwave licensees and too small relative to the needs of relocating PCOs and other MVPDs. The instant *Report and Order* revises the rules to add new channel sizes in both bands along with special rules for MVPDs within the 17.7–18.3 GHz band, thereby facilitating the relocation.

Specifically, we adopt a revised band plan for the FS paired and unpaired spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz, consisting of a variety of channel bandwidths, primarily by adding narrower bandwidths, and a block of unpaired spectrum from 17.7–17.74 GHz. In addition, we permit applicants to request any amount of spectrum available based on their specific needs. We find that this flexibility will promote the more efficient use of the terrestrial 18 GHz band by allowing FS licensees to request the amount of spectrum that they need, rather than having to request larger bandwidth channels or seek a waiver of the Commission's rules. The additional flexibility and the elimination of the regulatory burden of seeking waivers will also promote small entities' access to spectrum for FS operations, both as relocating incumbents and as new entrants. Further, we find that permitting unpaired use by any FS licensee of the 17.7–17.74 GHz sub-band will provide additional opportunities for small entities to access spectrum. Moreover, licensees will be permitted to pair channels in the 17.7–17.74 GHz sub-band with other channels in the terrestrial 18 GHz band.

In addition, the *Report and Order* designates a contiguous 600 megahertz block of one-way spectrum from 17.7–18.3 GHz for use by MVPDs, who will have flexibility within such block to determine the appropriate bandwidths and other technical parameters of their MVPD operations. Although the Commission originally proposed to

designate only a 500 megahertz block for use by MVPDs, we conclude in this *Report and Order* that the additional 100 megahertz of spectrum will offer small entities a reasonably cost effective transmission solution to compete with large telecommunications and cable companies.

In this *Report and Order*, we also provide channel flexibility to grandfathered MVPDs in the 18.3–18.58 GHz band, which was previously designated for non-primary use by MVPDs. Specifically, we find that it is in the public interest to adopt the proposal in the *NPRM* to retain the 18.3–18.58 GHz sub-band for grandfathered MVPDs given its adjacency to the 17.7–18.3 GHz band that we are designating for MVPDs today. We believe this approach is appropriate because it preserves the status of the grandfathered terrestrial licensees in the 18.3–18.58 GHz sub-band, many of which are small entities.

We also adopt a requirement that all MVPD applications (under parts 74, 78, or 101) seeking authority to operate in the 17.7–17.8 GHz band near Denver, Colorado, and Washington, DC be coordinated with the Federal Government by the Commission before an authorization will be issued in order to protect government satellite operations in those areas. The Commission considered requiring applicants to coordinate their applications directly with IRAC at the same time of filing their applications with the Commission. However, we find that it may be less burdensome on small entities if the Commission were to coordinate the applications through IRAC rather than requiring applicants to do so. In addition, we sought to minimize the potential burden on all entities by limiting both the scope of operations and geographical areas that will be subject to this requirement.

F. Report to Congress

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).

29. *Paperwork Reduction Analysis.* This Report and Order does not contain either a proposed or modified information collection.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wiretapping and electronic surveillance.

47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission hereby amends 47 CFR parts 1, 2, 74, 78, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Section 1.924 is amended by adding a new paragraph (e)(4) to read as follows:

§ 1.924 Quiet zones.

* * * * *

(e) * * *

(4) In the band 17.7–17.8 GHz, fixed service applications, under parts 74, 78, or 101 of this chapter, supporting Multichannel Video Programming Distributors shall be coordinated with the Federal Government by the Commission before an authorization will be issued if the station or proposed station is located in whole or in part within any of the areas defined in paragraphs (e)(1) or (e)(2) of this section.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 49.

■ b. In the list of United States (US) footnotes, add footnote US401.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

* * * * *

BILLING CODE 6712–01–P

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.518 5.515 5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US401	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 US401 NG144	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE		17.8-18.3 FIXED-SATELLITE (space-to-Earth) G117 5.519 US334	17.8-18.3 FIXED 5.519 US334 NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) G117	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE			US334	US334 NG144	
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast (74) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)
20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US334	20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	

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UNITED STATES (US) FOOTNOTES

* * * * *

US401 In the band 17.7–17.8 GHz, Federal earth stations in the fixed-satellite service (space-to-Earth) may be authorized in the Denver, CO and Washington, DC areas on a primary basis. Before commencement of operations, non-Federal fixed service applications supporting Multichannel Video Programming Distributors (MVPD) shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 6. Section 74.25 is amended by revising paragraph (c) (3) to read as follows:

§ 74.25 Temporary conditional operating authority.

* * * * *

(c) * * *

(3) If operated on frequencies in the 17.8–19.7 GHz band for any services or on frequencies in the 17.7–17.8 GHz band for MVPD operations, the station site does not lie within any of the areas identified in § 1.924 of this chapter.

* * * * *

■ 7. Section 74.32 is revised to read as follows:

§ 74.32 Operation in the 17.7–17.8 GHz and 17.8–19.7 GHz bands.

(a) To minimize or avoid harmful interference to Federal Government Satellite Earth Stations located in the Denver, Colorado and Washington, DC areas, any application for a new station license to provide MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

Denver, CO Area

Rectangle 1:
41°30′00″ N. Lat. on the north
103°10′00″ W. Long. on the east
38°30′00″ N. Lat. on the south
106°30′00″ W. Long. on the west

Rectangle 2:
38°30′00″ N. Lat. on the north
105°00′00″ W. Long. on the east
37°30′00″ N. Lat. on the south
105°50′00″ W. Long. on the west

Rectangle 3:
40°08′00″ N. Lat. on the north
107°00′00″ W. Long. on the east
39°56′00″ N. Lat. on the south
107°15′00″ W. Long. on the west

Washington, DC Area

Rectangle:
38°40′00″ N. Lat. on the north
78°50′00″ W. Long. on the east
38°10′00″ N. Lat. on the south
79°20′00″ W. Long. on the west

or

(b) Within a radius of 178 km of 38°48′00″ N. Lat./76°52′00″ W. Long.

(c) In addition, no application seeking authority for MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service will be accepted for filing if the proposed station is located within 20 km of the following coordinates:

Denver, CO area: 39°43′00″ N. Lat./ 104°46′00″ W. Long.

Washington, DC area: 38°48′00″ N. Lat./ 76°52′00″ W. Long.

Note to § 74.32: The coordinates cited in this section are specified in terms of the ''North American Datum of 1983 (NAD 83)'' with an accuracy of 30 meters with respect to the ''National Spacial Reference System''.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 8. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 9. Section 78.19 is amended by revising paragraphs (f) introductory text and (f)(2) introductory text to read as follows:

§ 78.19 Interference.

* * * * *

(f) Protection to the Federal Government's receive earth station operations in the Denver, Colorado and Washington D.C. areas in the 17,700 to 19,700 MHz band.

* * * * *

(2) To minimize or avoid harmful interference to Government Satellite Earth Stations located in the Denver, Colorado and Washington, DC areas, any application for a new station license for MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 10. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 11. Section 101.31 is amended by revising paragraphs (a)(3) and (b)(1)(v) to read as follows:

§ 101.31 Temporary and conditional authorizations.

(a) * * *

(3) Operations in the 17.8–19.7 GHz band for any services and in the 17.7–17.8 GHz band for MVPD operations are prohibited in the areas defined in § 1.924 of this chapter. Operations proposed in the areas defined in § 1.924 of this chapter may not commence without prior specific notification to, and authorization from, the Commission.

(b) * * *

(1) * * *

(v) The station site does not lie within 56.3 kilometers of any international border, within areas identified in §§ 1.924(a) through (d) of this chapter unless the affected entity consents in writing to conditional operation or, if for any services on frequencies in the 17.8–19.7 GHz band and for MVPD operations in the 17.7–17.8 GHz band, within any of the areas identified in § 1.924 of this chapter;

* * * * *

■ 12. Section 101.63 is amended by adding paragraph (g) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

* * * * *

(g) MVPD licensees which have both analog and digital emissions designators specified on the license and which already have, or may transition from analog to digital operations, or a combination of both, meet their

completion of construction requirements and do not automatically surrender their license provided they are using either set of emissions. If the licensee has completed the transition to digital, the license can remove the unused analog emission designators the next time a modification or renewal application is filed.

■ 13. Section 101.147 is amended by revising paragraph (r) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz:* Operation of stations using frequencies in these bands is permitted to the extent specified in this paragraph. Until November 19, 2012, stations operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, 74, and 78 of this chapter. Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to paragraph (r)(10) of this section shall operate on a co-primary basis. Until June 8, 2010, stations operating in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, 74, and 78 of this chapter. Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, 74, and 78 of this chapter. After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After November 19, 2002, no applications for new stations for 47 CFR part 101 licenses will be accepted in the 18.3–18.58 GHz band. After June 8, 2000, no applications for new stations for 47 CFR part 101 licenses will be accepted in the 18.58–19.3 GHz band. Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103 of this subpart. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the above conditions related to the 18.58–19.3 GHz band.) Applicants for one-way spectrum from 17.7–18.58 GHz for multichannel video programming distribution are governed by paragraph (r)(6) of this section. Licensees are also allowed to use one-way (unpaired) channels in the 17.7–17.74 GHz sub-band to pair with other channels in the FS portions of the 18 GHz band where, for example, the return pair is already in use and therefore blocked or in TDD systems. Stations used for MVPD operations in the 17.7–17.8 GHz band must coordinate with the Federal Government before operating in the zones specified in § 1.924(e) of this chapter.

(1) 1.25 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17700.625	NA
17701.875	NA
17703.125	NA
17704.375	NA
17705.625	NA
17706.875	NA
17708.125	NA
17709.375	NA
17710.625	NA
17711.875	NA
17713.125	NA
17714.375	NA
17715.625	NA
17716.875	NA
17718.125	NA
17719.375	NA
17721.625	NA
17722.875	NA
17723.125	NA
17724.375	NA
17725.625	NA
17726.875	NA
17728.125	NA
17729.375	NA
17730.625	NA
17731.875	NA
17733.125	NA
17734.375	NA
17735.625	NA
17736.875	NA
17738.125	NA
17739.375	NA
18060.625	19620.625
18061.875	19621.875
18063.125	19623.125
18064.375	19624.375
18065.625	19625.625
18066.875	19626.875
18068.125	19628.125
18069.375	19629.375
18070.625	19630.625
18071.875	19631.875
18073.125	19633.125
18074.375	19634.375
18075.625	19635.625
18076.875	19636.875
18078.125	19638.125
18079.375	19639.375
18080.625	19640.625
18081.875	19641.875
18083.125	19643.125
18084.375	19644.375
18085.625	19645.625
18086.875	19646.875
18088.125	19648.125
18089.375	19649.375
18090.625	19650.625
18091.875	19651.875
18093.125	19653.125
18094.375	19654.375
18095.625	19655.625
18096.875	19656.875
18098.125	19658.125
18099.375	19659.375
18100.625	19660.625
18101.875	19661.875
18103.125	19663.125
18104.375	19664.375
18105.625	19665.625
18106.875	19666.875
18108.125	19668.125
18109.375	19669.375
18110.625	19670.625
18111.875	19671.875
18113.125	19673.125
18114.375	19674.375
18115.625	19675.625
18116.875	19676.875
18118.125	19678.125
18119.375	19679.375
18120.625	19680.625
18121.875	19681.875
18123.125	19683.125
18124.375	19684.375
18125.625	19685.625
18126.875	19686.875
18128.125	19688.125
18129.375	19689.375
18130.625	19690.625
18131.875	19691.875
18133.125	19693.125
18134.375	19694.375
18135.625	19695.625
18136.875	19696.875
18138.125	19698.125
18139.375	19699.375

(2) 2 Megahertz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	N/A

(3) 2.5 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17701.25	N/A
17703.75	N/A
17706.25	N/A
17708.75	N/A
17711.25	N/A
17713.75	N/A
17716.25	N/A
17718.75	N/A
17721.25	N/A
17723.75	N/A
17726.25	N/A
17728.75	N/A
17731.25	N/A
17733.75	N/A
17736.25	N/A
17738.75	N/A
18061.25	19621.25
18063.75	19623.75
18066.25	19626.25
18068.75	19628.75
18071.25	19631.25
18073.75	19633.75
18076.25	19636.25
18078.75	19638.75
18081.25	19641.25
18083.75	19643.75
18086.25	19646.25
18088.75	19648.75
18091.25	19651.25
18093.75	19653.75
18096.25	19656.25
18098.75	19658.75
18101.25	19661.25
18103.75	19663.75
18106.25	19666.25
18108.75	19668.75
18111.25	19671.25
18113.75	19673.75
18116.25	19676.25
18118.75	19678.75
18121.25	19681.25
18123.75	19683.75
18126.25	19686.25
18128.75	19688.75
18131.25	19691.25
18133.75	19693.75
18136.25	19696.25
18138.75	19698.75

(4) 5 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 Megahertz Separation (* channels are no longer available on a primary basis)	
18762.5*	19102.5*
18767.5*	19107.5*
18772.5*	19112.5*
18777.5*	19117.5*
18782.5*	19122.5*
18787.5*	19127.5*
18792.5*	19132.5*
18797.5*	19137.5*
18802.5*	19142.5*
18807.5*	19147.5*
18812.5*	19152.5*
18817.5*	19157.5*

(5) 5 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation	
17702.5	N/A
17707.5	N/A
17712.5	N/A
17717.5	N/A
17722.5	N/A
17727.5	N/A
17732.5	N/A
17737.5	N/A
18062.5	19622.5
18067.5	19627.5
18072.5	19632.5
18077.5	19637.5
18082.5	19642.5
18087.5	19647.5
18092.5	19652.5
18097.5	19657.5
18102.5	19662.5
18107.5	19667.5
18112.5	19672.5
18117.5	19677.5
18122.5	19682.5
18127.5	19687.5
18132.5	19692.5
18137.5	19697.5

(6) MVPD use: Multichannel video programming distributors (MVPDs) can use any size channels for one-way operations in the 17.7–18.58 GHz band for any permissible communications specified for this band in § 101.603 provided that they have coordinated the appropriate emission designators and power, but must request contiguous spectrum (minus spectrum that is already licensed or prior coordinated in the area and thus blocked). MVPD systems must meet the efficiency requirements of § 101.141. Spectrum at 18.3–18.58 GHz is only available for grandfathered stations. See § 101.85.

(7) 10 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation (* channels are no longer available on a primary basis)	
17705.0	19265.0*
17715.0	19275.0*
17725.0	19285.0*
17735.0	19295.0*
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 Megahertz Separation	
18585.0*	18925.0*
18595.0*	18935.0*
18605.0*	18945.0*
18615.0*	18955.0*
18625.0*	18965.0*
18635.0*	18975.0*
18645.0*	18985.0*
18655.0*	18995.0*
18665.0*	19005.0*
18675.0*	19015.0*
18685.0*	19025.0*
18695.0*	19035.0*
18705.0*	19045.0*
18715.0*	19055.0*
18725.0*	19065.0*
18735.0*	19075.0*
18745.0*	19085.0*
18755.0*	19095.0*
18765.0*	19105.0*
18775.0*	19115.0*
18785.0*	19125.0*
18795.0*	19135.0*
18805.0*	19145.0*
18815.0*	19155.0*

(8) 20 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation (* channels are no longer available on a primary basis)	
17710.0	19270.0*
17730.0	19290.0*
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 Megahertz Separation	
18590.0*	18930.0*
18610.0*	18950.0*
18630.0*	18970.0*
18650.0*	18990.0*
18670.0*	19010.0*
18690.0*	19030.0*
18710.0*	19050.0*
18730.0*	19070.0*
18750.0*	19090.0*
18770.0*	19110.0*
18790.0*	19130.0*
18810.0*	19150.0*

(9) 30 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation	
17715.0	N/A
17755.0	19315.0
17785.0	19345.0
17815.0	19375.0
17845.0	19405.0
17875.0	19435.0
17905.0	19465.0
17935.0	19495.0
17965.0	19525.0
17995.0	19555.0
18025.0	19585.0
18055.0	19615.0
18085.0	19645.0
18115.0	19675.0

(10) 40 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation (* channels are no longer available on a primary basis)	
17720.0	19280.0*
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(11) 50 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation	
17765.0	19325.0
17815.0	19375.0
17865.0	19425.0
17915.0	19475.0
17965.0	19525.0
18015.0	19575.0
18065.0	19625.0
18115.0	19675.0

(12) 80 Megahertz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 Megahertz Separation (* channels are no longer available on a primary basis)	
17740.0	19300.0*
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

(13) The following frequencies on channels 35–39 are available for point-to-multipoint systems and are available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the U.S. borders. Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509 of this subpart. Stations also must comply with international coordination agreements.

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
(* channels are no longer available on a primary basis)		
25	18,820–18,830	19,160–19,170*
26	18,830–18,840	19,170–19,180*
27	18,840–18,850	19,180–19,190*
28	18,850–18,860	19,190–19,200*
29	18,860–18,870	19,200–19,210*
30	18,870–18,880	19,210–19,220*
31	18,880–18,890	19,220–19,230*
32	18,890–18,900	19,230–19,240*
33	18,900–18,910	19,240–19,250*
34	18,910–18,920	19,250–19,260*
35	24,250–24,290	25,050–25,090
36	24,290–24,330	25,090–25,130
37	24,330–24,370	25,130–25,170
38	24,370–24,410	25,170–25,210
39	24,410–24,450	25,210–25,250

(14) *Special provision for low power systems in the 17,700–19,700 MHz band:* Notwithstanding other provisions in 47 CFR part 101 and except for specified areas around Washington, DC, and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(13) of this section may continue to operate in accordance with the requirements of § 101.85 and may operate multiple low power transmitting devices within a defined service area. Operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38 deg.48′ N/76 deg.52′ W (Washington, DC area) and 39 deg.43′ N/104 deg.46′ W (Denver, Colorado area). The service area will be a 28 kilometer omni directional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are subject to the following requirements on the low power transmitting devices:

(i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power;

(ii) A frequency tolerance of 0.001% must be maintained; and

(iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the

channel bandwidth and is within the bands 18,820–18,870 MHz or 19,160–19,210 MHz:

A = 35 + .003 (F − 0.5B) dB

or,

80 dB (whichever is the lesser attenuation).

Where:

A = Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B = Bandwidth of channel in kHz.

F = Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820–18.870 GHz: At least 43 + 10 log P (mean output power in watts) decibels.

(iv) Low power stations authorized in the band 18.8–19.3 GHz after June 8, 2000, are restricted to indoor use only. No new licenses will be authorized for applications received after April 1, 2002.

* * * * *

■ 14. Section 101.603 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

§ 101.603 Permissible communications.

(a) * * *

(2) In the frequency bands 6425–6525 MHz, 17,700–18,580 MHz, and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

* * * * *

(b) * * *

(3) Be used to provide the final RF link in the chain of transmission of program material to multichannel video programming distributors, except in the frequency bands 6425–6525 MHz and 17,700–18,580 MHz and on frequencies above 21,200 MHz.

[FR Doc. E6–20167 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 05–247; FCC 06–157]

Over the Air Reception Devices (Continental Airlines)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a Petition for Declaratory Ruling filed by Continental Airlines, Inc. (Continental) pertaining to the installation and use of a Wi-Fi antenna within its lounge at Boston-Logan International Airport (Logan Airport). Continental claims that the Massachusetts Port Authority (Massport), the owner of Logan Airport, has demanded that Continental remove its Wi-Fi antenna, and that such restrictions are prohibited by the Commission's Over-the-Air Reception Devices (OTARD) rules. The Commission finds that Massport's restrictions on Continental's use of its Wi-Fi antenna are pre-empted by the OTARD rules and it grants Continental's petition.

DATES: Effective November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, Policy and Rules Division, Office of Engineering and Technology, (202) 418–0636, e-mail *Nicholas.Oros@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 05–247, FCC 06–157, adopted October 17, 2006 and released November 1, 2006. The full text of this document is available on the Commission's Internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *fcc@bcpiweb.com.*

Summary of the Memorandum Opinion and Order

1. The Commission's OTARD rules prohibit restrictions on property that impair the use of certain antennas. Restrictions prohibited by the OTARD rules include lease provisions (as is the situation here), as well as restrictions imposed by state or local laws or regulations, private covenants, contract provisions, or homeowner's association rules. Restrictions are prohibited by the OTARD rules if they unreasonably delay or prevent the installation, maintenance, or use of the antenna; unreasonably increase the cost of installation, maintenance or use of the antenna; or preclude the reception of an acceptable quality signal via the antenna. No distinctions are made in the OTARD rules based upon the setting (*e.g.*, residential vs. commercial). There are exceptions in the OTARD rules for restrictions necessary to address valid and clearly articulated safety or historic preservation objectives, provided such restrictions are narrowly tailored, impose as little burden as possible, and apply in a nondiscriminatory manner.

2. The Commission adopted the OTARD rules in 1996 in response to Section 207 of the 1996 Telecommunications Act (1996 Act), which required the Commission to promulgate rules that ''prohibit restrictions that impair a viewer's ability to receive video programming services'' via antennas. The 1996 Act had as its overarching goals promoting competition in telecommunications, increasing consumer choice, and encouraging the rapid deployment of new technologies. In 1998, the Commission modified the OTARD rules to extend their applicability to rental property. In 2001, the Court of Appeals for the D.C. Circuit upheld the Commission's statutory authority and discretion to extend OTARD protections to rental environments and to preempt any contractual provisions to the contrary. In 2000 the Commission extended the OTARD rules to antennas that transmit or receive fixed wireless signals.

3. The OTARD rules provide that parties who are affected by antenna restrictions may petition the Commission to determine if the restrictions are permissible or prohibited by the rule and sets forth specific filing procedures. Such a determination is highly dependent on the facts alleged by the parties involved. Continental has filed such a petition alleging that Massport has demanded that it remove a Wi-Fi antenna from its lounge at Logan Airport in contradiction of the OTARD rules.

4. Three conditions must be satisfied in order for Continental's Wi-Fi antenna to be covered by the OTARD rules. First, the antenna must be one meter or less in diameter or diagonal measurement. Second, the antenna must be located on property within the exclusive use and control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property. Lastly, the antenna must be used to receive or transmit fixed wireless signals. Massport concedes that Continental's Wi-Fi antenna satisfies the first condition, *i.e.*, the antenna is less than one meter in diagonal measurement. The Commission finds that the second requirement is also satisfied. There is no dispute that Continental has a direct leasehold interest in the airport lounge where the

Wi-Fi antenna is located, nor is there any indication in the record that the lounge is not exclusively used and controlled by Continental. It is Continental that is asserting rights under the OTARD rules, and it is Continental that is ''using'' the antenna to send and receive signals from its customers and employees within the lounge and has exclusive use and control of the leased premises.

5. For purposes of the third condition, that the antenna receives or transmits fixed wireless signals, a signal is a fixed wireless signal if it is (1) commercial, (2) non-broadcast, and (3) transmitted via wireless technology to and/or from a fixed customer location. The Wi-Fi antenna transmits commercial signals because Continental accesses a commercial Internet service that it receives over a wireline connection and uses the antenna to transmit those same commercial signals within the lounge. There is no dispute that the Wi-Fi signals are non-broadcast. The application of OTARD is not limited to fixed antennas used for signals originating or terminating outside of the leased premises. Thus, Continental's Wi-Fi antenna transmits signals via wireless technology to and/or from a fixed customer location.

6. Continental's Wi-Fi antenna is not excluded from OTARD as a ''hub'' antenna used to deliver service to others. When a leaseholder or property owner uses an antenna to send and receive signals strictly within its premises, and not to ''multiple customer locations,'' the antenna user is using the antenna for its own purposes under the OTARD rules. The present case involves the sending of signals to and from an OTARD-covered antenna strictly within the premises under the exclusive use and control of the antenna user. Consequently, Continental's Wi-Fi antenna cannot be considered a hub antenna.

7. A restriction runs afoul of the OTARD rules if it unreasonably delays, prevents, or increases the cost of the installation, maintenance, or use of the antenna or precludes reception of or transmission of an acceptable quality signal. The restrictions contained in Massport's lease with Continental for the airport lounge unreasonably impair the use of Continental's antenna because the lease provisions for the lounge allegedly require that Continental discontinue use of or remove its Wi-Fi antenna and because the lease allegedly prohibits making alterations to the premises without submitting an application to and receiving prior approval.

8. The presence of an airport Wi-Fi backbone that provides coverage throughout the airport does not provide an exception to the OTARD rule as a ''central antenna.'' The Commission has explicitly declined to adopt a central antenna exception to the OTARD rule. The availability of a central antenna must be analyzed in the context of impairment—*i.e.*, whether the restrictions on the installation and use of an antenna constitute impairment if the landlord offers a central antenna that may be used by the tenant. The restrictions constitute an impairment because of the time delay in which Massport offered allegedly comparable service, and because Continental would not be able choose its own service provider and would be limited to whatever type of services, level of network security, quality of service, and signal strength the airport Wi-Fi backbone provides.

9. Massport does not qualify for a safety exception to the OTARD rules because of potential interference to the airport Wi-Fi backbone because the OTARD safety exception addresses potential dangers to the physical safety and health of the public and not interference to other radio device users. The Commission further noted that because the Wi-Fi device that Continental is using in the lounge operates as permitted under Part 15 of the Commission's rules, Massport has no right to operate the airport Wi-Fi backbone free from interference from other Part 15 devices, and that the type of traffic carried by the airport Wi-Fi backbone does not change the application of Part 15 of the Commission's rules. Users who believe they must have interference-free communication should pursue the exclusive-use options under the licensed service models instead of relying on Part 15 devices. Massport also does not qualify for a special exemption from the OTARD rule because OTARD has no express exception for governmental entities and Massport has made no showing that its management responsibilities relating to antenna siting differ materially from those of any other landlords.

10. The Commission has the statutory authority to apply the OTARD rules to antennas used to receive and/or transmit fixed wireless signals. There is no indication that Congress intended to limit the Commission's discretionary preemptive authority over antenna siting to the strict parameters of Section 207 of the 1996 Telecommunications Act. Nothing in Section 207 prohibits the Commission from exercising its authority pursuant to Section 303 and other provisions of the Communications Act to protect the siting of other antennas that receive or transmit other types of signals. Furthermore, Section 303(d) of the Communications Act provides the Commission with express statutory authority to regulate antenna siting. Additionally, the Commission's exercise of its ancillary jurisdiction in the Competitive Networks Report and Order also provides an independent basis for the Commission's OTARD rules. When the Commission extended the OTARD rules to include antennas used to transmit or receive fixed wireless signals, it relied upon the statutory goals in Sections 1, 201(b), 202(a), and 205(a) of the Communications Act, as well as the Preamble to and Section 706 of the 1996 Telecommunications Act.

11. The Commission is able to apply OTARD to a state or local government acting in a proprietary capacity. When a governmental entity acts in a private capacity, the authority of a federal agency like the Commission to regulate such action will turn on whether the agency has lawfully exercised its authority in the same manner over similarly situated non-governmental regulatees. The OTARD rules expressly apply to ''contract provision[s]'' and ''lease provision[s],'' of private parties. In Building Owners and Managers Association International v. FCC, 254 F.3d 89 (D.C. Cir. 2001) (''BOMA''), the D.C. Circuit held that the Commission possessed the authority to prohibit private leasing restrictions that impair a viewer's ability to receive video programming services through antennas designed for over-the-air reception. In extending the OTARD rules to the wireless context, the Commission relied upon the same policies underpinning the video-based OTARD rules upheld by the D.C. Circuit. Private lease agreements that impair a user's ability to install an antenna falling within the scope of the Commission's OTARD rules conflict with the Commission's authority over such antenna siting. In addition, such a lease agreement stands as an obstacle to the accomplishment and full objectives of federal law to facilitate the availability of advanced communications services and to foster competition.

12. The D.C. Circuit has affirmed in BOMA that application of the OTARD rules to leased property is not a per se taking of the landlord's property rights. Whether a regulatory taking has occurred is determined by considering: (1) The character of the government action; (2) its economic impact; and (3) its interference with reasonable investment-backed expectations. No

regulatory taking has occurred because applying the OTARD rules in this situation will promote the important government interests of increasing competition and encouraging the deployment of advanced communication technology; economic harm need not be considered because no one has the right to operate part 15 devices such as Wi-Fi free of interference; and no one has a reasonable expectation to generate revenue from the use of unlicensed spectrum.

Ordering Clauses

13. Pursuant to section 1.4000(d) of the Over-the-Air Reception Devices Rule, 47 CFR 1.4000(d), and section 1.2 of the Commission's rules, 47 CFR 1.2, that the Petition for Declaratory Ruling filed by Continental Airlines, Inc. on July 8, 2005 is granted.

14. This Memorandum Opinion and Order does not change any rules, it grants a Petition for Declaratory Ruling, no Congressional Review requirements are necessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20142 Filed 11–28–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 060228057–6283–02; I.D. 022206D]

RIN 0648–AU38

Endangered and Threatened Species; Designation of Critical Habitat for Southern Resident Killer Whale

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule designating critical habitat for the Southern Resident killer whale (Orcinus orca) distinct population segment (DPS). Three specific areas are designated, (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which comprise approximately 2,560 square miles (6,630 sq km) of marine habitat. We considered the economic impacts and impacts to national security, and concluded the benefits of exclusion of 18 military sites, comprising approximately 112 square miles (291 sq km), outweighed the benefits of inclusion because of national security impacts.

We solicited comments from the public on all aspects of the proposed rule. An economic analysis, biological report, and Endangered Species Act (ESA) report were available for comment along with the proposed rule. The supporting documents have been finalized in support of the final critical habitat designation.

DATES: This rule becomes effective December 29, 2006.

ADDRESSES: The final rule, maps, and supporting documents used in preparation of this final rule, as well as comments and information received, are available on the NMFS Northwest Region website at *http://www.nwr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Lynne Barre at (206) 526–4745, or Marta Nammack at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, we are responsible for determining whether certain species, subspecies, or distinct population segments (DPS) are threatened or endangered, and designating critical habitat for them (16 U.S.C. 1533). In November 2005, we listed the Southern Resident killer whale DPS as endangered under the ESA (70 FR 69903; November 18, 2005). At the time of listing, we also announced our intention to propose critical habitat for the Southern Resident killer whale. Critical habitat for Southern Residents was proposed on June 15, 2006 (71 FR 34571).

Killer Whale Natural History

Three distinct forms of killer whales, termed residents, transients, and offshores, are recognized in the northeastern Pacific Ocean. Resident killer whales in U.S. waters are distributed from Alaska to California, with four distinct communities recognized: Southern, Northern, Southern Alaska, and Western Alaska (Krahn *et al.*, 2002; 2004). Resident killer whales are fish eaters and live in stable matrilineal pods. The Southern Resident DPS consists of three pods, identified as J, K, and L pods, that reside for part of the year in the inland waterways of Washington State and British Columbia (Strait of Georgia, Strait of Juan de Fuca, and Puget Sound), principally during the late spring, summer, and fall (Ford *et al.*, 2000; Krahn *et al.*, 2002). Pods visit coastal sites off Washington and Vancouver Island (Ford *et al.*, 2000), but travel as far south as central California and as far north as the Queen Charlotte Islands. Offshore movements and distribution are largely unknown for the Southern Resident DPS.

Detailed information on the natural history of Southern Residents is included in the Proposed Conservation Plan for Southern Resident Killer Whales (Orcinus orca) available at *http://www.nwr.noaa.gov/* and was summarized in the biological report and the proposed rule to designate critical habitat (71 FR 34571; June 15, 2006).

Summary of Comments and Responses

We requested comments on the proposed rule to designate critical habitat for Southern Resident killer whales (71 FR 34571; June 15, 2006). To facilitate public participation, the proposed rule was made available on our regional web page and comments were accepted via standard mail, e-mail, and through the Federal eRulemaking portal. In addition to the proposed rule, several draft documents supporting the proposal, including a biological report, an economic report, and a report supporting NMFS' conclusions under Section 4(b)(2) of the ESA, were posted. We obtained independent peer review of the draft biological report (NMFS, 2006a) and draft Economic Analysis (NMFS, 2006b) and incorporated the peer review comments into the documents prior to dissemination in support of the proposed rule. Two public hearings were held on July 12, 2006, in Seattle and July 13, 2006, in Friday Harbor, WA, and the public comment period closed on August 14, 2006.

We have considered all public comments, and they are addressed in the following summary. We have assigned comments to major issue categories and, where appropriate, have combined similar comments.

Physical or Biological Features Essential for Conservation (Primary Constituent Elements)

Comment 1: In our proposed listing determination for killer whales, we identified potential Primary Constituent Elements (PCEs) of critical habitat, including ''Sound levels that do not exceed thresholds that inhibit communication or foraging activities or result in temporary or permanent hearing loss.'' Many commenters expressed concern that the proposed critical habitat designation did not include sound as a PCE. These commenters pointed out that killer

whales rely on sound to navigate, forage, mate, avoid predators, and communicate with one another. One commenter noted research findings that vessel effects and acoustic disturbance are stressors on killer whales. Another commenter pointed to study findings that suggest killer whales abandon certain habitats when confronted with introduced noise. These commenters argued that NMFS should consider sound an element of the physical environment of water, just as NMFS considers water quality, prey, and passage habitat conditions. Commenters pointed out that underwater, sound travels farther than above water, and, therefore, should be considered differently. Others pointed out that sound is a commonly accepted pollutant, and should be treated as such in the critical habitat designation. They also pointed to the inclusion of sound as a concern in NMFS' proposed Conservation Plan for Southern Residents and the 2004 Status Review. The commenters were particularly concerned with the impact of military sonar in Puget Sound on Southern Residents. Several commenters also mentioned the 2003 USS Shoup incident that reportedly affected Southern Resident behavior in the Sound as evidence of the harmful impacts of military sonar in the Sound. Other commenters focused on ambient noise and the noise from specific projects underway in the Sound as concerns for Southern Residents. They felt that excluding sound as a PCE would allow these activities to continue unmonitored for sound levels. One commenter argued that NMFS should extend critical habitat to the shoreline to prevent the impacts of noise related to nearshore activities on killer whales. These commenters requested NMFS reconsider sound as a PCE due to its importance to the species and create sound thresholds to enable enforcement of potential regulations.

Response: We acknowledge the many observations about the potential for sound to startle or even physically injure killer whales. These effects, however, are direct effects to the animal itself and not to its habitat. The agency has already conducted several ESA section 7 consultations on construction activities, and measures were included in the action to avoid direct impacts to the whales. Regarding the comment in support of enforceable regulations to protect killer whales from sound, we have sound thresholds that we consider to be harassment under the Marine Mammal Protection Act (MMPA). We also recently announced our intention to consider new criteria to determine what constitutes ''take'' under the MMPA and ESA, through preparation of an environmental impact statement (70 FR 1871; January 11, 2005). As that process unfolds, we may consider additional regulations to protect Southern Residents from harmful sounds.

Continuous sounds may interfere with the whales' echolocation and communication. At this time, however, we lack sufficient information to include sound as a PCE of killer whale critical habitat. We will continue to consider sound in any future revisions of the critical habitat designation.

Geographical Area Occupied by the Species

Comment 2: We received many comments regarding the proposal to designate critical habitat in waters deeper than 20 feet (6.1 m) based on extreme high water. The majority of commenters felt that we should include waters shallower than 20 feet (6.1 m) because killer whale prey, particularly salmon, occupy these waters, and these areas are essential to the conservation of the Southern Residents. The importance of these habitats for salmon and forage fish was the predominant argument for including shallow waters as critical habitat for Southern Residents. Several commenters argued against our assessment that the Southern Residents' size prevents them from occupying shallow waters, pointing to the activities of other killer whales that use shallow waters for rubbing on rock bottoms and for foraging on marine mammals as evidence of killer whales' ability to occupy shallow waters. In contrast, there were commenters who supported our determination that there is very little evidence to indicate that the whales occupy shallow waters.

Commenters also cited the lack of a barrier between shallow and deep waters and mentioned that human activities occurring in shallow waters inevitably affect Southern Residents in deeper waters. Of particular concern was the fact that much of the pollution in the Sound enters through shallow waters and that excluding these waters from designation would limit our ability to address polluting activities. Commenters believed that including shallow waters in the critical habitat designation would increase the clean-up priority of contaminated sediments and limit industrialization. Some commenters listed specific projects in shallow waters that pose pollution and noise threats to Southern Residents. These commenters felt that including shallow waters would allow closer regulation of these projects to prevent harmful impacts on the deeper water habitat of Southern Residents. One commenter believed that including shallow water in critical habitat is necessary to ensure water quality and prey sustainability, two of the PCEs identified by NMFS.

In addition, several commenters asserted that it would be difficult to determine a 20–foot (6.1–m) depth contour relative to extreme high water because such a line is not commonly found on reference maps and charts. We received suggestions that using the shoreline as the critical habitat boundary would make it easier for the public to understand the boundaries of critical habitat and for Federal action agencies to evaluate their projects and effects on critical habitat.

Response: The overwhelming majority of comments focused on the importance of shallow nearshore waters for salmon and forage fish species. In the critical habitat proposal, we did not consider shallow waters (i.e., nearshore areas between the line of extreme high tide and a depth of 20 feet (6.1 m) relative to this line) of Puget Sound to be within the geographical area occupied by Southern Resident killer whales. While we acknowledged observations of transient whales beaching themselves to attack marine mammals, and those of Northern Residents using shallow areas at rubbing beaches, we did not have any similar accounts for Southern Resident whales and so requested additional information on use of shallow waters from the public during the comment period.

We received comments providing some information on Southern Resident killer whale use of shallow waters. One researcher and several other individuals submitted accounts and photos of Southern Resident whales using specific shallow areas, though it was not clear if these areas were less than 20 feet (6.1 m) deep based on extreme high water. We specifically requested public comments on use of shallow areas, and the limited information received is not sufficient to consider all shallow areas as occupied.

Joint NMFS-U.S. Fish and Wildlife Service (FWS) regulations provide that we will designate unoccupied areas as critical habitat only upon a finding that the currently occupied habitat is inadequate for conservation (50 CFR 424.12(e)). At this time we lack sufficient information to determine that the currently occupied habitat is inadequate and that additional unoccupied habitat in the shallow areas less than 20–feet (6.1 m) deep is essential for conservation of the species. We will consider any new information

indicating that the current occupied habitat is a limiting factor for recovery as more research is conducted.

The final critical habitat designation is consistent with the proposed rule and does not include waters shallower than 20 feet (6.1 m) based on extreme high water. Tidal fluctuations vary at locations throughout the critical habitat areas, but generally, the shallow areas not included in the critical habitat designation are very shallow (5–10 feet) (1.5–3m) in some tidal conditions and can even be exposed at very low tides. During some tidal conditions these areas are not accessible by the whales, and we do not have data indicating that these areas are frequently used by whales.

Regarding the importance of using lines found on standard maps, we agree it can be problematic to draw a line at the 20–foot (6.1 m) depth because standard topographic maps and nautical charts do not always depict such a line. The line of extreme high water, however, can be determined using visual cues (Cowardin *et al.*, 1979; Ritter *et al.*, 1996) and using site-specific tidal information and similar depth contours (e.g., 20 feet or 6.1 meters) found on maps and nautical charts to evaluate if their activities are taking place in or may affect designated critical habitat deeper than 20 feet (6.1 m) at extreme high water. Thus, Federal agencies can determine whether their proposed actions may affect critical habitat, and the public and other entities can discern where habitat critical to Southern Resident killer whales has been designated.

In our proposed rule, we estimated the total area and shoreline proposed for designation using readily available Geographic Information System (GIS) data depicting Washington shorezones (Berry *et al.*, 2000). These data are widely used by various state and Federal agencies in Puget Sound to locate and evaluate projects and activities in the nearshore zone. The GIS data approximate the line of ordinary high water, but do not include bathymetry, so we did not attempt to subtract the areas shallower than 20 feet (6.1 m), though areas shallower than 20 feet are not designated as critical habitat in this final rule. We have used the same dataset to make calculations supporting this final critical habitat designation.

Prior to issuing proposed critical habitat, we did make some modifications to the GIS data described above, notably, the exclusion of estuarine and freshwater areas upstream of river and creek mouths. In re-evaluating the nearshore areas proposed for critical habitat, we identified several small or shallow inlets, harbors, coves and bays, some with very narrow entrances, and obtained more detailed sighting information to assist with drawing a shoreline boundary for some areas. In most cases, the whales had not been sighted within the small water bodies (e.g., Drayton Harbor, Wescott Bay, Guthrie Cove, Tulalip Bay, Port Gardner/eastern side of Jetty Island, Chapman Cove, Big Fishtrap Inlet, Gull Harbor, Rocky Bay at the mouth of Rocky Creek, Taylor Bay, Mayo Cove, Horsehead Bay, Wollochet Bay, Mystery Bay, Eagle Harbor, Jarrell Cove and Sequim Bay), so we have further modified the GIS data to excise these areas, totaling approximately 15 square miles (39 sq. km), in the final designation. We did include several small harbors where we had reports of Southern Resident whales at the harbor entrances (e.g., Keystone Harbor, Gig Harbor).

Not designating waters shallower than 20 feet (6.1 m) (based on extreme high water) as critical habitat does not preclude consultation on activities that occur in these shallow nearshore areas. ESA section 7's requirement that Federal agencies ensure their actions aren't likely to adversely modify critical habitat applies equally to actions occurring outside as to actions occurring within designated critical habitat.

Comment 3: Many commenters argued for including Hood Canal (Canal) in the critical habitat designation. Commenters reported sightings of Southern Residents in the Canal, and asserted that until the 1980s Southern Residents regularly visited the Canal, making the Canal part of the home range of the species. These commenters felt we used too short of a time frame in our assessment and that a longer time frame of up to 20 years would result in the inclusion of Hood Canal in the designation. Others noted that transient killer whales use the Canal frequently, and, therefore, it should be designated critical habitat. Some commenters expressed concern that exclusion from designation would allow further development of the Canal, strip mining, industrial harbor pollution, continued sewer runoff into the Canal, and heavy commercial traffic, harming the Canal's ecosystem, contributing to low oxygen levels, and further discouraging Southern Residents from using its waters. Many commenters felt that Hood Canal and its salmon populations should be a top concern for NMFS, predicting that with salmon recovery in the waterway, Southern Residents would return to seek out prey. These commenters felt strongly that protecting Southern Resident food sources, specifically salmon, was reason enough to designate Hood Canal critical habitat. All of these commenters believe Hood Canal is essential to the recovery of Southern Residents.

Response: Section 3(5)(A) of the ESA defines critical habitat as areas either occupied or not occupied by the species ''at the time it is listed.'' We relied on the best available information on killer whale distribution to develop the proposed critical habitat areas. The sighting data we received from the Whale Museum included sightings of Southern Residents from 1990–2003, which was the most reliable information in their long-term database. Whales were identified by pod when possible, and sightings of transients, northern residents, and offshore whales were not included in the Whale Museum data set. There were no sightings of Southern Resident killer whales reported in Hood Canal from 1990–2003. In addition to the sighting data, we received one report of a sound recording made in Hood Canal from 1995, which was confirmed as calls of Southern Residents. Based on the one recording, we did not consider Hood Canal as occupied by the species at the time of listing. Commenters compared the one occurrence of Southern Residents in Hood Canal in 1995 to the areas in South Puget Sound that also had small numbers of sightings. The Puget Sound sightings, however, were often more than one sighting, were more recent, and were contiguous with areas of greater numbers of sightings. In contrast, Hood Canal has a narrow entrance, and its waters are not adjacent to areas with regular sightings.

The information we received during the public comment period included three additional sightings of killer whales in Hood Canal with sufficient information (photos, sound recordings, detailed field notes) to confirm that they were Southern Residents. The sound recording was made in 1958, the photograph was taken in 1973, and the detailed account was from a sighting in 1977. In addition, there were many anecdotal accounts of groups of whales with larger group sizes than are typical for transient whales and may have been Southern Residents spanning the 1940's–1980's. In the past, we have considered opportunistic or historical information on a specicies' occupied habitat when current documentation is not available. However, for Southern Residents, we have a more recent sighting record from the Whale Museum. Even if we increased the time span under consideration to 20 years, it would not add any confirmed sightings of Southern Residents in Hood Canal at

the time of listing. At this time, there are not sufficient data to consider Hood Canal as occupied at the time of listing.

The commenters also argued that if Hood Canal is not currently considered ''occupied by the species,'' it should still be designated as critical habitat because it contains the PCEs necessary for conservation (i.e., prey), and it is essential for conservation. Joint NMFS-U.S. Fish and Wildlife Service (FWS) regulations provide that we will designate unoccupied areas as critical habitat only upon a finding that the currently occupied habitat is inadequate for conservation (50 CFR 424.12(e)). At this time we lack sufficient information to determine that the currently occupied habitat is inadequate and that additional unoccupied habitat in Hood Canal is essential for conservation of the species. We will consider any new information indicating that the current occupied habitat is a limiting factor for recovery as more research is conducted.

We appreciate the efforts by the Hood Canal community to gather the historical information on killer whale use of the area. If, as some predict, the whales do return to Hood Canal in response to increasing populations of prey species, we will continue to work with the local community to gather information and reevaluate the importance of Hood Canal as Southern Resident habitat.

Specific Areas

Comment 4: Several commenters urged us to designate areas as critical habitat for killer whales if they are essential for salmon conservation, based on a variety of theories. Some commenters pointed out that nearshore areas and/or freshwater areas that support salmon contain physical or biological features essential for conservation of killer whales (those features being salmon, or the features that support salmon). Some commenters urged us to consider nearshore areas, bays, and even freshwater areas as unoccupied areas ''essential for conservation'' of the whales - one stating that the statutory provision regarding ''physical or biological features'' applies to both occupied and unoccupied areas and another stating that there is no statutory requirement for unoccupied areas to contain physical or biological features. One commenter stated that because nearshore and offshore waters are connected, it is arbitrary to draw a line separating the two (that is, the line we proposed at the 20–foot (6.1 m) depth).

Response: The presence of salmon in densities and/or bathymetric conditions that make them available to killer whales appears to be the primary factor determining what areas the whales are likely to occupy. The fact that this essential feature is also present in areas the whales cannot occupy does not make those outside areas ″occupied″ in the statutory sense. Nor does the fact that those unoccupied areas may be essential to salmon make them essential to killer whale conservation. Joint NMFS-U.S. Fish and Wildlife Service (FWS) regulations provide that we will designate unoccupied areas as critical habitat only upon a finding that the currently occupied habitat is inadequate for conservation (50 CFR 424.12(e)). At this time we lack sufficient information to determine that the currently occupied habitat is inadequate and that additional unoccupied habitat is essential for conservation of the species. We will consider any new information indicating that the current occupied habitat is a limiting factor for recovery as more research is conducted.

No matter where the line is drawn to delineate a specific area, there will be activities occurring outside of the delineated area that may affect the features within the area. When prey items are a biological feature that moves freely in and out of the geographical area occupied by the species, it creates a situation in which there is a ″biological feature″ outside the occupied specific areas. This fact does not make line-drawing arbitrary because the statute requires us to designate as critical habitat specific areas occupied by the species that contain those physical and biological features essential to conservation and may require special management considerations or protection, or unoccupied areas essential to the conservation of the species. Here we have chosen a reasonable line on a map (as our regulations require) to clearly identify ''specific areas within the geographical area occupied by the species.'' Moreover, section 7's requirement that Federal agencies ensure their actions are not likely to adversely modify critical habitat apply equally to actions occurring outside and within designated critical habitat. We have identified a depth contour of 20 feet (6.1 m) based on extreme high water for the final critical habitat. We believe this is a reasonable way to delineate a ''specific area within the geographical area occupied by the species.''

Comment 5: Many commenters requested that we include the offshore waters of Washington, Oregon, and California in the critical habitat designation. One commenter recommended we begin our designation at a reasonable depth and extend it to five miles (8.0 km) offshore to adequately protect waters used by Southern Residents. Many comments specifically requested that the Olympic Coast National Marine Sanctuary be included in the critical habitat designation. Most felt there was sufficient evidence to include offshore waters in the critical habitat designation at this time. Others encouraged us to conduct additional research on the winter coastal habitat of Southern Residents to gather information to support expansion of the critical habitat designation in the future.

Response: In the proposed rule, we identified the data gaps regarding distribution of Southern Residents in coastal and offshore waters and uncertainty regarding the important habitat features of these areas. At this time, we do not feel there is sufficient data to identify the specific areas in offshore waters in which the essential habitat features are found. This concern applies equally to the Olympic Coast National Marine Sanctuary and to other offshore areas. There is an active research program underway to gather information and fill in these data gaps, and we will consider any new information on coastal and offshore habitats that becomes available.

Special Management Considerations

Comment 6: We received a number of comments on the threats to the Southern Resident killer whales and suggestions for management actions that could be taken. These included: concerns regarding fisheries management to ensure sufficient prey for the whales; high pollution levels in Puget Sound and the sewage dumping practices of particular areas; stress from whale watching and other vessels; and potential effects from research practices and oil spills.

Response: For each of the specific areas proposed for critical habitat designation, we identified the PCEs and their special management considerations, which generally are the same concerns as those expressed by commenters. We will also consider the comments pertaining to specific threats to the whales and their habitat and potential management actions in developing a recovery plan for Southern Resident killer whales.

Activities That May Be Affected

Comment 7: One commenter requested at least a partial list of the type of projects that would likely require ESA section 7 consultation to assist agencies and project sponsors.

Another commenter suggested that Federal hydropower projects should

also be considered because of their potential to affect abundance of killer whale prey. Several commenters encouraged us to explore a Federal nexus under section 7 that would allow us to address vessels in Puget Sound.

Response: We provided a list of activities that may be affected by this designation, including, but not limited to, fishery management practices, vessel traffic, dredging and disposal, sub-marine cable/pipline installation and repair, oil and gas exploration, pollutant discharge, and oil spill prevention and response. If hydropower actions can be shown to significantly reduce the abundance of salmon available to the whales in designated critical habitat, they could adversely modify that habitat. As noted in response to Comment 8 below, most hydropower operations in the range of salmon and steelhead are already subject to modifications to protect listed salmon and steelhead. We will work with the Coast Guard and other agencies that oversee vessel activities to explore actions regarding vessels that may require section 7 consultation under the ESA.

Application of ESA section 4(b)(2)

Economic Impacts

Comment 8: We received several comments requesting that we include additional quantified estimates of economic impacts of designating critical habitat for Southern Resident killer whales in the economics report. One commenter objected to the focus of the economic analysis on potential impacts to fisheries. One commenter suggested Federal hydropower projects be considered under section 7 of the ESA and economic impacts of those consultations be considered in the economic analysis. Other commenters requested inclusion of costs associated with water quality and stormwater management and noise-producing activities, such as construction. Another suggested that information about economic costs associated with climate change be included.

Response: The range of economic costs estimated for critical habitat designation was related to possible reductions in harvest of prey species. While the economic analysis may appear to focus on potential impacts to fisheries, the economic report addresses other impacts such as those to water quality which could not be quantified. The inability to quantify these costs does not reduce their relative importance. In the ESA section 4(b)(2) report, we acknowledge that there are also additional costs associated with prey in addition to harvest, though we could not attribute these costs to the designation of critical habitat for Southern Resident killer whales. In designating critical habitat for the Puget Sound Chinook ESU, there were over $70,000,000 of economic impacts identified for the designated areas. Examples of other programs affecting salmon habitat include Shared Strategy for salmon recovery and Puget Sound Action Team and Puget Sound Partnership efforts to improve conditions in Puget Sound, which may cost hundreds of millions of dollars.

In the case of hydroelectric projects, particularly the Federal projects the commenter identified, many hydroelectric project modifications to protect salmon and steelhead are already required to protect ESA-listed salmon or steelhead. Along the entire West Coast, nearly all salmon-bearing streams are home to listed salmon and steelhead (only coastal streams in Western Washington contain no listed salmon or steelhead). To the extent there is a Federal nexus on hydropower operations affecting these listed salmon and steelhead, the Federal agency involved must ensure its actions aren't likely to jeopardize the listed salmonids or adversely modify their critical habitat. As a result, hydropower operations that might affect the abundance of killer whale prey (including those in the Columbia River basin) are already modified to protect salmon and their critical habitat. It would be inappropriate to attribute the cost of modifications to killer whale critical habitat designation when they are already required to protect salmon and steelhead; however, if additional project modifications are required to prevent reductions of prey abundance for Southern Resident killer whales in designated critical habitat, these impacts would be attributable to this designation.

Regarding water quality, we lack sufficient information at this time to determine which contaminants are likely to be the focus of future ESA section 7 consultations and what threshold levels are appropriate to protect Southern Residents. Until we have better information about the number and type of section 7 consultations on water quality management, and the extent of changes that may be required as a result of those consultations, it would be speculative to try to estimate associated costs. We do not have a consultation history for killer whales that would provide information on changes that might be required in water quality management to protect killer whale habitat from adverse modification. Nor do we have information that would allow us to estimate with any confidence what those changes might be. One commenter suggested that we rely on the consultation history of salmon to estimate economic costs for water quality management. However, there are different contaminants of concern for salmon, and, as noted above, costs associated with salmon consultations would not be appropriate to count twice. Impacts from Southern Resident critical habitat designation will likely come in areas different than those that stem from salmon protection and recovery.

There are likely to be significant costs associated with construction activities as a result of our listing of Southern Resident killer whales because these sound-producing activities have a direct effect on the whales, as described in our response to Comment 1. We have already conducted several ESA section 7 consultations on construction activities, and measures were included in the action to avoid direct impacts to the whales. Because we consider such sound to be an impact on the whales rather than on the whales' habitat, however, we did not include the costs associated with these measures in our analysis of the economic impacts of designation.

At this time it would be too speculative to try to determine what management changes may be required for salmon and steelhead in response to climate change.

Comment 9: One commenter questioned the information in the economics report regarding stormwater outfalls, including the number of outfalls listed, and suggested we consider the contaminant levels for individual outfalls and sources rather than the number of outfalls or the agency responsible for managing the outfalls.

Response: We recognize that the quantity and quality of stormwater, not the number of outfalls, will determine what changes would need to be made, if any, as a result of critical habitat designation. We also recognize that outfalls without any Federal nexus will not be subject to an ESA section 7 consultation. We included the number of outfalls that might be subject to consultation in the draft economics report, where such numbers were available, to give the decision maker some context for considering the potential impact of critical habitat designation, as required by ESA section 4(b)(2). In light of this comment, we have removed the table from the

economics report showing the number of outfalls.

Comment 10: Commenters suggested that additional information on the economic benefits of recovered Southern Resident and salmon populations be included in the report.

Response: While there may be studies that may provide some information relevant to estimating the benefits of recovered Southern Resident killer whale and salmon populations, there is insufficient information to estimate the incremental benefits (in addition to the current salmon recovery efforts) of critical habitat designation for Southern Residents on the status of Southern Resident and Pacific Northwest salmon populations.

Comment 11: One commenter objected to the inclusion of polycyclic aromatic hydrocarbons (PAH) as a contaminant of potential concern to Southern Resident killer whales in the economic report. The commenter acknowledged that PAHs are mentioned in the conservation plan, but that since they were not specifically addressed in the listing or biological report, like other contaminants such as polychlorinated biphenyls (PCB) and dichloro-diphenyl-trichloroethane (DDT), they should therefore not be included in the economic analysis.

Response: While we concur with the commenter that PCBs and other contaminants pose a greater risk to Southern Residents than PAHs, PAHs are still a concern and we have modified the biological report to ensure it clearly reflects this concern. Exposure to PAHs can be chronic or acute in the case of an oil spill. Although there are few studies of PAH levels and effects in wild marine mammals and no studies linking PAHs to the decline in the Southern Residents, there are concerns regarding carcinogenic effects of high levels of PAHs in some marine mammals (e.g., beluga whales). PAHs were not specifically identified as a primary concern in the listing of Southern Residents, but their inclusion in the conservation plan and the economic report indicates that they may be a concern for Southern Residents. No specific costs were associated with inclusion of PAHs in the economic report.

National Security Impacts

Comment 12: Many commenters disagreed with the decision to exclude 18 military sites on the basis of national security. Commenters requested that we review and offer explanations for the exclusion of each facility on a case-by-case basis, balancing national security interests with those of Southern Residents. Reducing the size of exemptions, limiting the degree of the exemptions, or entering into an agreement with the Navy to address their activities were several of the recommendations of commenters. Many of the commenters expressed concern about non-military activities that occur in the exempt areas and whether they would be subject to critical habitat regulations. These commenters hoped we could find a way to protect Southern Residents from harmful, non-military activities in these zones. An additional concern for these commenters was the impact of military sonar. We received recommendations that the military increase its efforts to protect killer whales when conducting tests, using passive sonar to locate whales and avoid sonar usage when whales are in potentially harmful proximity to the military vessel.

Response: In an appendix to the ESA Section 4(b)(2) report, we provided detailed information on each of the military sites and summarized the national security concerns raised by the Department of Defense (DOD). We concluded that the national security impacts outweighed the benefits to the species. There is no mechanism in the ESA to exclude just the military and not other Federal agencies from the impacts of critical habitat designation. The exclusion of the military sites from critical habitat designation, however, does not mean that Federal actions in those areas are exempt from all consultation obligations under section 7 of the ESA. Federal agencies must ensure their actions do not jeopardize the continued existence of listed species - a requirement that applies regardless of whether specific areas are designated as critical habitat. We will continue to be concerned about activities that harm Southern Resident killer whales and their habitat, regardless of whether that habitat is designated. We expect that where critical habitat is designated, it will more precisely focus our analysis on how the action will alter the habitat and how that will affect the ability of the habitat to support species' conservation.

Regarding sonar use, the Navy has operating procedures in place to reduce the risk to marine mammals, and these are included in the Proposed Conservation Plan for Southern Resident Killer Whales (available at *www.nwr.noaa.gov*). As stated above, the military exclusions from critical habitat designation do not affect the Navy's obligations under section 7 of the ESA to consult on Federal actions that may affect Southern Resident killer whales regardless of whether they occur in designated critical habitat.

Comment 13: We received several requests for additional exclusions based on impacts to national security. Commenters requested exclusions for refineries and ports in Puget Sound. Refinery operators requested exclusions because of their role in producing the petroleum products used by the U.S. military. These commenters felt that being subject to critical habitat consultations would limit the ability of refineries to efficiently provide oil to the military in a situation of national security. They also argued critical habitat designations would affect security, maintenance, operations and emergency preparedness at refineries. Those requesting national security exemptions for the ports located in Puget Sound argued that ports play an essential role in protecting the United States from terrorist threats because they are a primary entry and exit point. The commenters also argued there would be economic impacts to designating critical habitat in ports, making the ports less competitive. The commenters felt that, given that Southern Residents do not often use port waters, and many of the areas are already designated as critical habitat for Chinook salmon, an additional critical habitat designation would impact ports and not offer benefits to killer whales.

Response: We concluded that the national security benefits of exclusion outweighed the conservation benefits of designation for 18 military sites. The Navy and Army provided information on the direct and potentially substantial impacts to national security including preventing, restricting, or delaying training or testing exercises or access to sites; restricting, or delaying activities associated with vessel/facility maintenance and ordnance loading; and delaying response time for ship deployments and overall operations. The DOD did not identify any concerns regarding impacts to national security beyond those at their sites. National security is the primary mission for the military, and we considered the high priority placed on national security when weighing the benefits of exclusion against conservation benefits. Refineries and ports, however, are commercial operations, and the national security concerns associated with these sites are a part of their overall activities. We consider that designating critical habitat in these areas will provide some conservation benefit through ESA section 7 consultations on refinery and port actions that may impact habitat by affecting prey availability, contaminant levels, or passage. There was

insufficient information to demonstrate that any national security benefits outweigh the conservation benefits.

National Environmental Protection Act of 1969 (NEPA)

Comment 14: We received one comment arguing that the agency must comply with the NEPA to inform the public and help ensure that critical habitat designations do not result in unintended environmental consequences.

Response: We believe that in *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996), the Ninth Circuit Court of Appeals correctly interpreted the relationship between NEPA and critical habitat designation under the ESA. The Court rejected the suggestion, identical to that raised by commenters, that irreconcilable statutory conflict or duplicative statutory procedures are the only exceptions to application of NEPA to Federal actions. The Court held that the legislative history of the ESA demonstrated that Congress intended to displace NEPA procedures with carefully crafted procedures specific to critical habitat designation. Further, the Douglas County Court held that the critical habitat mandate of the ESA conflicts with NEPA in that, although the Secretary may exclude areas from critical habitat designation if such exclusion would be more beneficial than harmful, the Secretary has no discretion to exclude areas from designation if such exclusion would result in extinction. The Court noted that the ESA also conflicts with NEPA's demand for impact analysis, in that the ESA dictates that the Secretary ''shall'' designate critical habitat for listed species based upon an evaluation of economic and other ''relevant'' impacts, which the Court interpreted as narrower than NEPA's directive. Finally, the Court, based upon a review of precedent from several circuits including the Fifth Circuit, held that an environmental impact statement is not required for actions that do not change the physical environment.

Delay Designation Pending Resolution of Legal Issues

Comment 15: One commenter requested that we delay designation of critical habitat until clarification of outstanding legal issues, including litigation over the listing of the Southern Resident DPS and the definition of ″adverse modification″ of critical habitat, are resolved.

Response: Litigation is currently pending that challenges our listing of Southern Resident killer whales as endangered under the ESA [Washington State Farm Bureau and Building Industry Association of Washington v. NMFS]. Pending a decision on that challenge, the whales are listed, and the ESA requires that we designate critical habitat within one year of listing. Past court decisions on the agency's regulatory definition of adverse modification have no effect on the statutory requirement to designate critical habitat.

Coordination with Canada

Comment 16: We received a number of comments regarding the use of Canadian waters by Southern Residents. These commenters felt we should coordinate with Canada on our efforts for protecting Southern Residents and their habitat.

Response: We have some sighting data for Southern Residents in Canadian waters, and while our regulations limit us to designating critical habitat in areas under U.S. jurisdiction, we will continue to coordinate with Canada on both critical habitat designated in U. S. waters and recovery planning on both sides of the border.

Critical Habitat Identification and Designation

Section 3 of the ESA defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4 of the ESA requires that, before designating critical habitat, we consider economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of designation, unless excluding an area from critical habitat will result in the extinction of the species concerned. Once critical habitat is designated, section 7(a)(2) of the ESA requires that each Federal agency, in consultation with us and with our assistance, ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of critical habitat.

Physical or Biological Features Essential to Conservation (Primary Constituent Elements)

Joint NMFS-FWS regulations for listing endangered and threatened species and designating critical habitat at 50 CFR 424.12(b) state that the agencies ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection (hereafter also referred to as ''Essential Features' or ''Primary Constituent Elements'/PCEs').'' Pursuant to the regulations, such requirements include, but are not limited to, the following: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations state that we shall focus on essential features within the specific areas considered for designation. These features ″may include, but are not limited to, the following: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

Fish are the major dietary component of resident killer whales in the northeastern Pacific, with 22 species of fish and 1 species of squid (Gonatopsis borealis) known to be eaten (Scheffer and Slipp, 1948; Ford *et al.*, 1998; 2000; Ford and Ellis, 2005; Saulitis *et al.*, 2000). Observations from this region indicate that salmon are clearly preferred as prey (Ford *et al.*, 1998; Ford and Ellis, 2005) and are likely consumed in large amounts, as indicated by the estimates of total salmon consumed by the Southern Resident killer whale DPS. Sufficient prey abundance is necessary to support individual growth to reach sexual maturity and reproduction, including lactation and successful rearing of calves.

In addition to a sufficient biomass of prey species, the prey must not have

amounts of contaminants that exceed levels that can cause mortality or reproductive failure in Southern Residents. Because of their long life span, position at the top of the food chain, and their blubber stores, killer whales accumulate high concentrations of contaminants. Organochlorines, such as PCBs and DDT, and many other chemical compounds including polychlorinated napthalenes, brominated flame retardants, PAHs, dioxins, furans, and heavy metals, are a concern because of their ability to induce immune suppression, reproductive impairment, or other physiological damage, as observed in several species of marine mammals (Albers and Loughlin, 2003; Boland *et al.*, 1998; Bergman *et al.*, 1992; De Guise *et al.*, 2003; Jepson *et al.*, 1999; Reijinders, 2003; Ross, 2002).

To move between important habitat areas, find prey, and fulfill other life history requirements, the Southern Resident killer whales require open waterways that are free from obstruction. In-water structures that block passage, for example, could affect Southern Resident killer whale movement.

Killer whale habitat use is dynamic, and specific breeding, calving, or resting areas have not been documented. Births occur largely from October to March, but may take place in any month (Olesiuk *et al.*, 1990), and, therefore, potentially in any part of the whales' range. Southern Residents are highly mobile and can travel up to 100 miles (160 km) in a 24–hour period (Baird, 2000), allowing rapid movements between areas. These movements likely coincide with prey concentrations. Individual knowledge of productive feeding areas and other special habitats is probably important in the selection of locations visited and is likely a learned tradition passed from one generation to the next (Ford *et al.*, 1998).

Based on this natural history of the Southern Resident killer whales and their habitat needs, the physical or biological features of Southern Resident killer whale habitat are:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth; and

(3) Passage conditions to allow for migration, resting, and foraging.

Geographical Area Occupied by the Species

Photo-identification studies, tracking by boats, and opportunistic sightings have provided considerable information on the ranges and movements of Southern Resident killer whales since the early 1970s. Ranges are best known from late spring to early autumn (May-September), when survey effort is greatest. During this period, all three Southern Resident pods- J, K and L- are regularly present in the Georgia Basin (defined as the Georgia Strait, San Juan Islands, and Strait of Juan de Fuca) (Heimlich- Boran, 1988; Felleman *et al.*, 1991; Olson, 1998; Osborne, 1999).

While in inland waters during summer months, all of the pods concentrate their activity in Haro Strait, Boundary Pass, the southern Gulf Islands, the northeastern end of the Strait of Juan de Fuca, and several localities in southern Georgia Strait (Heimlich-Boran, 1988; Felleman *et al.*, 1991; Olson, 1998; Ford *et al.*, 2000). Pods commonly occur and are observed foraging in areas where salmon frequent, especially during the times of year salmon are migrating to their natal rivers (Heimlich-Boran, 1986, 1988; Nichol and Shackleton, 1996). Notable concentrations include Haro Strait and Boundary Passage, the southern tip of Vancouver Island, Swanson Channel off North Pender Island, and the mouth of the Fraser River delta, which is visited by all three pods in September and October (Felleman *et al.*, 1991; Ford *et al.*, 2000). These sites are major corridors for migrating salmon.

Individual pods are generally similar in their preferred areas of use (Olson, 1998), although some seasonal and temporal differences exist in areas used. All three pods typically arrive in May or June and spend most of their time in inland waters until departing in October or November. However, K and L pods make frequent trips lasting a few days to the outer coasts of Washington and southern Vancouver Island during this time period (Ford *et al.*, 2000). During early autumn, Southern Resident pods, especially J pod, routinely expand their movements into Puget Sound, probably to take advantage of chum and Chinook salmon runs (Osborne, 1999). Additional recent studies have identified finer scale pod differences in seasonal movement patterns and use of core areas (Hauser, 2006).

There are no confirmed sightings of Southern Resident killer whales inside Hood Canal in the 1990–2003 sighting database. On one occasion in 1995, acoustic recordings from Dabob Bay were identified as J pod vocalizations (Unger, 1997). Although additional historical sightings and recordings from the 1970s and earlier were provided during the comment period, we do not consider this sufficient evidence of presence to find Hood Canal ″within the geographical area occupied by the species at the time of listing.″ (Transient killer whales, in contrast, have been observed in Hood Canal on multiple occasions and have remained in Hood Canal for extended periods in the last several years.)

In the critical habitat proposed rule we did not consider extremely shallow waters of Puget Sound (less than 20 feet (6.1 m) deep relative to the extreme high water line) to be within the geographical area occupied by the species and requested information during the public comment period. The public and a scientific researcher provided accounts and photographs of Southern Resident killer whales using some shallow areas. The information received is not sufficient to consider all shallow areas as occupied. The final critical habitat designation is consistent with the proposed rule and does not include waters shallower than 20 feet (6.1 m) based on extreme high tide. Tidal fluctuations vary at locations throughout the critical habitat areas, but generally the shallow areas not included in the critical habitat designation are very shallow (5–10 feet (1.5–3 m)) in some tidal conditions and can even be exposed at very low tides. During some tidal conditions these areas are not accessible by the whales, and we do not have data indicating that these areas are frequently used by whales. We used this same shoreline data for the final rule, which is readily available from the Washington Department of Natural Resources, to display and calculate the critical habitat areas as we did in the proposed rule.

During the late fall, winter, and early spring, the ranges and movements of the Southern Residents are less well known. J pod continues to occur intermittently in the Georgia Basin and Puget Sound part of this time, but its location during apparent absences is uncertain (Osborne, 1999). One sighting of this pod was made off Cape Flattery, Washington, in March 2004 (Krahn *et al.*, 2004). Prior to 1999, K and L pods followed a general pattern in which they spent progressively smaller amounts of time in inland waters during October and November and departed them entirely by December of most years (Osborne, 1999). Sightings of both groups passing through the Strait of Juan de Fuca in late fall suggested that activity shifted to the outer coasts of Vancouver Island and Washington (Krahn *et al.*, 2002), although it is unclear if the whales spend a substantial portion of their time in this area or simply transit to other locations.

While there are considerable data on the use of inland waters of Washington, there is very little information on the movements of Southern Resident killer whales off the coast. Areas of activity of all pods are virtually unknown during their absences from inland waters. In the last 30 years of study, there are only 28 confirmed sightings in outside waters (Krahn *et al.*, 2004; NWFSC unpubl. data). The majority of these sightings were opportunistic, with most occurring within 10 miles (16.1 km) of shore, and we do not know how far from shore the Southern Residents range. Several new sightings occurred during the last five years, when effort was increased with dedicated ship surveys and expanded volunteer coastal sighting networks. Our knowledge of the southern and northern boundaries of the range has expanded with these new sightings from California and the Queen Charlotte Islands in recent years. At this time there are few data on how the whales are using offshore areas; however, some of the sightings included observations of feeding.

There is an active research effort underway to identify coastal and offshore distribution of Southern Residents. We have increased outreach efforts to gather sighting information from coastal communities, vessel operators, and pilots along the coasts of Oregon, Washington, and British Columbia. In addition, researchers are conducting dedicated ship surveys to locate the whales and observe their activities outside of Puget Sound. The research program is a long-term effort, but we hope to greatly increase the number of coastal observations in the next five years. As new information is collected on the coastal and offshore distribution and habitat use, we hope to fill in the data gaps about the important habitat features of these coastal and offshore areas.

NMFS regulations at 50 CFR 424.12(h) state: ''Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.'' Although the Southern Residents' range includes inland waters of Canada, we are not proposing these areas for designation.

Specific Areas within the Geographical Area Occupied by the Species

We reviewed the available information on Southern Resident distribution, habitat use, and habitat needs in a biological report to assist in identifying critical habitat (NMFS, 2006a). Within the geographical area occupied by the Southern Resident killer whales we have identified three specific areas that contain essential habitat features. We have divided the inside waters of Washington State into specific areas based on the habitat features and the use patterns of the Southern Resident killer whales.

We analyzed Southern Resident killer whale sightings data from The Whale Museum (Osborne, 2005; The Whale Museum Orca Master, 1990–2003) to assist in identifying specific areas based on habitat use patterns by the whales. The Whale Museum data are predominantly opportunistic sightings from a variety of sources, including public reports, commercial whale watching industry pager system, Soundwatch, Lime Kiln State Park land-based observations, and compilations of independent researcher reports. The whales are identified as belonging to a particular pod when possible, and sightings of transient or offshore whales are not included in the database. The data set does not account for level of effort by season or location, and, therefore, the sampling and data are biased (Osborne, 2005). The 1990–2003 Whale Museum data set is, however, the most comprehensive long-term data available to evaluate broad-scale whale distribution in inland waters at this time (with a total number of sighting records of 22,509). In order to evaluate frequency of use, our analysis of the sightings was limited to one unique location sighting, per location, per day to reduce the bias introduced by multiple sightings of the same whales in the same location on the same day (total number of unique sightings per day is 11,836). For the majority of the killer whale sightings the location reported was not an exact point location (Lat./Long.), and all locations were subsequently assigned to a center point in a quadrant system (Osborne, 2005). Almost half of the data is from the Whale Watch pager system created by the commercial whale watch industry and available to subscribers. A validation of recent pager data revealed greater than 90 percent accuracy in locating whales (Hauser *et al.*, 2006).

From the sightings and other data, we identified three ''specific areas,'' within the geographical area occupied by the species, that contain PCEs. We considered presence and movements of the whales, behavioral observations and studies, and other information to verify that one or more of the physical or biological features, or PCEs, can be found in these three areas. In some cases where direct data on PCEs were not available, we relied on distribution patterns of the whales to infer presence of PCEs.

Area 1. Core Summer Area - Bordered to the North and West by the U.S./Canadian border, Area 1 includes the waters surrounding the San Juan Islands, the U.S. portion of the Southern Strait of Georgia, and areas directly offshore of Skagit and Whatcom counties. Prey species, one of the PCEs, are present in Area 1. Runs of salmon passing through Area 1 include Chinook, chum, coho, pink, and sockeye salmon, which have all been identified as prey for Southern Residents (Ford *et al.*, 1998; Ford and Ellis, 2005; NWFSC, unpubl. data). The Strait of Juan de Fuca, Haro Strait, and Georgia Strait are relatively narrow channels and concentrate salmon returning from the Pacific Ocean to spawn in U.S. and Canadian rivers. In particular, Area 1 lies near the mouth of the Fraser River, which has the largest salmon runs in the Georgia Basin/Puget Sound region (Northcote and Atagi, 1997).

Occurrence of Southern Residents in Area 1 coincides with concentrations of salmon. Southern Resident killer whales have been sighted in Area 1 during every month of the year, but sightings are more consistent and concentrated in the summer months of June through August. The Whale Museum database from 1990–2003 contains 11,836 unique sightings after duplicate locations on the same date are excluded. Of these, 8,508 are in U.S. waters, and 85 percent of the U.S. sightings are in Area 1. Although sighting effort in Area 1 is extensive during the summer months as compared to other areas, which biases the data, the strength of the summer use pattern would undoubtedly persist if accounting for sighting effort. The largest number of sightings in Washington's inland waters is from Haro Strait off the west side of San Juan Island. There are over 1,200 unique sightings from 1990–2003 in one quadrant off the west side of San Juan Island.

Much of the behavioral research on Southern Residents takes place within Area 1. Southern Residents are observed exhibiting a variety of behaviors in this area, including travel, forage, social, and play behaviors. Resident whales spend 50–67 percent of their time foraging (Heimlich Boran, 1988; Ford, 1989; Morton, 1990; Felleman *et al.*, 1991). Opportunities to forage are presumed to be a major factor attracting Southern Residents to Area 1, particularly in the summer months when it is considered a primary feeding area for all three pods (J, K, and L).

Area 2. Puget Sound - south from Deception Pass Bridge, entrance to Admiralty Inlet, Hood Canal Bridge. Southern Resident killer whale occurrence in Area 2 has been correlated with fall salmon runs, a prey-

related PCE. Feeding has been observed in Area 2 (NWFSC, unpubl. data), though few behavioral studies have been conducted in this area. During the fall, Southern Residents, especially J pod, expand their movements into Puget Sound, likely taking advantage of chum and Chinook salmon runs (Osborne, 1999). A fall chum run was suggested as the likely reason for an extended presence of members of L pod in Dyes Inlet during October and November of 1997.

Southern Resident killer whales have been sighted in parts of Area 2 in all seasons despite limited search effort. The presence of Southern Residents in Area 2 is intermittent, with the smallest number of sightings in May-July. There are different sighting patterns in Area 2 for the three pods. In the most southern portion of Area 2, south of Tacoma Narrows Bridge, there have been only a small number of Southern Resident sightings from October-January, with one additional sighting in April.

Area 3. Strait of Juan de Fuca - Deception Pass Bridge, San Juan and Skagit County lines to the northeast, entrance to Admiralty Inlet to the southeast, U.S./Canadian border to the north, Bonilla Point/Tatoosh Island line to the West. All pods regularly use the Strait of Juan de Fuca for passage from Areas 1 and 2 to outside waters in the Pacific Ocean. Area 3 is predominantly a passage used to access outer coastal water feeding grounds, including Swiftsure and La Perouse Banks, off Tofino, British Columbia, and off Westport, as well as other areas with unknown usage, such as the coast of northern California. Recent observations at Westport coincided with presence of a spring Chinook salmon run, although other species were also likely present (NWFSC, unpubl. data). The presence of migrating salmonids in the Strait of Juan de Fuca suggests that feeding might occur during times the whales are transiting. However, the whales are not known to spend long periods in localized areas in the Strait. Sightings of the Southern Residents in Area 3 are limited, particularly on the U.S. side of the international boundary, as there is little observation effort in the area, particularly to the west toward the Bonilla Point/Tatoosh Island line. Even with a small number of actual sightings, we can infer that the whales are using this corridor, and the passage PCE is present in Area 3 based on the inland and coastal sightings of whales. The Strait of Juan de Fuca is not the only transit corridor between inland waters and coastal British Columbia, and the whales occasionally use the Strait of Georgia and Johnstone Strait in Canadian waters as an alternate route.

Special Management Considerations

The specific areas within the geographical area occupied by a species meet the definition of critical habitat only if they contain physical or biological features that ''may require special management considerations or protection.'' Agency regulations at 50 CFR 424.02(j) define ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' Several forms of human activity have the potential to affect the habitat of killer whales and, specifically, the PCEs that are essential to their conservation.

Most salmon stocks throughout the Northwest are at a fraction of their historic levels. Historically, overfishing was a major cause of decline. More recently the major cause is loss of freshwater habitat. Poor ocean conditions over the past two decades reduced populations already weakened by the degradation and loss of freshwater and estuary habitat, fishing pressures, hydropower system management, and hatchery practices.

Continued regulation of contaminants and pollution in Puget Sound is also necessary to protect the prey PCE for Southern Residents through management schemes, such as the National Pollutant Discharge Elimination System (NPDES). Contaminants enter marine waters and sediments from numerous sources, but are typically concentrated near areas of high human population and industrialization. Once in the environment these substances proceed up the food chain, accumulating in long-lived top predators like Southern Resident killer whales. Chemical contamination through the food chain continues to be a potential threat to Southern Resident killer whales, despite the enactment of modern pollution controls in recent decades, which were successful in reducing, but not eliminating, the presence of many contaminants in the environment.

Oil spills are another source of contamination that can have long-lasting impacts on habitat (although the primary concern with oil spills is the potential for direct injury to the whales). The Environmental Protection Agency and U.S. Coast Guard oversee the Oil Pollution Prevention regulations promulgated under the authority of the Federal Water Pollution Control Act. There is a Northwest Area Contingency Plan, developed by the Northwest Area Committee, which serves as the primary guidance document for oil spill response in Washington and Oregon.

Southern Residents are highly mobile and use a variety of areas for foraging and other activities, as well as for traveling between these areas. Human activities can interfere with movements of the whales and impact the passage PCE. In particular, vessels may present obstacles to whale passage, causing the whales to swim further and change direction more often, which potentially increases energy expenditure for whales and impacts foraging behavior (although this effect of vessels is primarily a direct effect on the whales rather than an effect on their habitat).

The PCEs identified for this designation may require special management considerations or protection. Fishery management, vessel activities, and water quality management are all activities that have the potential to affect the PCEs by altering prey abundance, prey contamination levels, and passage between areas. The proposed rule included information regarding which features may require special management considerations or protection for each of the three specific areas designated as critical habitat (71 FR 34571; June 15, 2006).

Coastal and Offshore Areas

We have few data on Southern Resident distribution and habitat use of coastal and offshore areas in the Pacific Ocean. While we know that the whales occupy these waters for a portion of the year and they are considered part of the geographical area occupied by the species, we do not have detailed information about distribution, behavior, and habitat. While we can infer that some of the PCEs, such as prey, must be present to support the whales, we do not have sufficient data to describe them adequately and identify ″specific areas″ with those features. Based on the difficulties of determining the presence of the PCEs in specific offshore areas, we cannot assess the human activities affecting them or the special management considerations for their protection. At this time we are not designating coastal or offshore areas, though we do recognize that they are important for the Southern Resident killer whales. There is an active research program to fill the data gaps regarding coastal and offshore distribution and habitat features, and we anticipate obtaining additional data in the coming years. We will consider new information as it becomes available to

inform future considerations of critical habitat for Southern Residents.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines critical habitat to include ''specific areas outside the geographical area occupied'' if the areas are determined by the Secretary to be ''essential for the conservation of the species.'' Regulations at 50 CFR 424.12(e) specify that NMFS ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' At the present time we have not identified any areas outside the geographical area occupied by the species that are essential for its conservation, and, therefore, we are not designating any unoccupied areas.

Activities That May be Affected

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate, in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, require an ESA section 7 consultation. Such activities include, but are not limited to, fishery management practices, vessel traffic, dredging and disposal, sub-marine cable/pipeline installation and repair, oil and gas exploration, pollutant discharge, and oil spill prevention and response.

This critical habitat designation will provide Federal agencies, private entities, and the public with clear notification of critical habitat for Southern Resident killer whales and the boundaries of the habitat. This designation will also assist Federal agencies and others in evaluating the potential effects of their activities on critical habitat and in determining if ESA section 7 consultation with NMFS is needed. Consistent with recent agency guidance on conducting adverse modification analyses (NMFS, 2005), we will apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed action might result in the destruction or adverse modification of critical habitat.

Application of ESA Section 4(b)(2)

Section 4(b)(2) of the ESA provides that the Secretary shall consider certain impacts before designating critical habitat: ''the Secretary shall designate critical habitat . . . on the basis of the best scientific data available and after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat.'' The Secretary has the discretion to exclude an area from designation if he determines the benefits of exclusion (that is, avoiding the impact that would result from designation) outweigh the benefits of designation based upon best scientific and commercial data. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any area.

Section 4(b)(2) of the ESA calls for balancing the benefits of designation against the economic, national security, and other benefits of exclusion, and our considerations under section 4(b)(2) were described in the proposed rule and in a supporting report (NMFS, 2006c). We considered the conservation benefits to the species of designating areas, the economic benefits of excluding each of the three areas, and the national security benefits of excluding 18 particular military sites owned or controlled by the DOD.

Benefits of Designation

The primary benefit of designation is that section 7 of the ESA requires all Federal agencies to ensure their actions are not likely to destroy or adversely modify the designated habitat. This is in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. Another benefit of designation is that it provides notice of areas and features important to species conservation, and information about the types of activities that may reduce the conservation value of the habitat, which can be effective for education and outreach. Critical habitat designation may also trigger protection under state or local regulations.

In addition to the direct benefits of critical habitat designation to the killer whales, there may be ancillary benefits. These other benefits may be economic in nature, or they may be expressed through beneficial changes in the ecological functioning of Puget Sound. For example, Puget Sound supports an active whale watching industry, and so an increase in the killer whale population could increase the economic value of that activity. Another example could be the increased viability of Puget Sound salmon populations if their harvest is reduced to assure a larger prey supply for killer whales. Yet another example could be reduced levels of pollution in Puget Sound.

At this time we lack information that would allow us either to quantify or monetize the benefits of designation for the whales, and have determined the qualitative conservation benefits of designating each of the three particular areas identified as critical habitat for Southern Residents. We assessed the benefit of designating the three areas based on: the physical or biological features of each area, the Southern Residents' use of each area (including how frequently they are present), the Federal activities in each area that might trigger an ESA section 7 consultation, the likelihood that we would seek a modification of those activities, the strength of the connection between those activities and habitat modification, and educational effects of designation. These considerations for each area are summarized in tables in the 4(b)(2) report (NMFS, 2006c) and the proposed rule (71 FR 34571; June 15, 2006).

The benefit of designation also depends on the inherent conservation value of the area. The habitat areas for these killer whales are unique and irreplaceable. It is difficult to separate the value of any one of the areas: each of the three areas supports a distinct aspect of the whales' life history, and the conservation function of each area complements the conservation function of the others. Therefore, designation of each particular area benefits the conservation function of the other areas. For all of the reasons discussed, we consider the benefit of designation of each area to be high.

Economic Impacts (Economic Benefits of Exclusion)

An economic report describes in detail the actions we assumed may be affected, the potential range of changes we might seek in those actions, and the estimate of economic impacts that might result from such changes. For salmon fishing, we considered it too speculative to predict any particular level of reduction, and so considered the total value of salmon fishing in Puget Sound. If any reduction in fishing were to be required as a result of critical habitat designation, it would be some portion of that total. We considered it too speculative at this time to postulate likely consultations on water quality management actions, and what changes we might seek in those actions. Although we were only able to quantify the baseline for any economic impacts for potential modifications to fishing, this does not imply that harvest is the most important activity affecting the

abundance of the salmon PCE. As noted previously, salmon abundance is affected by a host of activities, which would be considered in ESA section 7 consultations. In the ESA section 4(b)(2) report we acknowledge that there are additional costs for programs associated with salmon conservation and and habitat restoration aside from costs associated with any harvest reduction, although we could not attribute these costs to the designation of critical habitat for southern resident killer whales. In addition, if fisheries were impacted, any potential reductions in harvest would be evaluated to ensure that they were consistent with the ESA, treaty fishing rights, treaty trust obligations, and relevant court cases.

Balancing the Benefits and Economic Impacts of Designation

Section 4(b)(2) of the ESA requires that we balance the benefit of critical habitat designation against the economic benefit of exclusion for each particular area. The benefit to the species of designation depends upon the inherent conservation value of the area, the seriousness of the threats to that conservation value, and the extent to which an ESA section 7 consultation or the educational aspects of designation will address those threats. If a threat bears a closer relationship to the adverse modification prohibition of section 7, we can begin to understand and give weight to the incremental benefit of designation beyond the protection provided by listing and the jeopardy prohibition. We have identified the threats that face each area and the likelihood that the adverse modification prohibition will enhance our ability to address those threats.

We listed the whales as endangered, citing, among other reasons, ''the ongoing and potentially changing nature of pervasive threats, in particular, disturbance from vessels, the persistence of legacy toxins and the addition of new ones into the whales' environment, and the potential limits on prey availability (primarily salmon) given uncertain future ocean conditions.'' As described above, designation of critical habitat will enhance our ability to address some of these threats, either through an ESA section 7 consultation or through ongoing public outreach and education. Because some of these threats bear a stronger relationship to adverse modification than to jeopardy, we also believe there is an incremental benefit of designation beyond the protection afforded by the jeopardy prohibition.

As stated above, the benefit of designation also depends on the inherent conservation value of the area. The habitat areas for these killer whales are unique and irreplaceable. It is difficult to separate the value of any one of the areas: each of the three areas supports a distinct aspect of the whales' life history, and the conservation function of each area complements the conservation function of the others. Therefore, designation of each particular area benefits the conservation function of the other areas. For all of the reasons discussed above, we consider the benefit of designation of each area to be high.

The benefit of exclusion of an area depends on some of the same factors - the likelihood of an ESA section 7 consultation and the extent to which an activity is likely to change as a result of that consultation. As with the benefit of designation side of the equation, if a threat bears a closer relationship to the adverse modification prohibition of section 7, we can begin to understand and give weight to the incremental cost of designation (benefit of exclusion) beyond the cost associated with listing and the jeopardy prohibition. In balancing the potential costs of designation, we also considered the nature of the threats and the relevance of section 7's adverse modification prohibition to each threat. Because adverse modification and jeopardy bear an equally strong relationship to fishing, and because some changes in fishing are likely as a result of consultation, we gave these costs of designation moderate weight. We recognize that adverse modification bears the strongest relationship to water quality management, but we presently lack sufficient data to estimate an economic impact. We also recognize that we have not monetized (quantified) the costs that may be associated with the education benefit of designation with respect to vessel traffic.

We conclude that the economic benefits of excluding each particular area do not outweigh the conservation benefits of designating each particular area as critical habitat, given the endangered status of the whales, the uniqueness of the habitat, the fact that threats to habitat were a primary concern leading to our endangered finding, and the fact that designation will enhance the ability of an ESA section 7 consultation to protect the habitat.

Impacts on National Security

Prior to listing Southern Resident killer whales under the ESA, we contacted the DOD by letter and identified 18 military sites, previously addressed during salmon and steelhead habitat designations, that potentially overlapped with areas under consideration for Southern Resident killer whale critical habitat: (1) Naval Undersea Warfare Center, Keyport; (2) Naval Ordnance Center, Port Hadlock (Indian Island); (3) Naval Fuel Depot, Manchester; (4) Naval Air Station, Whidbey Island; (5) Naval Station Everett; (6) Naval Hospital Bremerton; (7) Fort Lewis (Army); (8) Pier 23 (Army); (9) Puget Sound Naval Ship Yard; (10) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area; (11) Strait of Juan de Fuca and Whidbey Island naval restricted areas; (12) Admiralty Inlet naval restricted area; (13) Port Gardner Naval Base restricted area; (14) Port Orchard Passage naval restricted area; (15) Sinclair Inlet naval restricted area; (16) Carr Inlet naval restricted area; (17) Port Townsend/Indian Island/Walan Point naval restricted area; and (18) Crescent Harbor Explosive Ordnance Units Training Area.

These 18 military sites overlap with areas we found to meet the definition of critical habitat for the Southern Resident killer whale DPS. These 18 sites include shore-based facilities, nearshore areas around structures such as docks and piers, and offshore areas in Puget Sound where the Navy has security restrictions, and they cover approximately 112 square miles (291 sq km) out of the total 2,687 square miles (6,959 sq km) under consideration as critical habitat for Southern Residents. The total area considered was recalculated for the final rule and was updated from 2,676 square miles (6,931 sq km) in the proposed rule, to 2,687 square miles (6,959 sq km) for the final rule. The shore-based sites cover 81 miles (130 km) of shoreline out of the total 2,081 miles (3,349 km) of shoreline considered for critical habitat designation.

The DOD confirmed that the 18 sites are owned or controlled by the DOD, identified the types of military activities that take place in the areas, and provided an assessment as to whether designation of critical habitat would affect military readiness. The Army and Navy concluded that critical habitat designation at any of these sites would likely impact national security by diminishing military readiness. The DOD requested that we consider conducting an ESA section 4(b)(2) analysis to determine whether all of the sites could be excluded from designation because the benefits of exclusion outweigh the benefits of designation. The possible impacts to national security include: preventing, restricting, or delaying training or

testing exercises or access to sites; restricting or delaying activities associated with vessel/facility maintenance and ordnance loading; and delaying response times for ship deployments and overall operations.

Balancing the Benefits of Designation with National Security Impacts

The benefit of excluding these particular areas is that the DOD would only be required to comply with the jeopardy prohibition of ESA section 7(a)(2) and not the adverse modification prohibition. The DOD maintains that the additional commitment of resources in completing an adverse modification analysis, and any change in its activities to avoid adverse modification of critical habitat, would likely reduce its readiness capability. Given that the DOD is currently actively engaged in training, maintaining, and deploying forces in the current war effort, this reduction in readiness could reduce the ability of the military to ensure national security.

We assessed the benefit of designating these areas of overlap based on: the physical or biological features of each area, the Southern Residents' use of each area (including how frequently they are present), the Federal activities in each area that might trigger an ESA section 7 consultation, the likelihood that we would seek a modification of those activities, and the strength of the connection between those activities and habitat modification. The benefit of designation is that the section 7 requirement regarding adverse modification would focus our section 7 consultations on essential physical and biological features of the whales' habitat, particularly where the Federal activity has a more direct impact on habitat features and a less direct impact on individual killer whales.

We considered the overlap of killer whale habitat within the boundaries of military sites; the conservation value of that habitat; and the types of Federal activities in those areas that would likely undergo ESA section 7 consultation. We also considered the high priority placed on national security, the potential for critical habitat designation to have some impact on military readiness, and the fact that, collectively, these areas represent relatively small percentages of the total habitat and none of them are located in Area 1, the core summer area. Based on our consideration of these factors, we conclude that the national security benefits of exclusion outweigh the conservation benefits of designation for each of the 18 sites, and we are not designating these DOD sites as critical habitat.

ESA Section 4(b)(2) Conclusions

We conclude that the economic benefits of excluding each particular area do not outweigh the conservation benefits of designating each particular area as critical habitat, given the endangered status of the whales, the uniqueness of the habitat, the fact that threats to habitat were a primary concern leading to our endangered finding, and the fact that designation will enhance the ability of an ESA section 7 consultation to protect the habitat.

We considered the overlap of killer whale habitat within the boundaries of military sites; the conservation value of that habitat; and the types of Federal activities in those areas that would likely undergo ESA section 7 consultation. We also considered the high priority placed on national security, the potential for critical habitat designation to have some impact on military readiness, and the fact that, collectively, these areas represent relatively small percentages of the total habitat and none of them are located in Area 1, the core summer area. Based on our consideration of these factors, we conclude that the national security benefits of exclusion outweigh the conservation benefits of designation for each of the 18 sites, and we are not designating these DOD sites as critical habitat.

We did not identify other relevant impacts of designation beyond economic impacts and impacts on national security.

Critical Habitat Designation

We are designating approximately 2,560 square miles (6,630 km) of marine habitat within the area occupied by Southern Resident killer whales in Washington. The proposed areas are occupied and contain physical or biological features that are essential to the conservation of the species and may require special management considerations or protection. Some of these areas overlap with military sites, which are not designated as critical habitat because they were determined to have national security impacts that outweigh the benefit of designation and were therefore excluded under ESA section 4(b)(2). We determined that the economic benefits of exclusion of any of the areas do not outweigh the benefits of designation, and we are therefore not excluding any areas based on economic impacts. Section 4(b)(2) does not allow the agency to exclude areas if exclusion will result in extinction of the species. We are excluding only a small percentage of the whales' habitat because of impacts to national security. Given this small percentage, we conclude that the exclusion of these areas will not result in extinction of the Southern Resident killer whale DPS. No unoccupied areas are currently designated as critical habitat.

Required Determinations

Regulatory Planning and Review

This final rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. A final economic report and ESA section 4(b)(2) report document our consideration of alternatives to rulemaking as required by this Executive Order. We have analyzed the economic effects of various management scenarios. These are described in the economic report supporting this rulemaking, available at *http://www.nwr.noaa.gov/*.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). We have prepared a final regulatory flexibility analysis (FRFA), which is part of the Economic Analysis (NMFS, 2006b). The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), which was part of the draft economic analysis that accompanied the proposed rule to designate critical habitat. The FRFA also incorporates comments received on the IRFA and on the economic impacts of the rule generally. Responses to comments are provided above in the preamble to the rule, and any necessary corresponding changes were made to the FRFA. The analysis is summarized below.

A statement of the need for and objectives of this final rule is provided earlier in the preamble and is not repeated here. This final rule will not impose any recordkeeping or reporting requirements.

At the present time, insufficient information exists regarding the cost structure and operational procedures and strategies in the sectors that may be directly impacted by the critical habitat designation. Further, significant

uncertainty exists regarding the activities that may trigger an ESA section 7 consultation or how those activities may be modified as a result of consultation. Bearing in mind these limitations, we considered which of the potential economic impacts we analyzed might affect small entities. These estimates should not be considered exact estimates of the impacts of critical habitat to individual businesses. There are 344 entities engaged in fishing activities in the region, 332 of which are considered ″small entities.″

Although ESA section 7 consultations may also occur on water quality management activities, at this time it is too speculative to estimate the type and number of activities and the potential modifications that could result from a consultation.

The RFA, as amended by SBREFA, requires us to consider alternatives to the proposed regulation that will reduce the impacts to small entities. We considered and rejected the alternative of not designating critical habitat for Southern Resident killer whales because such an approach does not meet the legal requirements of the ESA. We also considered alternatives in which each of the three critical habitat areas is excluded under section 4(b)(2) of the ESA. Each of these alternatives may have minimized impacts on small businesses by reducing consultation costs and potential project modifications necessitated pursuant to section 7(a)(2) of the ESA once an area is designated as critical habitat. As described earlier in this rulemaking, the magnitude of these impacts is difficult to predict. However, because we did not find that the economic benefits of exclusion outweigh the benefits of designation for any of the three specific areas, we did not have discretion to exclude any these areas pursuant to the ESA. We therefore rejected each of these alternatives as inconsistent with the ESA.

E.O. 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

We have considered the potential impacts of this action on the supply, distribution, or use of energy and find the designation of critical habitat will not have impacts that exceed the thresholds identified above (NMFS, 2006b).

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(a) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon state, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5) (7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to state, local, and tribal governments under entitlement authority, ''if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the state, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities which receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(b) Due to the prohibition against take of this species both within and outside of the designated areas, we do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630, the final rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. Private lands do not exist within the proposed critical habitat and therefore would not be affected by this action.

Federalism

In accordance with E.O. 13132, this final rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of Commerce policies, we have requested information from, and will continue to coordinate this critical habitat designation with, appropriate state resource agencies in Washington. The designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary for the survival of the Southern Resident killer whales are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988, the Department of Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. We

are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of Southern Resident killer whales.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. This final rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act of 1969 (NEPA)

NMFS has determined that an environmental analysis as provided for under NEPA for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

The long-standing and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 (Consultation and Coordination with Indian Tribal Governments) outlines the responsibilities of the Federal Government in matters affecting tribal interests.

None of the designated critical habitat occurs on tribal lands. However, critical habitat does overlap with Usual and Accustomed hunting and fishing grounds. The designation of critical habitat for Southern Resident killer whales has the potential to affect tribal trust resources, particularly in relation to salmon, an important tribal resource and PCE for the whales. Should it be necessary to reduce Puget Sound fisheries, a reduction in tribal fisheries would only occur consistent with the principles established in the Secretarial Order, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act.'' We will continue to consult with affected tribes regarding designated critical habitat.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.nwr.noaa.gov/* and is available upon request from the NMFS office in Seattle, Washington (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: November 21, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, part 226, title 50 of the Code of Federal Regulations is amended to read as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Add § 226.206, to read as follows:

§ 226.206 Critical habitat for the Southern Resident killer whale (*Orcinus orca*).

Critical habitat is designated for the Southern Resident killer whale as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview map is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Critical Habitat Boundaries.* Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, King, Kitsap, Island, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

(1) *Summer Core Area:* All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24′ 25″ N./122°38′35″ W.).

(2) *Puget Sound Area:* All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24′ 25″ N./122°38′35″ W.), and east of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24′ 25″ N./122°38′35″ W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at latitude 48°12′30″ N./122°44′26″ W., and north of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(3) *Strait of Juan de Fuca Area:* All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23′10″ N./124°43′32″ W.), Tatoosh Island, Washington (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24′ 25″ N./122°38′35″ W.), and west of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W.

(b) An overview map of final critical habitat for the Southern Resident killer whale follows.

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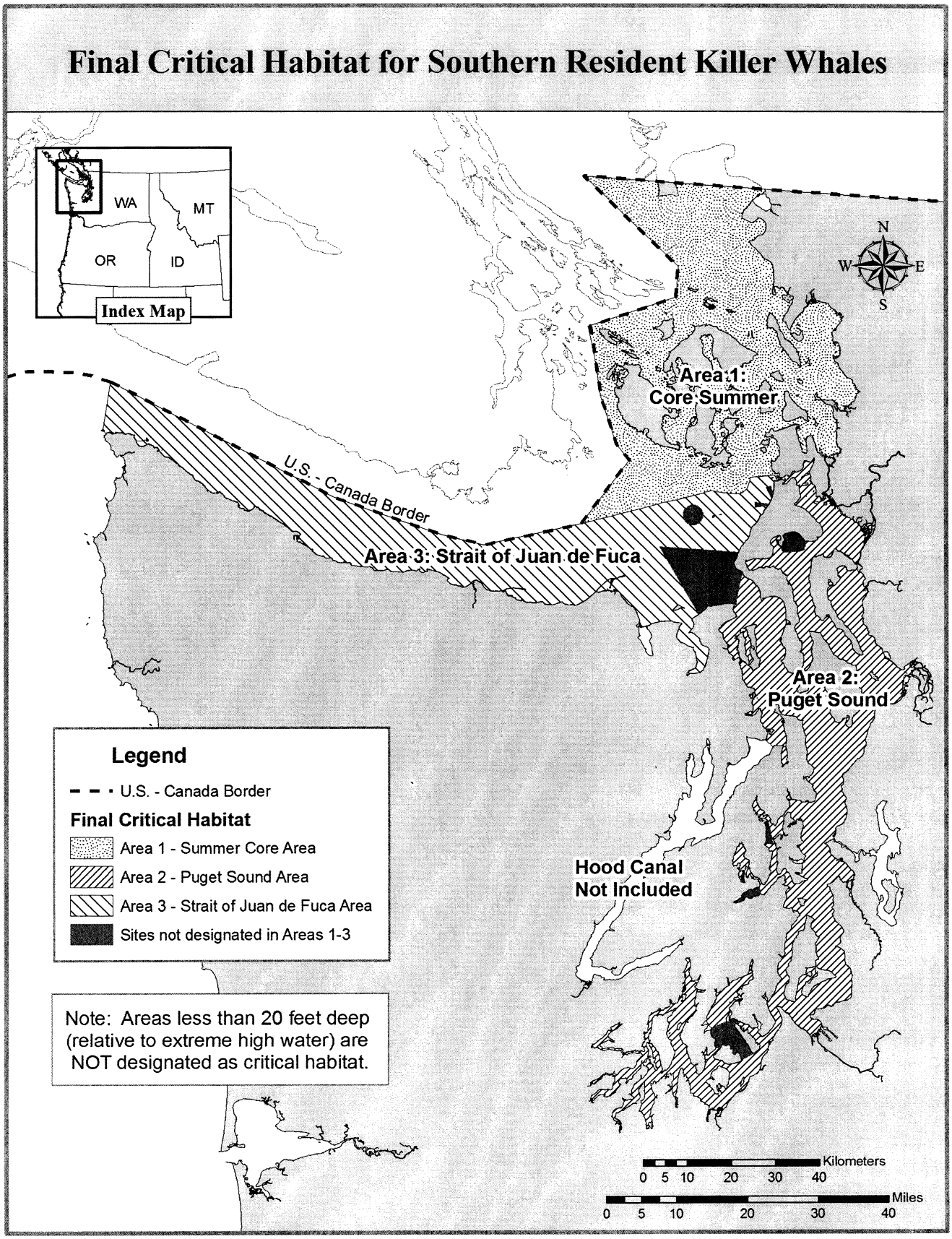

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(c) *Primary Constituent Elements.* The primary constituent elements essential for conservation of the Southern Resident killer whale are:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging.

(d) *Sites owned or controlled by the Department of Defense.* Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, in the State of Washington, including shoreline, nearshore areas around structures such as docks and piers, and marine areas:

(1) Naval Undersea Warfare Center, Keyport;

(2) Naval Ordnance Center, Port Hadlock (Indian Island);

(3) Naval Fuel Depot, Manchester;

(4) Naval Air Station, Whidbey Island;

(5) Naval Station, Everett;

(6) Naval Hospital Bremerton;

(7) Fort Lewis (Army);

(8) Pier 23 (Army);

(9) Puget Sound Naval Ship Yard;

(10) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;

(11) Strait of Juan de Fuca and Whidbey Island naval restricted areas;

(12) Admiralty Inlet naval restricted area;

(13) Port Gardner Naval Base restricted area;

(14) Port Orchard Passage naval restricted area;

(15) Sinclair Inlet naval restricted area;

(16) Carr Inlet naval restricted area;

(17) Port Townsend/Indian Island/Walan Point naval restricted area; and

(18) Crescent Harbor Explosive Ordnance Units Training Area.

[FR Doc. 06–9453 Filed 11–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060808213–6300–02; I.D. 073106C]

RIN 0648–AU56

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2006 Georges Bank Cod Fixed Gear Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Final rule.

SUMMARY: NMFS announces partial approval of an Operations Plan and Sector Contract titled ''GB Cod Fixed Gear Sector Operations Plan and Agreement'' (together referred to as the Sector Operations Plan), and the associated allocation of Georges Bank (GB) cod, consistent with regulations implementing Amendment 13, as modified by Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) for fishing year (FY) 2006. The intent of this action is to allow regulated harvest of NE multispecies by the GB Cod Fixed Gear Sector (Fixed Gear Sector), consistent with the objectives of the FMP.

DATES: Effective November 22, 2006, through April 30, 2007.

ADDRESSES: Copies of the Sector Operations Plan and the Environmental Assessment (EA) are available upon request from the NE Regional Office at the following mailing address: George H. Darcy, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. These documents may also be requested by calling (978) 281–9315.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, phone (978) 281–9145, fax (978) 281–9135, e-mail *Mark.Grant@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 13 to the FMP (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of total allowable catch (TAC) or days-at-sea (DAS) for specific NE multispecies, implemented restrictions that apply to all sectors, and authorized the first sector of the FMP (the GB Cod Hook Gear Sector). The final rule implementing FW 42 (71 FR 62156, October 23, 2006) creates the Fixed Gear Sector, the second approved sector of the FMP. Creation of the Fixed Gear Sector authorizes the Regional Administrator to allocate a GB cod TAC to the Fixed Gear Sector and exempt members from FMP restrictions on an annual basis.

In accordance with the regulations that specify the process of sector approval, and in anticipation of approval of the Fixed Gear Sector, the Fixed Gear Sector submitted an initial version of the Sector Operations Plan and EA to NMFS on February 1, 2006. A final version was submitted on September 18, 2006. According to these documents, the Fixed Gear Sector will be overseen by a Board of Directors and a Sector Manager. Consistent with Amendment 13, the cod TAC for the Fixed Gear Sector is based upon the number of participants and their historic landings of GB cod. In addition, participating vessels will be required to fish under their Amendment 13 DAS allocations to account for any incidental groundfish species that they may catch while fishing for GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is reached, Fixed Gear Sector vessels may not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations) for the remainder of the fishing year.

Each Fixed Gear Sector member will be required to fish with jigs, demersal longline, handgear or gillnets; remain in the Fixed Gear Sector for the entire fishing year; and be confined to fishing in the Sector Area, which is that portion of the GB cod stock area north of 39o 00' N. lat. and east of 71o 40' W. long. Fixed Gear Sector members will be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a Letter of Authorization (LOA), and with the provisions of the approved Operations Plan. Fixed Gear Sector members will be exempted from the GB cod possession limits, the requirements of the GOM cod trip limit exemption program, and the GB Seasonal Closure Area (when fishing with hook gear).

On August 22, 2006, a proposed rule was published in the **Federal Register** (71 FR 48903) that requested comments on the Operations Plan and EA. The

proposed rule announced that the Operations Plan proposed a geographic area for the Fixed Gear Sector that was different from the Sector Area proposed in FW 42 and specifically solicited comments on the larger area proposed in the Operations Plan. The comment period closed on September 21, 2006.

Two Fixed Gear Sector members have signed the 2006 Sector Contract. The GB cod TAC calculation is based upon the historic cod landings of the participating Fixed Gear Sector vessels, using all gear. The allocation percentage is calculated by dividing the sum of total landings of GB cod by Fixed Gear Sector members for FY 1996 through 2001, by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period (2,240,110 lb (1,016.1 mt)/ 113,278,842 lb (51,382.4 mt)). The resulting number is 1.98 percent. Based upon the two prospective Fixed Gear Sector members, the Fixed Gear Sector TAC of GB cod will be 121 mt (1.98 percent of the U.S. portion of the fishery-wide GB cod target TAC of 6,132 mt).

Disapproved Measure

The proposed rule for FW 42 specified the same geographic area for the Fixed Gear Sector (i.e., the Sector Area) as the area that was implemented in the Amendment 13 final rule for the GB Cod Hook Gear Sector. Conversely, the Fixed Gear Sector's Operations Plan, Sector Agreement, and EA proposed a geographic area for the Fixed Gear Sector that was substantially different from this Sector Area. The geographic area proposed in the Operations Plan and Sector Agreement included the Sector Area, but extended it south to 35 00' N. lat. and west to the coast. The Operation's Plan for the Fixed Gear Sector states that Fixed Gear Sector participants should be allowed to fish in an area larger than the GB Cod Hook Sector area in order to pursue an offshore gillnet fishery for monkfish. Because the goal of the Fixed Gear Sector is similar to the GB Cod Hook Sector, i.e., to target cod and other NE multispecies, the rationale to expand the Sector Area for participants in the Fixed Gear Sector for the purpose of targeting monkfish is not consistent with the objectives of the FMP and is, therefore, not justified in this action. Furthermore, expansion of this area must be implemented through the existing FMP framework adjustment process.

Comments and Responses

Thirty-three comments were received on this action. In addition, 36 comments sent in response to the proposed rule for FW 42, and which directly addressed the Operations Plan, were also considered for this action. Combined, 58 separate entities commented on the Operations Plan (some entities submitted separate comments to both proposed rules). Only comments received before the deadline were considered.

Comment letters were received from Associated Fisheries of Maine, the Maine Department of Marine Resources; the Cape Cod Commercial Hook Fishermen's Association; the GB Cod Hook Sector; the Fixed Gear Sector; the Portland Fish Exchange; the Boards of Selectmen of Orleans, Harwich, Brewster, Chatham, and Yarmouth, MA; Representative William Delahunt; Massachusetts State Senator Robert O'Leary; the Downeast Initiative; the Conservation Law Foundation; AJ Marine Hydraulic Equipment; Environmental Defense; the National Environmental Trust; one recreational fisherman; three industry members not associated with a sector; and 36 industry members associated with the two sectors.

Comment 1: One commenter did not specifically address either the Operations Plan or EA, but opposed any expansion of commercial fishing and asserted that a portion of GB should be reserved for recreational fishermen.

Response: Amendment 13 to the FMP established the process by which a group of individuals may form a sector. One of the requirements of this procedure is that all of the participating vessels are limited access NE multispecies permit holders. Reserving a portion of GB or any associated fish species as a sector is not a viable option under current regulations, nor is there any other mechanism by which a portion of the NE multispecies fishery or associated fishing area can be reserved for recreational fishers, since recreational fishers do not have a limited access NE Multispecies permit specific for their fishery.

Comment 2: Fifty-one commenters supported the Fixed Gear Sector and approval of the Operations Plan. Generally, the commenters supported the idea of a sector because they felt it could help to reduce fishing waste, involve communities in management, and allow for greater responsibility and accountability in the fishing industry.

Response: NMFS agrees and has approved the Fixed Gear Sector's Operations Plan.

Comment 3: Two commenters specified that the Fixed Gear Sector should be allowed access only to the GB Cod Hook Gear Sector Area, and two commenters believed that the expanded geographic area proposed in the Sector Operations Plan should be vetted by the Council prior to approval. Twenty-five comments were received on the proposed rule for FW 42, requesting that NMFS modify the Sector Area to reflect the larger area proposed by the Sector's Operations Plan to facilitate pursuit of an offshore monkfish fishery. A further 19 comments supported the expanded Sector Area proposed in the Operations Plan to direct effort away from the Gulf of Maine. Eight of the 19 comments specified that the expanded Sector Area proposed would allow the Fixed Gear Sector to maintain a traditional winter fishery focused on offshore monkfish while accounting for GB cod bycatch.

Response: Because the goal of the Fixed Gear Sector is similar to the GB Cod Hook Gear Sector, i.e., to target cod and other NE multispecies, the rationale to expand the Sector Area for participants in the Fixed Gear Sector for the purpose of targeting monkfish is not consistent with the objectives of the FMP, and is, therefore, not justified. Furthermore, changing the geographic area of a sector needs to be considered by the New England Fishery Management Council (Council) and must be implemented through rulemaking under the framework adjustment process in the FMP. For these reasons, NMFS has disapproved expansion of the Sector Area for the Fixed Gear Sector.

Comment 4: Six commenters believe that the Fixed Gear Sector should be required to have TACs for all species. One noted that input controls could have been proposed in lieu of TACs for all species. Two commenters also expressed concern that the Fixed Gear Sector will reduce the effectiveness of the net cap on pollock and monkfish. Two commenters expressed concern that the Fixed Gear Sector could cause redirected effort and impact other portions of the industry.

Response: The assertion that a sector should be governed by a TAC for each species has previously been considered in the context of the GB Cod Hook Gear Sector. Because the Fixed Gear Sector would continue to be bound by both species-specific possession limits and DAS effort controls, TACs are unnecessary for each species. A TAC is issued for GB cod in lieu of possession limits. The comment suggesting that input controls could have been proposed in lieu of TACs is without merit because the Fixed Gear Sector has proposed input controls in the form of DAS and gear restrictions. Similarly, concerns regarding pollock and monkfish caps, and the potential for

redirected effort are unfounded because the Fixed Gear Sector will continue to be bound by DAS and possession limits for all other species. Additionally, the Fixed Gear Sector may not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations) once the Sector's cod TAC is reached.

Comment 5: One commenter believes that the TAC monitoring protocol proposed in the Sector's Operations Plan is insufficient to ensure timely monitoring of monthly quotas and suggested that daily Vessel Monitoring System (VMS) reporting, standard for other parts of the industry, would be more effective than Vessel Trip Reports (VTRs) submitted monthly to NMFS.

Response: The TAC monitoring system proposed by the Fixed Gear Sector is modeled after the system used by the GB Cod Hook Gear Sector. During 3 years of operations this system has been successful at managing both the cod TAC and monthly quota. Further, the Sector Manager is empowered to require an observer be present at offloading of all catch to enhance monitoring.

LOAs will be issued to members of the Fixed Gear Sector exempting them, conditional upon their compliance with the Sector Operations Plan, from the requirements of the GOM cod trip limit exemption program, the GB Seasonal Closure Area (when fishing with hook gear), and the GB cod possession limit restrictions, as specified in §§ 648.86(b)(4), 648.81(g), and 648.86(b)(1) and (2), respectively.

Classification

NMFS has determined that this final rule is consistent with the FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(d)(3) to waive the 30-day delay in effectiveness. Formation of the Fixed Gear Sector is authorized by the final rule implementing FW 42, in accordance with procedures and requirements implemented by Amendment 13, and became effective on November 22, 2006 (71 FR 62156). Creation of the Fixed Gear Sector allows the Regional Administrator to allocate a GB cod TAC to the Fixed Gear Sector and exempt Fixed Gear Sector members from FMP restrictions on an annual basis. Therefore, this action could not be taken prior to the effective date of FW 42, November 22, 2006. FW 42 was scheduled to take effect on May 1, 2006, the beginning of the 2006 fishing year; however, final adoption of FW 42 by the Council was delayed for several months, which substantially hindered the ability of NMFS to implement the rule in the expected time frame. Under the Sector allocation provisions specified in 648.87(b)(1)(xii), vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during the same fishing year. Thus, the two vessels that have agreed to participate in the Fixed Gear Sector have been prohibited from fishing in the groundfish DAS program since May 1, 2006, pending the creation of the Fixed Gear Sector. Each of the vessels that have agreed to participate in the Fixed Gear Sector possesses only two limited access permits: Lobster and groundfish. The lobster fishery, for which these vessels are permitted, is seasonal, with catches slowing during late fall and remaining low through the winter. Thus, while both of these vessels have been able to fish in the lobster fishery since May 1, 2006, the seasonality of that fishery means that they are more dependent on groundfish for their livelihood at this time of year.

Both vessels that have signed on to the Fixed Gear Sector are considered small vessels (<50 ft), which are more adversely impacted by weather conditions than other vessels. In addition, since these vessels are rigged for lobster and hook gear, they are what is referred to as ''open'' vessels (i.e., no shelter is available during fishing operations) and are exposed to the elements during fishing operations. In addition, the homeport of one vessel, Chatham, is notoriously dangerous to access, particularly during inclement weather. If they cannot begin to fish immediately, then they may effectively be deprived of the majority of the rest of the fishing season because of the likelihood of a great number of days of inclement weather.. At this point in the fishing year, there remain a limited number of groundfish days which will have weather in which these two vessels can safely travel to the Sector area on Georges Bank, and since they have already missed the bulk of the season, any further delay would deprive them of a meaningful chance to pursue their livelihood.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. There are no Federal rules that duplicate, overlap, or conflict with this final rule.

An EA has been prepared for this final rule in compliance with the National Environmental Policy Act (NEPA). In addition, an EA was prepared for FW 42 to the FMP, which references the Fixed Gear Sector. Copies of both of these EAs may be obtained from the Regional Administrator (see **ADDRESSES**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this Final Regulatory Flexibility Analysis (FRFA) in support of the 2006 GB Fixed Gear Sector Operations Plan and allocation of GB cod TAC. The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) included in the proposed rule and the corresponding analysis in the EA prepared for this action. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, along with the objectives of, and the legal basis for, this rule are contained in the preamble to the proposed rule and are not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA. A summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made from the Proposed Rule as a Result of Such Comments

No comments pertaining to the IRFA or the economic impacts of the rule were received during the comment period for this action.

Description of and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

All vessels issued a limited access NE multispecies permit and allocated DAS are eligible to participate in the Fixed Gear Sector. Although the nearly 1,000 vessels issued a limited access NE multispecies permit and allocated DAS are eligible to participate in this Sector, it is expected that a substantially smaller number of vessels will actually participate in the Fixed Gear Sector. Due to delays in the review and approval of FW 42, to date, only two vessels have signed the 2006 Sector Contract. However, it is expected that approximately 23 vessels will participate in a proposed Fixed Gear Sector during FY 2007, based upon preliminary estimates.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $4 million in gross sales, and the size standard for small charter/party operators is $6.5

million. Available data for FY 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was $1.8 million, and the maximum gross sales for any affected party/charter vessel was $1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and charter/party fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statues

Two alternatives were considered regarding the 2006 Fixed Gear Sector Operations Plan and allocation of GB cod TAC: The no-action alternative and the proposed alternative. Under the no-action alternative, all Fixed Gear Sector vessels would remain in the common pool of vessels and be subject to all of the regulations implemented by Amendment 13 and subsequent adjustments to the FMP, and would not be allocated any portion of the GB cod target TAC. The proposed alternative implemented by this action, enables vessels to fish under the restrictions of the Operations Plan summarized above and allocates a portion of the GB cod target TAC to Fixed Gear Sector vessels.

Because cod usually represents a high proportion of total fishing income for gillnet and hookgear vessels, revenues for such vessel owners are very sensitive to changes in cod trip limits. As a result, the reduced number of available DAS and restrictive trip limits implemented by recent management actions such as FW 42 would result in revenue losses for Fixed Gear Sector vessels under the no-action alternative. In contrast, the 2006 Sector Operations Plan includes a number of provisions that would allow Fixed Gear Sector vessels to remain economically viable, minimize vessel expenses, and maximize consistent revenue streams throughout the fishing year compared to the no-action alternative, without compromising conservation objectives of the FMP. Such provisions include the establishment of a hard TAC for GB cod landed by Fixed Gear Sector vessels, the even distribution of the allocated GB cod TAC throughout the fishing year, the ability to pool available DAS among Fixed Gear Sector vessels, and exemption from the GB Seasonal Closure Area for hook gear vessels. By facilitating the continued supply of groundfish, the preferred alternative allows Fixed Gear Sector vessels to maximize revenues from available fishing opportunities and, therefore, minimizes adverse economic impacts on small entities compared to the no-action alternative.

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

Dated: November 22, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–9452 Filed 11–24–06; 2:07 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060608158–6158–01; I.D. 051806E]

RIN 0648–AU47

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Emergency Rule

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: This rule continues management measures implemented by a June 16, 2006, emergency interim final rule that were set to expire on December 13, 2006. In the June 16, 2006, emergency action, NMFS implemented an observer service provider program for the Atlantic sea scallop (scallop) fishery including criteria for becoming an approved observer service provider, observer certification criteria, decertification criteria, and observer deployment logistics. Through the emergency rule, NMFS re-activated the industry-funded observer program implemented under the Atlantic Sea Scallop Fishery Management Plan (FMP) through a scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. Under the emergency action, scallop vessel owners, operators, or vessel managers are required to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. The emergency rule maintains the existing requirements for scallop vessel owners to pay for observers whether or not scallop TAC or DAS set-aside is available. This extension of the emergency rule ensures that observers can continue to be deployed in the scallop fishery throughout the year.

DATES: The amendments in this rule to paragraphs (g), (h), and (i), are effective November 29, 2006, through June 11, 2007. The emergency rule published June 16, 2006 (71 FR 34842), is extended from December 13, 2006, through June 11, 2007.

ADDRESSES: Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this rule should be submitted to the Regional Administrator at the address above and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: On June 16, 2006, an emergency rule implemented an observer service provider certification program that enabled NOAA Fisheries Service to reactivate the Scallop FMP's observer set-aside program. The emergency rule was necessary to resolve an issue with the observer program that rendered the Scallop FMP's observer set-aside program inoperable. Further, the Northeast Fisheries Science Center's (NEFSC's) FY 2006 level of funding for the observer program provided for only minimal coverage in the scallop fishery, and that is not expected to change in FY 2007. Additional background relative to the need for the action is included in the June 16, 2006, emergency rule, and is not repeated here.

The emergency rule established a program that allows observer service providers to be certified by NOAA Fisheries Service to deploy observers on scallop vessels. Certified observer service providers are required to meet specified criteria in order to remain certified under the emergency rule. In addition, vessel owners are required to procure observers from an approved observer service provider and must pay for the observer. To help defray the

costs of the observer, vessel owners are provided either additional scallop catch allowances when fishing in the Scallop Access Areas or additional fishing Days-at-Sea (DAS) when fishing in open areas. The Area Access Program specifies a portion of the total projected scallop catch from each area as a set-aside to cover the observer costs, and vessels that carry observers are authorized to land additional scallops on such trips. These additional scallops are deducted from the access area set-aside for observers. An additional set-aside of DAS operates similarly to cover the observer costs for vessels fishing in open areas. Once the set-asides are exhausted, vessel owners are no longer allocated any set asides to offset the costs of observer coverage, but they are still required to pay for the cost of observers, as specified in the scallop regulations at § 648.53(h)(1) and 648.60(d)(2).

The initial June 16, 2006, emergency rule expires on December 13, 2006, and is extended through June 11, 2007, by this action. Although there is less urgency for placing observers on scallop vessels in December through April, a lapse in coverage could compromise NOAA Fisheries Service's ability to gather complete fishing year data on the scallop fishery. In addition, turtles begin to move into the Mid-Atlantic in the spring, and observer coverage in the early spring months of April and May could help document potential interactions. Finally, a very high amount of scallop fishing effort is expected to occur in the Elephant Trunk Access Area (ETAA), a Mid-Atlantic Scallop Access Area, which will open to scallop fishing on January 1, 2007. Observer coverage in that area upon opening will help document fishing activity, scallop catch, and bycatch.

The justification for the extension of the emergency rule remains consistent with the Policy Guidelines for the Use of Emergency Rules (August 21, 1997, 62 FR 44422) because the continued NEFSC funding situation presents previously unforeseen circumstances that also present serious management problems to the fishery. The NEFSC does not expect that funding for the observer program will increase for 2007. Continued observer coverage in the scallop fishery is critical to document fishing activity, bycatch, and interactions with sea turtles throughout the fishing year.

This emergency action re-activates the industry-funded scallop observer program. Scallop vessels are required to procure observer coverage from a NMFS-approved observer service provider and to pay for the observer coverage. This emergency rule establishes criteria for being approved by NMFS as an observer service provider for the scallop fishery. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information specified in the regulatory text of this rule. Upon receipt of an application, NMFS shall provide all potential observer service providers with an estimated number of observer sea days for this fishing year under this program. Additionally, a planned schedule of observer deployments shall be posted on this NOAA website *http://www.nefsc.noaa.gov/femad/fsb/*. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of NMFS's receipt of the application. This emergency rule specifies observer service provider requirements, as well as observer requirements and responsibilities to become certified as an observer for the scallop fishery.

The scallop observer set-aside will provide scallop vessel owners with compensation for observer coverage up to a specified limit, as specified in the regulations for the scallop fishery. Once the set-aside is exhausted, vessel owners will no longer be compensated for coverage but will still have to pay for the cost of observers, as specified at §§ 648.53(h)(1) and 648.60(d)(2).

Comments and Responses to the June 16, 2006, Emergency Interim Final Rule

Comment 1: An environmental organization commented that NMFS must have tight control over the observer providers under the emergency action in order to ensure that appropriate quality control and accountability is built into the observer service provider program. The commenter suggests that NMFS must establish a contractual agreement with the provider.

Response: NMFS recognizes the need to establish necessary and tight controls over the observer service providers. However, the execution of a contractual agreement between NMFS and the observer provider was determined to be inconsistent, at this time, with augmentation of appropriations law and policy. However, NMFS believes that the requirements that are imposed on observer providers in order for them to remain certified allow NMFS to maintain sufficient quality and accountability of the observer providers. If the restrictive requirements are not met, the observer service provider risks decertification.

Comment 2: An environmental organization commented that only one observer service provider should be approved in order to avoid inefficiencies and management challenges that could result from having multiple observer providers.

Response: To ensure fair and equitable opportunities to the public, in the absence of contracting authority for this type of service, NMFS determined that it could not limit the participation to one observer provider.

Comment 3: An environmental organization commented that NMFS needs to make sure that it uses a method for obtaining money from the commercial fishing industry that does not lead to overfishing, increased interaction with sea turtles, or equity issues among fishermen.

Response: It is not clear how the exchange of funds to pay for observers would influence overfishing, interactions with sea turtles, or equity issues. None of the funds exchanged under the program are handled by NMFS. The vessel's owner, or vessel manager pays the observer provider directly, based on a fee and payment mechanism established by the observer service provider. NMFS uses a random sampling design to assign observers to a vessel on a trip by trip and vessel by vessel basis. The random observer deployment ensures that bias is not built into observer coverage and helps provide equity across the fleet. Further, an observer would be restricted from deploying on the same vessel on a frequent basis in order to avoid sampling bias.

Comment 4: An industry representative commented that NMFS must ensure that adequate and careful observer protocols must be followed under the emergency rule to ensure that the observers provide accurate information on yellowtail flounder bycatch in the access areas, in particular to avoid premature closure of the access areas. The representative urged NMFS to consider and address methodological issues promptly and to work with the industry to resolve potential problems with inadequate observer coverage or inaccurate information.

Response: NMFS acknowledges these concerns and notes that the emergency rule requires observer providers to employ observers that are fully trained by the Northeast Fisheries Observer Program (NEFOP) and that follow observer protocols established by the NEFOP.

Comment 5: An industry representative commented that its organization hoped to be able to work with NMFS and the observer providers

to work out practical issues that may arise from the program, such as billing logistics and affordability concerns related to catch rates and available set-aside.

Response: NMFS welcomes industry input on issues such as available set-aside and allocated compensation amounts. NMFS notes that in setting the scallop compensation amount, it must balance available set-aside with the cost of the observer and the amount of compensation that will enable a high number of trips to be observed and compensated. If the compensation amounts are set too high, the set-aside will run out sooner than if they are set lower. As a result, vessels would be required to carry observers and would not be compensated after the set-aside is exhausted. If the compensation is set too low, many scallop trips may not be able to recover enough funds to offset the observer costs. With respect to payment logistics, how vessels arrange payment for observers with the observer providers is between the vessel owner, vessel manager, or settlement house, and the observer provider. NMFS does not have any financial relationship with the observer provider for the purpose of deploying observers on scallop vessels and cannot therefore determine the mechanism for the exchange of funds.

Changes from June 16, 2006, Emergency Interim Final Rule

NMFS determined that some of the section references within the June 16, 2006, emergency were incorrect. Corrections to the following references have been made in this extension:

In § 648.11, paragraph (g)(1), a reference to paragraph (g)(2) of that section is changed to (g)(3) of that section, and a reference to paragraph (g)(5) of that section is changed to (g)(4)(ii) of that section.

In § 648.11, paragraph (h)(3)(vi), a reference to paragraph (h)(2) of that section is revised to paragraph (h)(5) of that section.

In § 648.11, paragraph (h)(7)(ii), a reference to paragraph (h)(3) of that section is revised to paragraph (h)(6) of that section.

In § 648.11, paragraph (i)(5), a reference to paragraph (i)(3) of that section is revised to paragraphs (i)(1) through (3) of that section.

Classification

Because this rule merely extends the emergency action already in place, for which public comment was accepted and considered, NOAA finds it is impracticable and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule. Waving prior notice and comment allows the observer service provider certification program to remain in place, thereby allowing the NOAA Fisheries Service observer program to provide uninterrupted observer coverage to the scallop fishery, which avoids any gaps in collecting data about this fishery. Continued observer coverage in the scallop fishery is critical to accurately and consistently document fishing activity, bycatch, and interactions with sea turtles throughout the fishing year. For these reasons, the need to extend these measures to assure that there is no lapse in observer coverage in the scallop fishery, also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delayed effective date, and implement the emergency action upon publication.

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

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule contains new collection-of-information requirements approved under emergency Paperwork Reduction Act by the Office of management and Budget (OMB) under the paperwork Reduction Act (PRA). These new requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider, OMB control number 0648- 0546 (10 hr per response);

2. Applicant response to denial of application for approval of observer service provider, OMB control number 0648–0546 (10 hr per response);

3. Observer service provider request for observer training OMB # 0648–0546 (30 min per response);

4. Observer deployment report, OMB control number 0648–0546 (10 min per response);

5. Observer availability report, OMB control number 0648–0546 (10 min per response);

6. Safety refusal report, OMB control number 0648–0546 (30 min per response);

7. Submission of raw observer data, OMB control number 0648–0546 (5 min per response);

8. Observer debriefing, OMB control number 0648–0546 (2 hr per response);

9. Biological samples, OMB control number 0648–0546 (5 min per response);

10. Rebuttal of pending removal from list of approved observer service providers, OMB control number 0648–0546 (8 hr per response);

11. Vessel request to observer service provider for procurement of a certified observer, OMB control number 0648–0546 (25 min per response); and

12. Vessel request for waiver of observer coverage requirement, OMB control number 0648–0546 (5 min per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 22, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§ 648.11 [Amended]

■ 2. Section 648.11 is amended as follows:

A. In paragraph (g)(1), remove ''paragraph (g)(2)'' the last time it appears and add ''paragraph (g)(3)'', and remove ''paragraphs (g)(3) and (5) of this section'' and add ''paragraphs (g)(3) and (g)(4)(ii) of this section.''

B. In paragraph (h)(3)(vi), remove ''paragraph (h)(2) of this section'' and add ''paragraph (h)(5) of this section.''

C. In paragraph (h)(7)(ii), remove '' paragraph (h)(3) of this section;'' and add ''paragraph (h)(6) of this section;''

D. In paragraph (i)(5), remove ''paragraph (i)(3) of this section,'' and add ''paragraphs (i)(1) through (3) of this section,''

[FR Doc. E6–20248 Filed 11–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263–6028–03; I.D. 112106B]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to groundfish management measures; request for comments.

SUMMARY: NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) December 1, 2006. Comments on this rule will be accepted through December 29, 2006.

ADDRESSES: You may submit comments, identified by I.D. 112106B, by any of the following methods:

• E-mail: *GroundfishInseason11.nwr@noaa.gov*. Include I.D. 112106B in the subject line of the message.

• Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Gretchen Arentzen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

• Fax: 206–526–6736, Attn: Gretchen Arentzen.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; or e-mail: *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the Pacific Fishery Management Council's (Pacific Council's) website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at Title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Council, and are implemented by NMFS. The specifications and management measures for 2005–2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); November 1, 2005 (70 FR 65861); and December 5, 2005 (70 FR 723850). Longer-term changes to the 2006 specifications and management measures were published in the **Federal Register** as a proposed rule on December 19, 2005 (70 FR 75115) and as a final rule on February 17, 2006 (71 FR 8489). The final rule was subsequently amended on March 27, 2006 (71 FR 10545), April 11, 2006 (71 FR 18227), April 26, 2006 (71 FR 24601), May 11, 2006 (71 FR 27408), May 22, 2006 (71 FR 29257), June 1, 2006 (71 FR 31104), July 3, 2006 (71 FR 37839), August 7, 2006 (71 FR 44590), August 22, 2006 (71 FR 48824), October 2, (71 FR 57889), October 3, 2006 (71 FR 58289), October 10, 2006 (71 FR 59505), and November 16, 2006 (71 FR 66693).

The changes to current groundfish management measures implemented by this action were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its November 12–17, 2006, meeting in Del Mar, CA. At that meeting, the Pacific Council recommended: (1) requesting industry to take voluntary action to reduce petrale sole catches if catch rates appear too high in December; (2) decreasing the limited entry fixed gear and open access daily-trip-limit (DTL) fishery for sablefish south of 36° N. lat. beginning December 1; and (3) prohibiting retention of cabezon in the recreational fishery in federal waters off Oregon.

Limited Entry Trawl Petrale Sole Fishery

The 2006 estimated total catch of petrale sole is approaching its 2006 ABC/OY. The best available information as of November 11, 2006 estimates petrale sole catch to be 2,174 mt out of an ABC/OY of 2,762, meaning that there are approximately 588 mt remaining for the November-December fishing period (Period 6). There is little recent data to inform catch projections for Period 6 since the Period 6 petrale fishery has largely been closed in the last several years. Based on 2006 fishery information, however, NMFS believes that ongoing fisheries will not exceed the ABC/OY for several reasons: (1) anecdotal information indicates that petrale sole have not yet migrated to open petrale fishing areas; (2) winter weather is expected to remain poor in the near future, which should dampen fishing effort; (3) the Dungeness crab fishery is expected to open in December along much of the coast and many trawl vessels are expected to switch their focus to that more lucrative fishery when it opens; and (4) the Period 6 trawl fishery has a cumulative petrale sole limit in place for 2006 to control catch levels; when petrale sole was available in prior Period 6 fishing periods, there were not limits for this species. In spite of these issues, it is important to consider that: overfishing on petrale sole occurred last year; the fleet is capable of catching in excess of 1,000 mt of petrale sole during a single period (as it did in the winter of 2005); and there is little data to inform this year's Period 6 projections.

The Pacific Council considered several options available to control the catch of this species through the end of the year in the event that catch rates

appear higher than a rate that would achieve 588 mt. These options included: (1) closing the petrale fishing areas in December; (2) using an inseason trigger mechanism to close the petrale sole fishing areas; and (3) soliciting voluntary action on the part of industry to reduce petrale sole catches.

The Council believed that either closing the petrale areas in December or implementing a trigger mechanism could be counter-productive, because, if fishers did not want to voluntarily forego the fishing opportunities, either measure would likely induce a race to fish before NMFS could implement a regulatory change. NMFS has asked industry to voluntarily reduce catches of petrale sole once before, in the summer of 2005, which resulted in an immediate 30–percent reduction of the petrale sole catch rate. The GMT believes that the risk of exceeding the ABC/OY without a regulatory action is low. However, if the catch rate appears too high, voluntary action on the part of industry is expected to be sufficient to keep catches within the ABC/OY. At the November 2006 Council meeting, several fish processors present pledged to reduce their petrale purchases for the November-December 2006 period, if necessary.

Therefore, the Pacific Council recommended and NMFS concurs that no regulatory action will be taken at this time, however NMFS will continue to monitor petrale catch closely and request industry to take voluntary action if catch rates appear too high.

Limited Entry Fixed Gear & Open Access Daily Trip Limit (DTL) Fishery for Sablefish South of 36° N. lat.

Beginning on October 1, 2006, the Pacific Council recommended and NMFS implemented a closure of the open access sablefish DTL fishery north of 36° N. lat. and increased the open access sablefish DTL fishery trip limits south of 36° N. lat. from ''350 lb per day, or 1 landing per week of up to 1,050 lb'' to ''500 lb per day, or 1 landing per week of up to 1,050 lb.'' Catch rates for sablefish south of 36° N. lat. increased substantially after this trip limit increase, and industry has asserted that sablefish landings have been in excess of 3 mt per day in Morro Bay alone. The best available data as of November 11, 2006 estimates catch in this area to be 145 mt out of an OY of 271 mt. If current catch rates continue through the end of the year, it is likely the sablefish OY could be exceeded in this area. The Pacific Council considered ways to control the catch of sablefish and believes a combination of a daily trip limit reduction and the introduction of a monthly catch limit is the best approach to slowing the catch rate of sablefish in this area.

Therefore, the Pacific Council recommended and NMFS is implementing a decrease in the limited entry fixed gear and open access sablefish DTL fishery trip limits, and an introduction of a monthly catch limit, south of 36° N. lat. beginning December 1 from ''500 lb per day, or 1 landing per week of up to 1,050 lb.'' to ''300 lb per day, or 1 landing per week of up to 1,050 lb not to exceed 3,000 lb per 1 month.''

Oregon Recreational Fishery

In the Oregon recreational groundfish fishery, the Oregon Department of Fish and Wildlife (ODFW) manages cabezon, which is harvested primarily in state waters, under a state harvest limit. Oregon recreational catch estimates through July and projections from historical temporal catch patterns indicate that the Oregon state harvest limit for cabezon, which was 15.9 mt, has been reached. State harvest limits apply to landings by recreational ocean boats and do not include shore catch and discards. Effective September 22, 2006, Oregon prohibited cabezon retention in the recreational ocean and estuary boat fisheries. Shore fisheries, including shore-based diving, angling and spear fishing, were not affected by this closure. The most recent landings update, which includes data through September 3, 2006, confirmed that the management measure was appropriate; cabezon landings were 14.9 mt, or 94 percent of the harvest limit.

Therefore, in order to conform recreational management measures for Federal waters (3–200 nm) to management measures for Oregon state waters (0–3 nm), the Pacific Council recommended and NMFS is implementing a prohibition on the retention of cabezon by boat anglers in federal recreational regulations off Oregon.

Classification

These actions are taken under the authority of 50 CFR 660.370(c)and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable. The data upon which these recommendations were based was provided to the Pacific Council, and the Pacific Council made its recommendations at its November 12–17, 2006, meeting in Del Mar, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect commercial and recreational groundfish fisheries. Changes to the limited entry fixed gear and open access sablefish DTL fishery south of 36° N. lat. must be implemented in a timely manner by December 1, 2006, to keep harvest of sablefish within the OY for this area. Changes to the recreational fishery must be implemented by December 1, 2006, in order to conform to existing state regulations and to keep recreational harvest within state harvest limits. Delaying any of these changes would keep management measures in place that are not based on the best available data, which could risk fisheries exceeding their OYs or harvest guideline. This would impair managing fisheries to stay within the OYs and harvest guidelines for the year.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: November 24, 2006.

Lee Benaka,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.384, paragraph (c)(2)(iii) is revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(2) * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 6 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast ''all-depth'' sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish. ''All-depth'' season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1 800 662 9825. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas. From October 1 through December 31, 2006, taking and retaining vermilion rockfish is prohibited in all areas by boat anglers. From December 1 through December 31, 2006, taking and retaining cabezon is prohibited in all areas by boat anglers.

* * * * *

■ 3. In part 660, subpart G, Table 4 (South) and Table 5 (South) are revised to read as follows:

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Table 4 (South) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 11/20/06

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
2	**Splitnose**	40,000 lb/ 2 months					
3	**Sablefish**						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months					
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb				500 lb/ day, or 1 landing per week of up to 1,050 lb	300 lb/ day, or 1 landing per week of up to 1,050 lb, not to exceed 3,000 lb/ 1 month
6	**Longspine thornyhead**	10,000 lb / 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months					
8	**Dover sole**	5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.			
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**						
12	**Other flatfish[1/]**						
13	**Whiting**	10,000 lb/ trip					
14	**Minor shelf rockfish[2/], Shortbelly, & Widow rockfish**						
15	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
16	South of 34°27' N. lat.	3,000 lb/ 2 months					
17	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Cowcod**	CLOSED					
21	**Bocaccio**						
22	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		300 lb/ 2 months	
23	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

24	**Minor nearshore rockfish & Black rockfish**							TABLE 4 (South) con't
25	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months	
26	Deeper nearshore							
27	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months				
28	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months	
29	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months	
30	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			CLOSED	
31	**Pacific cod**	Not limited	1,000 lb/ 2 months					
32	**Spiny dogfish**	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months			
33	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 11/20/06

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]: 40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months		CLOSED	
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb				500 lb/ day, or 1 landing per week of up to 1,050 lb	300 lb/ day, or 1 landing per week of up to 1,050 lb, not to exceed 3,000 lb/ 1 month
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.			
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	750 lb/ 2 months					
20	**Canary rockfish**	CLOSED					
21	**Yelloweye rockfish**	CLOSED					
22	**Cowcod**	CLOSED					

TABLE 5 (South)

Table 5 (South). Continued

23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			
26	**Minor nearshore rockfish & Black rockfish**						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months			
30	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
32	**Lingcod**[3/]	CLOSED		300 lb/ month, when nearshore open			CLOSED
33	**Pacific cod**	Not limited	1,000 lb/ 2 months				
34	**Spiny dogfish**	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months		
35	**Other Fish**[4/] **& Cabezon**	Not limited					
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:**						
38	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	100 fm - 200 fm	100 fm - 250 fm	75 fm - modified 250 fm [7/]
39	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
40	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:**						
42	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	100 fm - 200 fm	100 fm - 250 fm	75 fm - modified 250 fm [7/]
43	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).						

TABLE 5 (South) con't

Table 5 (South). Continued

46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*	
47	South	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 06–9451 Filed 11–24–06; 2:07 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 71, No. 229
Wednesday, November 29, 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–2006–26091; Directorate Identifier 2006–NE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In operation, fuel leaks at the level of start electro valve fuel coupling were observed. A lack of power or an uncommanded in-flight shutdown may result from these fuel leaks.

The condition described in the MCAI may result in a forced autorotation landing, the inability to continue safe flight or a fire. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 29, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- 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.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175, fax (781) 238–7199; e-mail: *christopher.spinney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26091; Directorate Identifier 2006-NE–28-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the European Union, has issued Airworthiness Directive No. 2006–0068, dated March 24, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that:

In operation, fuel leaks at the level of start electro valve fuel coupling were observed. A lack of power or an uncommanded in-flight shutdown may result from these fuel leaks.

The condition described in the MCAI may result in a forced autorotation landing, the inability to continue safe flight or a fire.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turbomeca has issued Alert Service Bulletin No. A292 73 0251, Update No. 2, dated February 5, 2001. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all

information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 790 products of U.S. registry. We also estimate that it would take about 1.5 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $6,000 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,834,800, or $6,120 per product.

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 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 this 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.

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 FAA amends § 39.13 by adding the following new AD:

TURBOMECA: Docket No. FAA–2006–26091; Directorate Identifier 2006–NE–28–AD.

Comments Due Date

(a) We must receive comments by December 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel –1A, –1A1, –1A2, –1B, –1B2, –1C, –1C1, –1C2, –1D, –1D, –1D1, –1K1, –1E, –1E2, –1S, and –1S1 series turboshaft engines.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2006–0068, dated March 24, 2006, states:

In operation, fuel leaks at the level of start electro valve fuel coupling were observed. A lack of power or an uncommanded in-flight shutdown may result from these fuel leaks.

The condition described in the EASA AD may result in a forced autorotation landing, the inability to continue safe flight or a fire.

Actions and Compliance

(e) Within 90 days after the effective date of this AD, unless already done, do the following actions:

(1) Check the condition of the three fuel unions and the ignition solenoid valve/start drain valve assembly, and check for their proper assembly.

(2) Correct the installations if necessary.

(3) Use Turbomeca Alert Service Bulletin No. A292 73 0251, Update No. 2, dated February 5, 2001, to do the checks and corrections.

AD Differences

(f) None.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175, fax (781) 238–7199; e-mail: *christopher.spinney@faa.gov* for more information about this AD.

(i) Refer to EASA AD No. 2006–0068, dated March 24, 2006, for related information.

Issued in Burlington, Massachusetts, on November 21, 2006.

Peter A. White,

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

[FR Doc. E6–20229 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA 06–1863]

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Review of regulations under the Regulatory Flexibility Act of 1980; comments requested.

SUMMARY: This document invites members of the public to comment on the Federal Communication Commission's (FCC's or Commission's) rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, as amended (RFA). The purpose of the review is to determine whether Commission rules whose ten-year anniversary dates are in the year 2006, as contained in the Appendix, should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. Upon receipt of comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s).

DATES: Comments may be filed on or before January 29, 2007.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Office of Communications Business Opportunities (OCBO), Federal Communications Commission, 202–418–0990. People with disabilities may 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.

SUPPLEMENTARY INFORMATION: Each year the Commission will publish a list of ten-year old rules for review and comment by interested parties pursuant to the requirements of section 610 of the RFA.

Public Notice

FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. 610

[CB Docket No. 06–208]

Released: November 22, 2006.

1. Pursuant to the RFA, *see* 5 U.S.C. section 610, the FCC hereby publishes a plan for the review of rules adopted by the agency in calendar year 1996 which have, or might have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of section 610 of the RFA, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. This document lists the FCC regulations to be reviewed during the next twelve months. In succeeding years, as here, the Commission will publish a list for the review of regulations promulgated ten years preceding the year of review.

3. In reviewing each rule under this plan to minimize the possible significant economic impact on a substantial number of small entities, consistent with the requirements of section 610, the FCC will consider the following factors:

(a) The continued need for the rule;

(b) the nature of complaints or comments received concerning the rule from the public;

(c) the complexity of the rule;

(d) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and

(e) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule, including a brief description of the rule and the need for and legal basis of the rule. The public is invited to comment on the rules chosen for review by the FCC according to the requirements of section 610 of the RFA. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters 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 obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. 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, commenters 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). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

The filing hours at this location are 8 a.m. to 7 p.m.

- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Comments in this proceeding will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. They 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 202–488–5300 or 800–378–3160, facsimile 202–488–5563, or via e-mail at *fcc@bcniweb.com.* To request materials

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

For additional information on the requirements of the RFA visit *www.fcc.gov/ocbo.*

Federal Communications Commission.

Carolyn Fleming Williams,

Director, Office of Communications Business Opportunities.

Appendix

List of rules for review pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610, for the year 1996. All listed rules are in Title 47 of the Code of Federal Regulations.

PART 1—PRACTICE AND PROCEDURE

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

Brief Description: Establishes procedure for filing of applications for undersea cable landing licenses.

Need: Establishes proper procedure for submitting the correct information to comply with requirements for the licensing of undersea cable landing stations.

Legal Basis: 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954.

Section Number and Title: 1.767(e), (f) Cable landing licenses.

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Brief Description: Schedule of charges for applications.

Need: Section 1.1102 through 1.1107 rules are tables that identify the application fees that are charged by the Commission for renewing, modifying, or when applying for a new license. These fees are adjusted periodically to incorporate cost-of-living increases, and or other increases in fees. Section 1.1108 through 1.1118 rules describe the type and form of payment, where it should be sent and how the payment should be processed, as well as rules governing exemptions, refunds, and penalties associated with the charges in sections 1.1102 through 1.1107.

Legal Basis: 47 U.S.C. 158(b).

Section Number and Title: 1.113(d) Return or refund of charges.

Brief Description: Petitions and applications for review.

Need: These rules describe how fees may be waived or deferred for good cause, or if would promote the public interest.

Legal Basis: 47 U.S.C. 158(d)(1).

Section Number and Title: 1.1117(f) Petitions and applications for review.

Brief Description: Schedule of annual regulatory fees and filing locations.

Need: These rules provide the authority for the Commission to impose and collect regulatory fees, as well as identify possible exemptions, adjustments, penalties, and waivers of these fees.

Legal Basis: 47 U.S.C. 159(a).

Section Number and Title:

1.1164(f)(5) Penalties for late or insufficient regulatory fee payments.

1.1166(e) Waivers, reductions and deferrals of regulatory fees.

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Brief Description: This rule provides that no State or local government (or instrumentality thereof) may regulate the placement, construction, and modification of personal wireless service facilities based upon the environmental effects of radio frequency emissions, as long as such facilities comply with the Commission's environmental rules. Personal wireless service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. Personal wireless facilities are facilities for the provision of personal wireless services.

Need: The purpose of the regulation is to preempt regulation by a State or local government (or instrumentality thereof) regarding this subject.

Legal Basis: 47 U.S.C. 154, 303, 332(c)(7).

Section Number and Title: 1.1307(e) Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart J—Equipment Authorization Procedures

Brief Description: These rules streamline the equipment authorization requirements for personal computers and personal computer peripherals. These rules provide for a new equipment authorization procedure, ''Declaration of Conformity'' (DoC), which permits these devices to be authorized based on a manufacturer's or supplier's declaration that the computer product conforms with all FCC requirements.

Need: The streamlined DoC equipment authorization procedure saves industry a significant amount of administrative expenses, while continuing to provide the same level of protection against harmful interference from personal computing devices to radio communications services. These rules eliminate the need for manufacturers to obtain FCC approval before marketing new personal computer products and thus allow such products to reach the marketplace more quickly. These rules all align the FCC's equipment authorization requirements for personal computers with those used in other parts of the world.

Legal Basis: 47 U.S.C. 154, 302, 303, 307.

Section Number and Title:

2.906 Declaration of Conformity.

2.909 Responsible Party.

2.1071 Cross Reference.

2.1072 Limitation on Declaration of Conformity.

2.1073 Responsibilities.

2.1074 Identification.

2.1075 Retention of Records.

2.1076 FCC inspection and submission of equipment for testing.

2.1077 Compliance information.

PART 15—RADIO FREQUENCY DEVICES

Subpart A—General

Brief Description: These rules specify the testing and labeling requirements for the ''Declaration of Conformity'' (DoC) procedure which permits these devices to be authorized based on a manufacturer's or supplier's declaration that the computer product conforms with all FCC requirements.

Need: The streamlined DoC equipment authorization procedure saves industry a significant amount of administrative expenses, while continuing to provide the same level of protection against harmful interference from personal computing devices to radio communications services. These rules eliminate the need for manufacturers to obtain FCC approval before marketing new personal computer products and thus allow such products to reach the marketplace more quickly. These rules all align the FCC's equipment authorization requirements for personal computers with those used in other parts of the world.

Legal Basis: 47 U.S.C. 154, 302, 303, 304, 307.

Section Number and Title:

15.3(bb) Definition of CPU Board.

15.19(b) Labelling requirements.

15.32 Test procedures for CPU boards and computer power supplies.

15.37(g) Transition provisions for compliance with the rules.

Subpart B—Unintentional Radiators

Brief Description: These rules specify the testing and labeling requirements for the ''Declaration of Conformity'' (DoC) procedure which permits these devices to be authorized based on a manufacturer's or supplier's declaration that the computer product conforms with all FCC requirements.

Need: The streamlined DoC equipment authorization procedure saves industry a significant amount of administrative expenses, while continuing to provide the same level of protection against harmful interference from personal computing devices to radio communications services. These rules eliminate the need for manufacturers to obtain FCC approval before marketing new personal computer products and thus allow such products to reach the marketplace more quickly. These rules all align the FCC's equipment authorization requirements for personal computers with those used in other parts of the world.

Legal Basis: 47 U.S.C. 154, 302, 303, 304, 307.

Section Number and Title: 15.102 CPU boards and power supplies used in personal computers.

PART 17—CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA STRUCTURES

Subpart A—General Information

Brief Description: The purpose of these rules is to establish procedures for antenna registration and to set standards for consideration of proposed antenna structures. The rules establish the responsibilities of antenna structure owners, licensees and permittees for maintaining the painting and lighting of antenna structures in accordance with part 17.

Need: Under part 17, the Commission has implemented an antenna structure registration (ASR) program to promote the safety of air navigation. These rules are necessary to: (1) Establish definitions; (2) explain how the ASR program interrelates with the processing of applications for station authorizations that utilize such antenna structures; (3) establish responsibility for painting and lighting antenna structures; (4) establish the steps that must be taken if licensees or permittees become aware that a structure they are using is not properly painted or lighted; and (5) provide an alternate method for registering an antenna structure that is a potential hazard to air navigation when the antenna structure owner cannot register the structure due to provisions of the Anti-Drug Abuse Act of 1988.

Legal Basis: 47 U.S.C. 154, 303. Interpret or apply 47 U.S.C. 301, 309.

Section Number and Title:

17.2(c) Antenna Structure Owner.

17.2(d) Antenna structure registration number.

17.5 Commission consideration of applications for station authorization.

17.6 Responsibility of Commission licensees and permittees.

Subpart C—Specifications for Obstruction Marking and Lighting of Antenna Structures

Brief Description: Section 17.49(d) provides that owners of antenna structures must maintain records of any extinguishment or malfunctioning of a structure light, including the date, time and nature of adjustments, repairs, or replacements made.

Need: This rule is needed as the logical conclusion to the balance of the rule requirements in part 17, providing that a record be kept of any malfunctioning of a structure light, to assist in ensuring the light's return to functionality. Documentation of correction of the problem (and compliance with the rules) promotes the safety of air navigation.

Legal Basis: 47 U.S.C. 154, 303. Interpret or apply 47 U.S.C. 301, 309.

Section Number and Title: 17.49(d) Recording of antenna structure light inspections in the owner record.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

Brief Description: This rule specifies that local exchange carriers and commercial mobile radio service providers shall comply with applicable provisions of part 51, which establishes interconnection rules.

Need: To ensure that carriers, particularly new entrants and small entities, can interconnect on reasonable terms.

Legal Basis: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332.

Section Number and Title: 20.11(c) Interconnection to facilities of local exchange carriers.

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

Brief Description: Establishes procedure for filing of applications for special temporary authority involving construction or alteration of antennas where compliance with Federal Aviation Administration requirements may be required.

Need: Establishes proper procedure for submitting the correct information to establish compliance with Federal Aviation Administration antenna requirements.

Legal Basis: 47 U.S.C. 154, 303. Interprets or applies 47 U.S.C. 301.

Section Number and Title: 23.28(c) Special temporary authorization.

PART 24—PERSONAL COMMUNICATIONS SERVICES

Subpart C—Technical Standards

Brief Description: The part 24 rules set forth the conditions under which portions of the radio spectrum are made available and licensed for personal communications services (PCS). Subpart C sets forth the technical requirements for use of the spectrum and equipment in the personal communications services.

Need: The identified rule is needed to increase air navigation safety by assigning responsibility for registering, maintaining, and marking and lighting antenna structures.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303(r).

Section Number and Title: 24.55 Antenna structures; air navigation safety.

PART 25—SATELLITE COMMUNICATIONS

Subpart A—General

Brief Description: Establishes conditions for preemption of local zoning regulation of earth stations designed to receive direct broadcast satellite service, including direct-to-home satellite services, that are one meter or less in diameter or located in Alaska.

Need: Preempts restrictions impairing reception of direct broadcast satellite services.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title: 25.104(f) Preemption of local zoning of earth stations.

Subpart B—Applications and Licenses

Brief Description: Establishes antenna painting and lighting and antenna structure requirements.

Need: Compliance with Federal Aviation Administration antenna requirements.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title: 25.113(d), (e) Construction permits, station licenses, launch authority.

Brief Description: Establishes procedure for filing of applications for

special temporary authority involving construction or alteration of earth station antennas where compliance with Federal Aviation Administration requirements may be required.

Need: Establishes proper procedure for submitting the correct information to establish compliance with Federal Aviation Administration antenna requirements.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title: 25.120(c) Application for special temporary authorization.

Brief Description: Establishes procedure for filing of applications for transmitting earth station antennas where compliance with Federal Aviation Administration requirements may be required.

Need: Establishes proper procedure for submitting the correct information to establish compliance with Federal Aviation Administration antenna requirements.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title: 25.130(e) Filing requirements for transmitting earth stations.

Brief Description: Prohibits the grant of a license for a space station in the mobile satellite service operating in the 1610–1626.5/2483.5–2500 MHz frequency bands to applicants who have acquired concessions for the handling of traffic to or from the United States or to interchange traffic that are denied to any other United States company.

Need: Prohibits applicants for a space station in the mobile satellite service listed above from obtaining special concessions for the handling of traffic that are not available to United States companies.

Legal Basis: 47 U.S.C. 701–744; 47 U.S.C. 154. Interprets or applies 47 U.S.C. 303.

Section Number and Title: 25.143(h) Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

Subpart C—Technical Standards

Brief Description: Establishes technical standards for coordination of sites and frequencies for geostationary orbiting and non-geostationary orbiting earth stations operating in a frequency band where both have a co-primary allocation.

Need: Provides space station and earth station operators with standards and operating procedures to minimize interference.

Legal Basis: 47 U.S.C. 701–744; 47 U.S.C. 154. Interprets or applies 47 U.S.C. 303.

Section Number and Title: 25.203(h) Choice of sites and frequencies.

Brief Description: Establishes technical standards for operation of fixed satellite service earth stations operating in the 13.75–14 GHz frequency band.

Need: Provides space station and earth station operators with standards and operating procedures to minimize interference.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title: 25.204(f) Power Limits.

Brief Description: Establishes technical standards for sharing between non-geostationary orbiting mobile satellite service feeder links earth stations in the 19.3–19.7 GHz and 29.1–29.5 GHz frequency bands.

Need: Provides space station and earth station operators with standards and operating procedures to minimize interference.

Legal Basis: 47 U.S.C. 701–744; 47 U.S.C. 154. Interprets or applies 47 U.S.C. 303.

Section Number and Title: 25.250 Sharing between NGSO MSS Feeder links Earth Stations in the 19.3–19.7 GHz and 29.1–29.5 GHz Bands.

Brief Description: Establishes technical standards operations in the band 29.1–29.25 GHz For non-geostationary mobile satellite service operators.

Need: Provides space station and earth station operators with standards and operating procedures to minimize interference with respect to the local multipoint distribution service.

Legal Basis: 47 U.S.C. 701–744; 47 U.S.C. 154. Interprets or applies 47 U.S.C. 303.

Section Number and Title: 25.257 Special requirements for operations in the band 29.1–29.25 GHz between NGSO MSS and LMDS.

Brief Description: Establishes technical standards sharing between non-geostationary orbiting mobile satellite service feeder links earth stations and geostationary orbiting fixed satellite service feeder link earth stations in the 29.25–29.5 GHz frequency band.

Need: Provides space station and earth station operators with standards and operating procedures to minimize interference.

Legal Basis: 47 U.S.C. 701–744; 47 U.S.C. 154. Interprets or applies 47 U.S.C. 303.

Section Number and Title: 25.258 Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz Bands.

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

Brief Description: Part 42 implements sections 219 and 220 of the Communications Act of 1934, as amended, which authorize the Commission to require communications common carriers to keep records and file reports. The part 42 rules facilitate enforcement of the Communications Act by ensuring the availability of communication common carrier records needed by the Commission to meet its regulatory obligations.

Need: Section 42.11 requires non-dominant interexchange carriers to maintain and to make available to the Commission certain information concerning the rates, terms, and conditions for detariffed service offerings. The Commission adopted this rule when it ordered detariffing of all domestic, interstate, interexchange services offered by non-dominant carriers. Rule 42.11 was adopted to enable the Commission to meet its statutory duty of ensuring that rates, terms and conditions for these services are just, reasonable, and not unreasonably discriminatory and to investigate and resolve complaints about such services.

Legal Basis: 47 U.S.C. 154(i), 219, 220.

Section Number and Title: 42.11 Retention of information concerning detariffed interexchange services.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

Brief Description: These rules require common carriers to report transactions with affiliates and to allocate operating revenues between regulated and unregulated activities.

Need: The rules implement the Telecommunications Act of 1996's directive that incumbent local exchange carriers file annual reports showing, for the previous calendar year, their revenues, expenses, taxes, plant in service, and other investment and depreciation reserves.

Legal Basis: 47 U.S.C. 154.

Section Numbers and Title: 43.21(f) Transactions with affiliates.

Brief Description: Requires U.S. carriers that interconnect to the U.S. public switched network international private lines that extends between the United States and a country that the Commission has not exempted from the international settlements policy to file a certified statement containing the number and type of private lines interconnected on a country specific basis.

Need: Provides data that enables the Commission to assess compliance with the Commission's international settlements policy and to assess industry use of international transmission facilities.

Legal Basis: 47 U.S.C. 154, 211, 219, and 220.

Section Number and Title: 43.51(d) Contracts and concessions.

PART 51—INTERCONNECTION

Subpart A—General Information

Brief Description: The purpose of this subpart is to implement sections 251 and 252 of the Communications Act of 1934, as amended. These rules address the authority of the state commissions to approve interconnection agreements adopted by negotiation and define specific terms applicable to part 51.

Need: These rules explain industry terms and lay the groundwork for the following subparts of these rules. Additionally, the rules authorize state commissions to approve negotiated interconnection agreements regardless of whether the terms are otherwise compliant with the Commission rules, thereby fostering competition in the local exchange and exchange access markets and encouraging market-based, rather than regulatory, dispute resolutions.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.1 Basis and purpose.

51.3 Applicability to negotiated agreements.

51.5 Terms and definitions.

Subpart B—Telecommunications Carriers

Brief Description: Subpart B implements section 251(a) of the Communications Act of 1934, as amended, and addresses the general interconnection duties of telecommunication carriers. For certain section 251 interconnection arrangements, under these rules, a carrier may also offer information services so long as it offers telecommunications services through the same arrangement as well.

Need: These rules are intended to foster competition in the local exchange and exchange access markets by requiring that all telecommunications carriers interconnect directly or indirectly with other carriers.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title: 51.100 General duty.

Subpart C—Obligations of All Local Exchange Carriers

Brief Description: These rules implement section 251(b) of the Communications Act of 1934, as amended, and include requirements for all LECs in the areas of dialing parity and nondiscriminatory access to telephone numbers, operator services, directory assistance services and directory listings. The rules also address the authority of states to apply obligations on LECs not classified as an incumbent and the process for petitioning the Commission for classifying a LEC as an incumbent.

Need: These rules are intended to foster competition in the local exchange and exchange access markets by removing operational barriers to competition and by requiring incumbent LECs to provide nondiscriminatory access to services.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.201 Resale (cross-reference to Part 51 subpart G).

51.203 Number Portability (cross-reference to Part 52 subpart C).

51.205 Dialing parity: General.

51.207 Local dialing parity.

51.209 Toll dialing parity.

51.211 Toll dialing parity implementation schedule.

51.213 Toll dialing parity implementation plans.

51.215 Dialing parity: Cost recovery.

51.217 Nondiscriminatory access: Telephone numbers, operator services, directory assistance services, and directory listings.

51.219 Access to rights of way (cross-reference to Part 1 subpart J).

51.221 Reciprocal compensation (cross-reference to Part 51 subpart H).

51.223 Application of additional requirements.

Subpart D—Additional Obligations Of Incumbent Local Exchange Carriers

Brief Description: This subsection generally implements section 251(c) of the Communications Act of 1934, as amended, which imposes additional obligations on incumbent LECs. Under this subpart, incumbent LECs must negotiate interconnection agreements with requesting telecommunications carriers in good faith, and file the terms and conditions of these agreements with state commissions. Additionally, incumbent LECs must comply with various obligations to interconnect with requesting carriers, including the unbundling of certain elements of their networks, and allowing such carriers to collocate certain equipment on the incumbents' premises. This subpart also describes the Commission's network change disclosure rules.

Need: The Commission found that these rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.301 Duty to Negotiate.

51.303 Preexisting agreements.

51.305 Interconnection.

51.307 Duty to provide access on an unbundled basis to network elements.

51.309 Use of unbundled network elements.

51.311 Nondiscriminatory access to unbundled network elements.

51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.

51.315 Combination of unbundled network elements.

51.317 Standards for requiring the unbundling of network elements.

51.319 Specific unbundling requirements.

51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

51.323 Standards for physical collocation and virtual collocation.

51.325 Notice of network changes: Public notice requirement.

51.327 Notice of network changes: Content of notice.

51.329 Notice of network changes: Methods for providing notice.

51.331 Notice of network changes: Timing of notice.

51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops or copper subloops.

51.335 Notice of network changes: Confidential or proprietary information.

Subpart E—Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act

Brief Description: These rules implement section 251(f) of the Communications Act of 1934, as amended, which provides state commissions with the ability to determine if a telephone company is entitled to exemptions, suspensions or modifications of the requirements of that section, and place the burden of proof upon the telephone company to

justify continued exemption from these requirements. Additionally, these rules specifically identify the subscriber line threshold for LEC eligibility for exemptions, suspensions or modifications.

Need: These rules ensure appropriate adjustments are made for smaller incumbent LECs in order to avoid applying unduly burdensome requirements.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.401 State authority.

51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.

51.405 Burden of Proof.

Subpart G—Resale

Brief Description: The subpart implements section 251(b)(1) and 251(c)(4) of the Communications Act of 1934, as amended, which governs the terms and conditions under which LECs offer telecommunications services to requesting telecommunications carriers for resale.

Need: Resale has been an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market. These rules are designed to foster competition and ensure that new entrants have access to the resale services and ensure that they are offered on a reasonable and nondiscriminatory basis as required by section 251(b)(1) and 251(c)(4).

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.601 Scope of Resale Rules.

51.603 Resale obligation of all local exchange carriers.

51.605 Additional obligations of incumbent local exchange carriers.

51.607 Wholesale pricing standard.

51.609 Determination of avoided retail costs.

51.611 Interim wholesale rates.

51.613 Restrictions on resale.

51.615 Withdrawal of services.

51.617 Assessment of end user common line charge on resellers.

Subpart I—Procedures For Implementation Of Section 252 Of The Act

Brief Description: This subpart establishes regulations to carry out our obligations under section 252(e)(5), which authorizes the Commission to preempt a state commission in any proceeding or matter in which the state commission ''fails to act to carry out its responsibility'' under section 252. Section 252 sets out the procedures by which telecommunications carriers may request and obtain interconnection, resale services or unbundled network elements from an incumbent LEC.

Need: These rules foster competition by allowing the Commission to intervene if a state does not carry out its responsibilities concerning interconnection, resale, or access to unbundled network elements under section 252.

Legal Basis: 47 U.S.C. 251, 252.

Section Number and Title:

51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.

51.803 Procedures for Commission notification of a state commission's failure to act.

51.805 The Commission's authority over proceedings and matters.

51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

PART 52—NUMBERING

Subpart A—Scope and Authority

Brief Description: These rules implement the requirements of section 251(e) of the Communications Act of 1934, as amended, which gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.

Need: The rules provide a framework for ensuring fair and impartial access to numbering resources, which is a critical component of encouraging a competitive telecommunications market in the United States.

Legal Basis: 47 U.S.C. 251.

Section Numbers and Titles:

52.1 Basis and purpose.

52.3 General.

52.5 Definitions.

Subpart B—Administration

Brief Description: These rules implement the requirements of section 251(e) of the Communications Act of 1934, as amended, which gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.

Need: The rules provide a framework for ensuring fair and impartial access to numbering resources, which is a critical component of encouraging a competitive telecommunications market in the United States.

Legal Basis: 47 U.S.C. 251.

Section Numbers and Titles:

52.7 Definitions.

52.9 General requirements.

52.11 North American Numbering Council.

52.13 North American Numbering Plan Administrator.

52.15 Central office code administration.

52.17 Costs of number administration.

52.19 Area code relief.

Subpart C—Number Portability

Brief Description: These rules implement the requirements of section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs ''to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.''

Need: This subpart provides rules that are designed to ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another.

Legal Basis: 47 U.S.C. 251.

Section Numbers and Titles:

52.21 Definitions.

52.23 Deployment of long-term database methods for number portability by LECs.

52.25 Database architecture and administration.

52.27 Deployment of transitional measures for number portability.

52.29 Cost recovery for transitional measures for number portability.

52.31 Deployment of long-term database methods for number portability by CMRS providers.

PART 61—TARIFFS

Subpart C—General Rules for Nondominant Carriers

Brief Description: The part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs.

Need: The rules in Subpart C apply to nondominant carriers. Section 61.19(a) was adopted to require mandatory detariffing of interstate, domestic, interexchange services.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403.

Section Number and Title:

61.19(a) Detariffing of international and interstate, domestic, interexchange services.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Brief Description: Establishes content requirements for filing of applications for international common carriers.

Need: Establishes proper procedure for submitting the correct information to process applications to provide U.S. international telecommunications services.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, and 533.

Section Number and Title:

63.18 Contents of applications for international common carriers.

Brief Description: Establishes procedure for the discontinuance of international service.

Need: Establishes procedure to ensure that customers of international carriers have adequate notice of discontinuation of service to obtain service from alternative carriers.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, and 533.

Section Number and Title:

63.19 Special procedures for discontinuances of international services.

Brief Description: Establishes procedure for the filing of applications for international common carriers, including fees and filing periods associated with such applications.

Need: Ensures that applications are complete and establishes timeline for processing of applications.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, and 533.

Section Number and Title:

63.20 Copies required; fees; and filing periods for international service providers.

Brief Description: Establishes requirements and prohibitions applicable to all U.S. international common carriers.

Need: Ensures that international common carriers are on notice of all necessary filing requirements, requirements relating to the confidential treatment of customer proprietary information, and other requirements necessary to protect the interest of U.S. consumers of international services.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 218, 403, and 533.

Section Number and Title:

63.21 Conditions applicable to all international Section 214 authorizations.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

Brief Description: Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended. Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure that telecommunications relay services (TRS) are available, ''to the extent possible and in the most efficient manner,'' to individuals with hearing or speech disabilities in the United States. Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. The rules provide minimal functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and a carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

Need: Part 64, Subpart F is intended to facilitate communication by persons with hearing or speech disabilities by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for TRS programs. The TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make TRS calls, regardless of where their calls originate or terminate.

Legal Basis: 47 U.S.C. 225.

Section Numbers and Title:

64.604(a)(2) Operational Standards, Confidentiality and conversation content.

64.604(c)(ii) Jurisdictional separation of costs, Cost Recovery.

64.604(c)(iii) Jurisdictional separation of costs, TRS Fund.

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Telephone Operator Services

Brief Description: This rule requires that each payphone clearly indicate the local coin rate within the informational placard on each payphone.

Need: This rule ensures that consumers have the information in every instance about the price of the calls they make from payphones.

Legal Basis: 47 U.S.C. 276.

Section Number and Title:

64.703(b)(3) Consumer information.

Subpart M—Provision of Payphone Service

Brief Description: This subpart implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service. These rules ensure that payphone providers are fairly compensated for each and every completed payphone originated call, establish a default per-call rate, and give payphone providers the right to negotiate with location providers. These rules require states to review and remove regulations that impose payphone market entry and exit requirements and ensure that all payphones provide free access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled.

Need: This subpart encourages competition in the payphone industry and promotes the deployment of payphone services as directed by section 276 of the Communications Act.

Legal Basis: 47 U.S.C. 276.

Section Number and Title:

64.1300 Payphone compensation obligation.

64.1310 Payphone compensation procedures.

64.1320 Payphone call tracking system audits.

64.1330 State review of payphone entry and exit regulations and public interest payphones.

64.1340 Right to negotiate.

Subpart O—Interstate Pay-Per-Call and Other Information Services

Brief Description: Part 64, Subpart O implements section 228 of the Communications Act of 1934, as amended. Subpart O mandates that common carriers assigning telephone numbers to providers of interstate pay-per-call services require that the provider comply with the Subpart O rules as well as certain other laws and

regulations. Subpart O restricts the provision of pay-per-call services over 800 and ''toll free'' numbers and bars the provision of interstate pay-per-call services on a collect basis. It provides for 900 service access code assignment to pay-per-call services, and requires local exchange carriers to offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services and bars the disconnection or interruption of local exchange or long-distance service for the non-payment of charges for interstate pay-per-call and certain information services.

In 1993, the Commission promulgated the pay-per-call rules summarized above to implement the Telephone Disclosure and Dispute Resolution Act and replace prior pay-per-call rules adopted in 1991. In 1996, the Commission amended the rules to incorporate expanded consumer protections enacted in the Telecommunications Act of 1996. These additional protections included a prohibition on charging callers for calls to toll-free numbers without a written presubscription agreement, a requirement for use of personal identification numbers to prevent unauthorized access, and certain required billing disclosures. The amended rules also permitted alternatives to written presubscription such as payment by prepaid account, debit, credit, charge, or calling card. In July 2004, the Commission released a *Notice of Proposed Rulemaking* seeking comment on possible modifications to address circumvention of the pay-per-call rules.

Need: Part 64, Subpart O is intended both to promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Legal Basis: 47 U.S.C. 228.

Section Numbers and Titles:

64.1501 Definitions.

64.1502 Limitations on the provision of pay-per-call services.

64.1503 Termination of pay-per-call and other information programs.

64.1504 Restrictions on the use of toll-free numbers.

64.1505 Restrictions on collect telephone calls.

64.1506 Number designation.

64.1507 Prohibition on disconnection or interruption of service for failure to remit pay-per-call and similar service charges.

64.1508 Blocking access to 900 service.

64.1509 Disclosure and dissemination of pay-per-call information.

64.1510 Billing and collection of pay-per-call and similar service charges.

64.1511 Forgiveness of charges and refunds.

64.1512 Involuntary blocking of pay-per-call services.

64.1513 Verification of charitable status.

64.1514 Generation of signaling tones.

64.1515 Recovery of costs.

Subpart Q—Implementation of Section 273(D)(5) of the Communications Act: Dispute Resolution Regarding Equipment Standards

Brief Description: These rules implement section 273(d) of the Communications Act of 1934, as amended by setting forth procedures to be followed when organizations set industry-wide standards for telecommunications equipment or customer premises equipment. These rules establish a default dispute resolution process to be used when technical disputes arise between a non-accredited standards development organization (NASDO) and any party who funds the activities of the NASDO.

Need: As intended by Congress, these rules ensure that disputes can be resolved in an open, non-discriminatory, and unbiased fashion and that these dispute resolution procedures will be used only when all of the parties are unable to agree on a process for resolving their disputes.

Legal Basis: 47 U.S.C. 273.

Section Number and Title:

64.1700 Purpose and scope.

64.1701 Definitions.

64.1702 Procedures.

64.1703 Dispute resolution default process.

64.1704 Frivolous disputes/ penalties.

Subpart R—Geographic Rate Averaging and Rate Integration

Brief Description: Part 64, subpart R implements section 254(g) of the Communications Act of 1934, as amended (Act), which requires the Commission to adopt rules requiring providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates.

Need: Section 64.1801 was adopted to enable the Commission to meet its duty, in compliance with section 254(g) of the Act, to adopt rules requiring providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates.

Legal Basis: 47 U.S.C. 151, 154(i), 201–205, 214(e), 215, 254(g).

Section Number and Title:

64.1801 Geographic rate averaging and rate integration.

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

Brief Description: Part 64, subpart S facilitates Commission oversight and enforcement of section 254(g) of the Communications Act of 1934, as amended (Act), which requires providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates.

Need: Section 64.1900 requires each nondominant provider of interexchange telecommunications service that provides detariffed interstate, domestic, interexchange services to file an annual certification with the Commission that it is in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Act. This rule was adopted to enable the Commission to meet its statutory duty of ensuring that rates for these services comply with section 254(g) and to investigate and resolve related complaints.

Legal Basis: 47 U.S.C. 154, 201, 218, 226, 228, 254.

Section Number and Title:

64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Subpart A—General

Brief Description: Part 68 implements the Hearing Aid Compatibility Act of 1988 (HAC Act). The HAC Act requires that, unless exempt, all essential telephones and all telephones manufactured in or imported into the United States after August 16, 1989 must ''provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.'' The scope of this discussion is limited to part 68 as it applies to telephone compatibility with hearing aids.

Need: Part 68 establishes conditions for direct connection to the network of registered terminal equipment to

prevent network harm and ensure that telephones are compatible with hearing aids. The purpose of part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network.

Legal Basis: 47 U.S.C. 151–154, 201–205, 303(r) & 610.

Section Number and Title:

68.3 Definitions.

Subpart C—Terminal Equipment Approval Procedures

Brief Description: Part 68 governs the connection of terminal equipment (TE), *e.g.*, telephones, fax machines, and computer modems, to the Public Switched Telephone Network (PSTN) and to wireline carrier-provided private lines. Part 68 requires responsible parties, as defined in Section 68.3, to have their TE formally approved for such connection. Subpart C identifies the processes for obtaining TE approvals, and for the Commission revoking them.

Need: The rules set forth the grounds and process for revoking TE approval.

Legal Basis: 47 U.S.C. 151, 154, 155, 201–205, 218, 220, 313, 403, 412.

Section Numbers and Title:

68.211 Terminal equipment approval revocation procedures.

PART 73—RADIO BROADCAST SERVICES

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: This rule requires applications for a construction permit, or modification of a construction permit, for a new facility or change in an existing facility, for any AM, FM, TV and Class A TV broadcast service, to include the Antenna Structure Registration Number.

Need: This rule ensures the antenna structures are registered prior to staff consideration of the construction permit or license application.

Legal Basis: 47 U.S.C. 154.

Section Number and Title:

73.3533(c) Application for construction permit or modification of construction permit.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

Subpart J—Ownership of Cable Systems

Brief Description: This rule generally prohibits a local exchange carrier (''LEC'') or its affiliate from acquiring a cable company within the LEC's telephone service area, and prohibits a cable company or its affiliate from acquiring a LEC within the cable company's franchise area.

Need: This rule implements Section 302(a) of the Telecommunications Act of 1996, which created a new Section 652 of the Communications Act.

Legal Basis: 47 U.S.C. 572.

Section Number and Title:

76.505 Prohibition on buy outs.

Subpart N—Cable Rate Regulation

Brief Description: This rule provides an additional prong to the definition of cable systems subject to effective competition.

Need: This rule implements Section 303(b)(3) of the Telecommunications Act of 1996, which was codified at 623(1)(l)(D) of the Communications Act.

Legal Basis: 47 U.S.C. 543.

Section Number and Title:

76.905 Standards for identification of cable systems subject to effective competition.

Subpart R—Telecommunications Act Implementation

Brief Description: These rules provide interim procedures for administering certain aspects of cable regulation. These rules are interim because the Commission has solicited comment regarding the specific matters addressed in these rules and may modify their operation when they are promulgated in final form.

Need: These rules implement Section 301(b) of the Telecommunications Act of 1996.

Legal Basis: 47 U.S.C. 543.

Section Number and Title:

76.1400 Purpose.

76.1402 CPST rate complaints.

76.1404 Use of cable facilities by local exchange carriers.

Subpart S—Open Video Systems

Brief Description: These rules establish the framework for entry into the video programming delivery marketplace as an open video system operator. The open video framework provides an option for the distribution of video programming other than as a cable system governed by the provisions of Title VI. A service provider certified as an operator of an open video system is subject to streamlined regulation under Title VI.

Need: These rules implement Section 302(a) of the Telecommunications Act of 1996.

Legal Basis: 47 U.S.C. 154(i), 154(j), 303(r) and 573.

Section Number and Title:

76.1500 Definitions.

76.1501 Qualifications to be an open video system operator.

76.1502 Certification.

76.1503 Carriage of video programming providers on open video systems.

76.1504 Rates, terms and condition of carriage on open video systems.

76.1505 Public, educational and governmental access.

76.1506 Carriage of television broadcast signals.

76.1507 Competitive access to satellite cable programming.

76.1508 Network non-duplication.

76.1509 Syndicated program exclusivity.

76.1510 Application of certain Title VI provisions.

76.1511 Fees.

76.1512 Programming information.

76.1513 Open video dispute resolution.

76.1514 Bundling of video and local exchange services.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

Brief Description: The part 90 rules state the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart T sets forth the rules governing the licensing and operations of all systems operating in the 220–222 MHz band. Among other things, it sets forth policies governing the construction and modification of 220–222 MHz stations.

Need: These rules are needed to provide 220–222 MHz licensees with flexibility to modify their authorized facilities, and to provide a safeguard against the warehousing of 220–222 MHz spectrum.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.751 Minor modifications of Phase I, non-nationwide licenses.

90.753 Conditions of license modification.

90.757 Construction requirements.

Subpart V—Competitive Bidding Procedures for 800 MHz Specialized Mobile Radio Service

Brief Description: The part 90 rules state the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and

Radiolocation Radio Services. Subpart V sets forth the rules governing the use of competitive bidding to choose among mutually exclusive 800 MHz SMR applicants.

Need: These rules are needed to provide a framework for auctions.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.901 800 MHz SMR spectrum subject to competitive bidding.

90.903 Competitive bidding mechanisms.

90.904 Aggregation of EA licenses.

90.909 License grants.

90.910 Bidding credits.

90.911 Partitioned licenses and disaggregated spectrum.

90.912 Definitions.

90.913 Record maintenance and definitions.

PART 95—PERSONAL RADIO SERVICES

Subpart B—Family Radio Service (FRS)

Brief Description: The part 95 rules govern the Personal Radio Services, including the General Mobile Radio Service, Family Radio Service, Radio Control Radio Service, Citizens Band Radio Service, 218–219 MHz Service, Low Power Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, and Multi-Use Radio Service. Subpart B applies to the Family Radio Service, a very short distance, unlicensed, two-way voice radio service in the Ultra High Frequency (UHF) portion of the radio spectrum.

Need: These rules provide a radio service to meet the needs of families and other small groups for a good quality voice radio communication service having a very short range. The Family Radio Service provides group members with the ability to use palm size radio units to communicate while on outings, such as visiting shopping malls and amusement parks, attending sporting events, camping, and taking part in other recreational activities. These rules also impose limitations on the use of the Family Radio Service, including specification of permissible communications.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

95.191 (FRS Rule 1) Eligibility and responsibility.

95.192 (FRS Rule 2) Authorized locations.

95.193 (FRS Rule 3) Types of communications.

95.194 (FRS Rule 4) FRS units.

Subpart G—Low Power Radio Service (LPRS)

Brief Description: The part 95 rules govern the Personal Radio Services, including the General Mobile Radio Service, Family Radio Service, Radio Control Radio Service, Citizens Band Radio Service, 218–219 MHz Service, Low Power Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, and Multi-Use Radio Service. Subpart G applies to the Low Power Radio Service, a low power radio service sharing use of the 216–217 MHz band.

Need: These rules provide a regulatory framework accommodating, for example, auditory assistance devices, health care assistance devices, and law enforcement tracking systems. These rules also impose limitations on the use of the Low Power Radio Service, including specification of permissible communications.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

95.1001 Eligibility.

95.1003 Authorized locations.

95.1005 Station identification.

95.1007 Station inspection.

95.1009 Permissible communications.

95.1011 Channel use policy.

95.1015 Disclosure policies.

95.1017 Labeling requirements.

95.1019 Marketing limitations.

PART 101—FIXED MICROWAVE SERVICES

Subpart B—Applications and Licenses

Brief Description: The part 101 rules prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf. Subpart B sets forth the rules governing the licensing and operations of those fixed microwave operations subject to part 101.

Need: The identified rules are necessary to define the rights and obligations of licensees in those portions of the band that have been reallocated from fixed microwave services to other services.

Legal Basis: 47 U.S.C. 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316.

Section Number and Title:

101.71 Voluntary negotiations.

101.73 Mandatory negotiations.

101.75 Involuntary relocation procedures.

101.77 Public safety licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

101.81 Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

Subpart C—Technical Standards

Brief Description: The part 101 Rules prescribe the manner in which portions of the radio spectrum may be made available for fixed microwave services. Subpart C sets forth the technical requirements for such services.

Need: The identified rule is necessary to promote efficient utilization of the spectrum allocated for fixed microwave services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

101.15 Use of signal boosters.

[FR Doc. E6–20143 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–281; DA 06–2283]

Rules and Regulations Regarding the Transmission of Calling Party Number

AGENCY: Federal Communications Commission.

ACTION: Proposed waiver; comments requested.

SUMMARY: On October 25, 2006, the National Aeronautics and Space Administration (NASA), John F. Kennedy Space Center (KSC) filed a petition for a limited waiver of the Commission's rules, which prohibits terminating carriers from passing calling party number (CPN) to the called party where a privacy indicator has been triggered. KSC requests that the Commission allow it to receive CPN, even when a privacy indicator has been triggered. In this document, the Commission seeks comment on the NASA/KSC petition for limited waiver of the Commission's Calling Party Number rules.

DATES: Comments are due on or before December 14, 2006, and reply comments are due on or before December 26, 2006.

ADDRESSES: You may submit comments, identified by CC Docket No. 91–281, 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.

• *Mail:* Parties who choose to file by paper should also submit their comment on diskette. These diskettes should be submitted, along with three paper copies to Lynne Montgomery, Consumer Policy Division, Consumer & Governmental Affairs Bureau, 445 12th Street, SW., Room 5–A746, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case *CC Docket No. 91–281*), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2229 (voice), *Lynne.Montgomery@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 06–2283, released November 7, 2006. The full text of document DA 06–2283, KSC's submission, and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–2283, KSC's submission, and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor, Best Copy and Printing, at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *www.bcpiweb.com* or call 1–800–378–3160. A copy of KSC's submission may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert *CC Docket No. 91–281* into the proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Document DA 06–2283 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy*. Pursuant to §§ 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 the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

• Commercial 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.

Synopsis

On October 25, 2006, KSC filed a petition for a limited waiver of § 64.1601(b) of the Commission's rules, which prohibits terminating carriers from passing calling party number (CPN) to the called party when a privacy indicator has been triggered. Specifically, KSC asks the Commission to allow its Central Office Switch facility to obtain and store CPN information so that its security personnel can identify and capture the perpetrators of threatening calls. Section 64.1601(b) of the Commission's rules states in pertinent part that ''[n]o common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call * * *. [W]hen a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party.''

According to KSC, the facility provides its own security, fire and rescue, telecommunications, and other utility services 24 hours per day. Over the course of a year, KSC reports receiving between 12 and 20 threatening or harassing phone calls that are considered serious in nature. KSC states that the telecommunications carriers serving KSC are bound by CPN privacy rules, and parties placing threatening calls often use CPN restriction to

prevent authorities from identifying their location. Without access to CPN, KSC's security personnel have to request a trace of these phone calls which can take up to a week to process. KSC requests a waiver of section 64.1601(b) so that all CPN information can be passed, to KSC's secure log, without regard to the calling party's privacy indicator, to facilitate KSC's investigation of telephone threats it deems credible. KSC proposes to limit the scope of its waiver by recording the CPN of incoming restricted calls but not passing CPN on to the party called, using passwords and non-disclosure agreements to protect CPN data, and destroying CPN information after a reasonable retention period. KSC argues that its situation presents special circumstances that warrant a limited waiver and states that it provides both the security services and end office telecommunications to all locations within its boundaries. Finally, KSC contends that the waiver would be applicable only to a narrow and well-defined public institution making it predictable, workable and unbiased in application. Accordingly, the Commission seeks comment on KSC's petition.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E6–20162 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 229
Wednesday, November 29, 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

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: USDA Forest Service, Willamette National Forest.

ACTION: Notice of Solicitation for Nominations.

SUMMARY: The Willamette National Forest is seeking nominees for eight positions on the Opal Creek Advisory Council. The Council was originally established in June 2000 with 13 members. On April 20, 2007, eight member's terms will expire. Five of the current members will remain on the Council to provide continuity for new members.

The Advisory Council makes recommendations to the Detroit District Ranger on matters relating to the management of the Opal Creek Scenic Recreation Area (SRA).

The Advisory Council is composed of a diverse group of citizens, which allows for sharing of technical knowledge and personal experience. Members represent interests including, but not limited to: Timber industry; environmental organizations; mining industry; land inholders within the Opal Creek Wilderness and SRA; economic development interests; and Indian tribes. Other members serving on the Council as required by the Act represent Marion County, communities within a 25 mile radius of the SRA, State of Oregon, and City of Salem.

Positions to be filled are from timber industry, economic development, Indian Tribes, communities within 25-miles of the SRA, the City of Salem, Marion County, the State of Oregon, and one at-large member. Examples of ''at-large'' members who may be interested in serving on this Council include recreation interests, adjacent landowner, educators and researchers.

Nominees must be United States citizens, at least 18 years old. Willamette officials will recommend nominees' appointments to the Secretary of Agriculture based on criteria which include:

(1) Familiarity with the Opal Creek SRA;

(2) Knowledge and understanding of other cultures;

(3) Ability to actively participate in diverse team settings;

(4) Respect and credibility in local communities;

(5) Past experience working with the government planning processes;

(6) Demonstrated skill in working toward mutually beneficial solutions to complex issues; and

(7) Commitment to attending Advisory Council and other meetings.

The basic duties include sharing of technical knowledge and personal experience. Members also represent interests of appropriate groups by (1) generating information necessary for the planning and implementation process from interest groups, and (2) keeping their constituency informed of progress.

DATES: Nomination packets should be received by January 8, 2007.

Address and Contact Informaton: People interested in more information or a nomination packet should contact the Detroit Ranger District at 503–854–3366. The nomination packet can also be downloaded from the Opal Creek Advisory Council section of the Willamette National Forest Web site: *www.fs.fed.us/r6/willamette/manage/opalcreek/index.html.* The nomination packet with original signatures must be sent to: Detroit Ranger District, *Attn:* Opal Creek DFO, HC 73 Box 320, Mill City, OR 97360.

SUPPLEMENTARY INFORMATION: Congress established the Opal Creek Wilderness and the Scenic Recreation Areas on November 9, 1998. As outlined in Section 1023 of the Omnibus Parks and Public Lands Management Act of 1996 (Pub. L. 104–333), an Advisory Council has been chartered to serve as a consultant on matters relating to the management of the 13,408-acres Opal Creek Scenic Recreation Area (SRA).

Dated: November 22, 2006.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. E6–20202 Filed 11–28–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Management Unit, California, South Tahoe Greenway Multi-Use Trail Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The South Tahoe Greenway Multi-Use Trail is a California Tahoe Conservancy (Conservancy) proposed Class I or better trail that will link Meyers, California to Stateline, Nevada, generally following the former Caltrans U.S. Highway 50 Bypass Corridor. The trail will form the backbone of the bike trail network in South Lake Tahoe and line residential and lodging uses to jobs, schools, shopping, and recreation and community areas. The trail implements specific goals and policies of the Tahoe Regional Planning Agency (TRPA), the USDA Forest Service Lake Tahoe Basin Management Unit (USFS), and Conservancy to provide a non-motorized alternative transportation corridor through South Lake Tahoe. Approximately 0.5 mile of the trail corridor will cross National Forest lands in approximately six locations.

DATES: Comments concerning the scope of the analysis must be received by December 20, 2006. The Draft Environmental Impact Statement (DEIS) is expected by summer 2007 and the Final Environmental Impact Statement (FEIS) is expected by fall/winter 2007.

ADDRESSES: Send written comments to: Ray Lacey, Program Coordinator, California Tahoe Conservancy, 1061 Third Street, South Lake Tahoe, California, 96150, e-mail: *rlacey@tahoecons.ca.gov.*

FOR FURTHER INFORMATION CONTACT: Matt Dickinson, NEPA Coordinator, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150, *Mattdickinson@fs.fed.us,* (530) 543–2769; or Lisa O'Daly, Recreation Program Manager, Tahoe Regional Planning Agency, P.O. Box 5310, 128 Market Street, Stateline, NV 89449, *lodaly@trpa.org,* (775) 589–5242.

SUPPLEMENTARY INFORMATION: *Purpose and need for action:* Complete accessible and continuous multi-use trail from the existing Class I trail in Meyers, California to Stateline, Nevada

that establishes a convenient non-auto transportation alternative and high quality recreational experience for residents and visitors. The South Shore roadway network suffers from excessive traffic congestion and the resulting degradation of air quality The South Shore also lacks continuous Class I facilities for bicycles and pedestrians that provide high quality recreational opportunities. The Tahoe Regional Planning Agency (TRPA) Regional Transportation Plan/Air Quality Plan identifies the unconstructed State Route 50 right-of-way as an opportunity for development of a portion of the bicycle and pedestrian network to reduce dependence on private autos and improve air quality.

Proposed action: The Conservancy is proposing to construct a 9.6-mile long multi-purpose trail that will provide residents and visitors with a non-motorized, alternative transportation corridor from Meyers, California (near the intersection of U.S. Highway 50 and Pioneer Trail) to Stateline, Nevada (near the proposed Van Sickle Bi-State Park). The South Tahoe Greenway Multi-Use Trail will generally follow the former Caltrans U.S. Highway 50 Bypass Corridor and will also utilize other publicly (including National Forest) and privately owned lands.

Possible alternatives: Potential alternatives include the following: (1) Use of the new El Dorado County Sawmill Trail (located west of U.S. Highway 50) from Meyers to the intersection of Meadowvale or Elks Club and U.S. Highway 50; (2) Use of the U.S. Highway 50 corridor from Pioneer Trail to near Kyburz Avenue, bending around the north side of the Lake Tahoe Airport and crossing back east toward the South Tahoe Greenway Multi-Use trail corridor through Barton Meadow and over the Upper Truckee River on private property; (3) Use of alternative trail design measures (e.g., boardwalks, bridges, porous paving materials) to reduce or eliminate effects to sensitive resources; (4) Use of Pioneer Trail right of way from the South Tahoe Greenway Multi-Use Trail's crossing location at Pioneer Trail to Ski Run Boulevard, then using Ski Run Boulevard, connecting back to the South Tahoe Greenway; (5) Use of Pioneer Trail right-of-way from Ski Run Boulevard to the trail's terminus at U.S. Highway 50; and (6) maximize use of the former U.S. Highway 50 bypass right-of-way in the Sunset Stables project area located east of the Lake Tahoe Airport by locating the trail in the eastern-most forested area of the Sunset Stables project and at a higher elevation to allow for greater flexibility during future Conservancy design of the Sunset Stables river restoration project.

Lead, Joint Lead, and Cooperating Agencies: The Conservancy is planning to construct the South Tahoe Greenway Multi-Use Trail. The Conservancy, USFS, and TRPA are preparing a joint Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) to inform agency decision makers about the potential environmental effects of the project. This joint document will serve as an EIR prepared by the Conservancy (lead CEQA agency) pursuant to the California Environmental Quality Act (CEQA); an EIS prepared by the USFS (lead federal agency) pursuant to the National Environmental Policy Act (NEPA); and an EIS prepared by TRPA pursuant to its regulations.

Responsible Official and Mailing Address: For Forest Service Decision, Terri Marceron, Forest Supervisor, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150 is the responsible official.

Decision to Be Made: The decision to be made is whether to construct a Class I trail on approximately ½ mile of National Forest System land in conjunction with construction of a Class I trail along the U.S. Highway 50 right-of-way as described in the proposed action, to implement another combination of activities which meets the purpose and need for action, or to take no action at this time.

Scoping Process: Public scoping began with the publication of this Notice of Intent in the **Federal Register**. Notice of the preparation of the environmental documentation is also being published in a local newspaper (Tahoe Daily Tribune) and mailed to adjacent property owners. Public scoping opportunities with agency staff will be provided on the following dates: The City of South Lake Tahoe will provide an opportunity for public input at their Council hearing on Tuesday, November 28 beginning at 9 a.m. at the Lake Tahoe Airport, 1901 Airport Road, South Lake Tahoe, CA; and the TRPA will hold a public scoping hearing before their Hearings Officer on December 14 beginning at 2 p.m. at the TRPA offices, 128 Market Street, Stateline, NV. The Forest Service will accept comments at these public meetings.

Preliminary Issues: During preparation of the Multi-Use Trail Preliminary Concept Plans, the following issues were identified: Disturbance of stream environment zone and the Upper Truckee River floodplain from new trail construction; potential water quality degradation from runoff and erosion from new trail creation; wildlife habitat environmental effects from direct habitat removal and potential habitat degradation from increased visitation to the project area; effects to sensitive vegetation communities and loss of ''old growth'' trees as defined by the TRPA Code of Ordinances; effects to scenic quality along scenic highways and at the Pioneer Trail roadway crossing; conflicts (e.g., public safety and traffic flow) with vehicular circulation in neighborhood areas and at roadway intersections; consistency with public safety plans and policies, such as the Lake Tahoe Airport Comprehensive Land Use Plan; consistency with the Lake Tahoe Basin Management Unit Forest Plan; and consistency with the goals of the Conservancy Sunset Stables Restoration and Resource Management Plan Project.

Identification of Permits or Licenses Required: The TRPA, California Department of Fish and Game, U.S. Army Corps of Engineers and California Regional Water Quality Control Board, Lahontan Region may issue project specific permits for trail segments within the Lake Tahoe Region.

Comment Requested: This notice of intent initiates the scoping process that guides the development of the environmental impact statement. The Forest Service would like to know the views of interested persons, organizations, and agencies as to the scope and content of the information to be included and analyzed in the DEIS. Agencies should comment on the elements of the environmental information that are relevant to their statutory responsibilities in connection with the proposed alternatives. Comments must be received by December 20, 2006.

Person to Which Comments may be Mailed: Send written comments to: Ray Lacey, Program Coordinator, California Tahoe Conservancy, 1061 Third Street, South Lake Tahoe, California, 96150, e-mail: *rlacey@tahoecons.ca.gov.*

Early Notice of Importance of Public Participation in Subsequent Environmental Review: There will be additional opportunities to comment on this project in addition to this scoping period. When the DEIS is released there will be a 45 day comment period from the date the Environmental Protection Agency publishes the notice of availability of the DEIS in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 21, 2006.

Nancy J. Gibson,

Acting Deputy Forest Supervisor, Lake Tahoe Basin Management Unit.

[FR Doc. 06–9444 Filed 11–28–06; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Willamette National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Sites.

SUMMARY: The Willamette National Forest is planning to charge fees at six recreation sites. All sites have recently been reconstructed or amenities are being added to improve services and experiences. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment.

The fees listed are only proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

Gold Butte and Timber Butte Lookouts will be available for overnight rental. A financial analysis is being completed to determine the rental fee but may range between $40 and $80 per night. Lookout rentals offer a unique experience and are a widely popular offering on National Forests. Gold Butte was recently resorted to maintain the lookout's eligibility to the National Register of Historic Places. Fees would continue to help protect and maintain lookouts and their historic integrity.

The fee structure at Harralson Horse Camp would change from the required Recreation Pass to a $10 per campsite for overnight use. A fee of $5 per additional vehicle would be required per campsite. Recreation passes such as the Northwest Forest Pass would continue to cover day use fees at the trailhead. Additional amenities are proposed for the facility and may include hitching rails, additional corrals and campsites, and a water system. Improvements allow visitors with horses to safely secure their stock while protecting area resources from degradation.

Elk Lake Campground is currently a fee free site. Improvements are being made including designating up to 17 campsites, installing fire rings, picnic tables and adding garbage service. Three new toilets were installed last year. Improvements will address sanitation and safety concerns, and improve deteriorating resource conditions and recreation experiences. A financial analysis is being completed to determine fee rates. The proposed fee to help maintain this site would range between $6 and $8 a campsite, $12–$16 for a double site, and $5 per one additional vehicle per campsite.

Whitewater Trailhead would be re-established as a fee site since amenities such as toilets and garbage service have been added, and interpretive signing is being developed for this site. Recreation Passes such as the Northwest Forest Pass would cover day use fees for this trailhead. Northwest Forest Passes are $5 for a daily pass and $30 for an annual pass. The Forest Service proposes to continue charging a $5 per vehicle fee at Upper Arm Day Use Site from October through March. This newly constructed picnic site and formal swimming area opened in June of 2006, and is operated by Santiam Recreation under a concessionaire special use permit from April through September. The concessionaire currently charges a $5 per vehicle fee during the operating season of their permit.

DATES: New fees would begin after May 2007 and contingent upon completion of certain improvements. The lookout rentals would be available once a final decision is made and is listed with the National Recreation Reservation Service.

ADDRESSES: Dalles Emch, Forest Supervisor, Willamette National Forest, 211 East 7th Avenue, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Dani Pavoni, Recreation Fee Coordinator, 503–854–4208. Information about proposed fee changes can also be found on the Willamette National Forest Web site: *http://www.fs.fed.us/r6/willamette/recreation/index.html.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting to rent Gold Butte or Timber Butte Lookouts would need to do so through the National Recreation Reservation Service, at *www.reserveusa.com* or by calling 1–877–444–6777 when it becomes available.

Dated: November 21, 2006.

Dalles Emch,

Forest Supervisor.

[FR Doc. 06–9447 Filed 11–28–06; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The CSB will convene a public meeting concerning the fatal explosion that occurred on January 11, 2006, at the Bethune Point Wastewater Plant in Daytona Beach, Florida. The Board will take testimony from the investigation team and also from a panel of outside experts. The meeting will be held from 9:30 a.m. until approximately noon on December 14, 2006, in the Tides A room of the Daytona Beach Resort and Conference Center, 2700 North Atlantic Ave., Daytona Beach, FL 32118.

Two municipal workers died and another was seriously injured while attempting to remove a steel roof over a storage tank containing highly flammable methyl alcohol at the plant, operated by the City of Daytona Beach. The blast was ignited by a cutting torch.

The investigation team, led by Robert Hall, P.E., will present findings related to the safety programs and training at the plant, the use of plastic pipe in flammable liquid systems, and maintenance of specialized equipment used on flammable liquid tanks.

The Board will hear testimony from experts discussing OSHA coverage for State and municipal employees and whether Florida should adopt OSHA coverage to protect public employees from chemical hazards in the workplace. The Board will also welcome any public comments on issues raised during the meeting.

Pre-registration is not required, but to assure adequate seating attendees are encouraged to pre-register by e-mailing their names and affiliations to *publicmeeting@csb.gov* by December 7, 2006.

The CSB is an independent Federal agency charged with investigating industrial chemical accidents.

The agency's board members are appointed by the president and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents, including physical causes such as equipment failure as well as inadequacies in safety regulations, industry standards, and management systems.

The Board does not issue citations or fines but does make safety recommendations to plants, industry organizations, labor groups, and government agencies. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 06–9471 Filed 11–27–06; 1:05 pm]

BILLING CODE 6350–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111606B]

Endangered and Threatened Species; Initiation of a 5-year Review of the Caribbean Monk Seal

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

ACTION: Notice of initiation of a 5-year review; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 5-year review of the Caribbean monk seal (*Monachus tropicalis*) under the Endangered Species Act (ESA) of 1973. The Caribbean monk seal was listed as endangered in 1967 under the Endangered Species Preservation Act of 1966 (32 FR 4001) and then again in 1979 following its re-assessment under the ESA (44 FR 21288). A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on the Caribbean monk seal that has become available since its last status review in 1984 (49 FR 44774). Based on the results of this 5-year review, we will make the requisite findings under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than January 29, 2007. However, we will continue to accept new information about any listed species at any time.

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

• Mail: Kyle Baker, National Marine Fisheries Service, 263 13th Avenue South, St. Petersburg, FL 33701.

• E-mail: *kyle.baker@noaa.gov*. Include in the subject line of the e-mail the following identifier: Comments on 5-year review for the Caribbean monk seal.

• Fax: 727–824–5309, attention: Kyle Baker.

Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Kyle Baker at the above address, or at 727–824–5312.

SUPPLEMENTARY INFORMATION: Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the list (delisted), or reclassified from endangered to threatened, or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available, substantiating that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Caribbean monk seal, currently listed as endangered.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Caribbean monk seal.

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include (A) species biology including, but not limited to, population trends,

distribution, abundance, demographics, and genetics; (B) habitat conditions including, but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) status and trends of threats; and (E) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

If you wish to provide information for this 5-year review, you may submit your information and materials to Kyle Baker (see **ADDRESSES** section). Our practice is to make submissions of information, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. We will not, however, consider anonymous submissions. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Information and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 22, 2006.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–20249 Filed 11–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110706B]

Endangered and Threatened Species; Recovery Plans; Proposed Recovery Plan for Southern Resident Killer Whales

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

ACTION: Notice of availability; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce the availability for public review of the Proposed Recovery Plan (Plan) for Southern Resident Killer Whales (*Orcinus Orca*). NMFS is requesting review and comment on the Plan from the public and all interested parties.

DATES: Written comments and information must be received by February 27, 2007.

ADDRESSES: Copies of the Plan may be reviewed and/or copied at NMFS, Protected Resources Division, 7600 Sand Point Way NE, Seattle, WA 98115. The Plan is available on-line on the NMFS web site *http://www.nwr.noaa.gov*. Comments should be submitted by mail to Chief, Protected Resources Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232 or by sending an e-mail message to *orca.plan@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NOAA/NMFS, Northwest Region, (206) 526–4745.

SUPPLEMENTARY INFORMATION: The Endangered Species Act (ESA) of 1973, as amended (15 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not result in the conservation of the species. NMFS announced the endangered listing of the Southern Resident killer whale distinct population segment (DPS) on November 18, 2005 (70 FR 69903). Prior to the ESA listing, NMFS designated the Southern Resident killer whale population as a depleted stock under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) on May 29, 2003 (68 FR 31980). At the time of the designation, we announced our intention to develop a conservation plan.

We held a series of public meetings and technical workshops to gather input from Federal Government agency representatives, state and tribal co-managers, Canadian officials, orca advocacy groups, non-governmental organizations, researchers, whale watch industry, and concerned citizens. We circulated a preliminary draft conservation plan for public review on March 14, 2005. We received comments on the preliminary draft, and made revisions in response to the comments. We subsequently published a Notice of Availability of a Proposed Conservation Plan in the **Federal Register** on October 3, 2005 (70 FR 57565), opening a public comment period. We received comments on the proposed conservation plan and have addressed them in the proposed recovery plan. In addition to addressing the comments, we have incorporated ESA elements into the plan, including discussions of the five ESA listing factors, critical habitat, section 7, and ESA recovery criteria. We also included new research results and references that have become available since the proposed conservation plan was released.

The Plan

The ESA requires that recovery plans incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of time required and costs to implement recovery actions. NMFS' goal is to restore the endangered Southern Resident DPS to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The Plan provides background on the natural history of killer whales, population trends and the potential threats to their viability. The Plan lays out a recovery strategy to address the potential threats based on the best available science and includes recovery goals and criteria. The Plan is not a regulatory action, but presents guidance for use by agencies and interested parties to assist in the recovery of Southern Resident killer whales. The Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. The program also links management actions to an active research program for filling data gaps, and monitoring activities to assess effectiveness. The Plan incorporates an adaptive management framework by which Plan actions and other elements will evolve and adapt to information gained as a result of research and monitoring. Recovery of Southern Resident killer whales is a long-term effort and will require cooperation and coordination of Federal, state, tribal and local government agencies, and the community.

We request comments on the Proposed Recovery Plan for Southern Resident Killer Whales with this notice. NMFS will consider substantive comments and information provided during the public comment period in the course of finalizing this Plan.

Dated: November 22, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–9454 Filed 11–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111306A]

Marine Mammals; File No. 1053–1825

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that David Mann, Ph.D., College of Marine Science, The University of South Florida, College of Marine Science, 140 Seventh Avenue South, St. Petersburg, FL 33701 has been issued a permit to conduct research on certain cetacean species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 5, 2006, notice was published in the **Federal Register** (70 FR 28909) that a request for a scientific research permit to take certain cetacean species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

This permit authorizes the permit holder to conduct hearing measurements on stranded cetaceans on beaches, in near-shore waters, and in rehabilitation facilities in the U.S.; and on cetaceans captured under separate research permits.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 22, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–20246 Filed 11–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 83,028: A TECHNIQUE FOR FABRICATING TWO AND THREE TERMINAL DEVICES IN WIDE-BAND GAP SEMICONDUCTORS WITHOUT PLASMA ETCHING and any continuations, continuations-in-part, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, e-mail: *techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: November 22, 2006.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–20203 Filed 11–28–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Availability of a Special Environmental Analysis; Potomac River Generating Station

AGENCY: Department of Energy (DOE).

ACTION: Notice of Availability.

SUMMARY: DOE has prepared a *Special Environmental Analysis (SEA) for Actions Taken under U.S. Department of Energy Emergency Orders Regarding Operation of the Potomac River Generating Station in Alexandria, Virginia*, and is announcing its availability. In the SEA, DOE examines environmental impacts from the Secretary of Energy's December 20, 2005 Emergency Order, and the Secretary's September 28, 2006 extension of that Emergency Order; the SEA covers a period of about 24 months beginning in December 2005. The SEA also considers alternatives that include mitigation measures that DOE may take until the Potomac Electric Power Company's (PEPCO) installation of two additional 230 kV electric transmission lines to the Central Washington, DC area (expected in June 2007) that would appear to eliminate the emergency that lead to the issuance of the December 20, 2005 Emergency Order.

DOE prepared the SEA after consulting with the Council on Environmental Quality (CEQ) for alternative arrangements under 40 CFR 1506.11, which applies where emergency circumstances make it necessary to take action without preparing an environmental impact statement (EIS). The U.S. Environmental Protection Agency worked with DOE on this SEA.

Simultaneously with issuance of the SEA, the Secretary is issuing another temporary extension of the Emergency Order until February 1, 2007. DOE is providing the public an opportunity to comment before the Secretary considers whether to allow the Order to expire, extend the Order, or extend the Order with mitigation measures.

DATES: DOE has posted the SEA on two websites: its Web site for this matter at *http://www.oe.energy.gov/permitting/372.htm* and the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/documentspub.html.* Comments on the SEA should be submitted to DOE on or before January 8, 2007.

ADDRESSES: Comments should be addressed to: Anthony J. Como; Permitting, Siting, and Analysis Division; Office of Electricity Delivery and Energy Reliability (OE–20); U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–5935; fax: 202–586–5860; or *anthony.como@hq.doe.gov.* Due to postal security procedures, comments sent through the U.S. Mail may be delayed.

FOR FURTHER INFORMATION CONTACT: For information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and

Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0103; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 800–472–2756.

For further information on the Emergency Order contact Lawrence Mansueti, Permitting, Siting, and Analysis Division; Office of Electricity Delivery and Energy Reliability (OE–20); U.S. Department of Energy; telephone: 202–586–2588; fax: 202–586–5860; or *lawrence.mansueti@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 20, 2005, the Secretary of Energy issued Order No. 202–05–3 (Emergency Order) pursuant to Section 202(c) of the Federal Power Act. The Emergency Order directed Mirant Corporation and its wholly owned subsidiary, Mirant Potomac River, LLC, to generate electricity at its Potomac River Generating Station in limited circumstances in order to address electric reliability, including the risk of a blackout, in the Central Washington DC area. On September 28, 2006, the Secretary of Energy issued Order No. 202–06–2 temporarily extending DOE Order No. 202–05–3 until December 1, 2006.

In emergency situations, pursuant to 40 CFR 1506.11, the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act of 1969 call for agencies to consult with CEQ to determine what alternative arrangements the agency will take in lieu of preparing an environmental impact statement that might otherwise be required for the relevant action. DOE prepared the SEA pursuant to the alternative arrangements agreed upon with CEQ.

The SEA includes descriptions of the DOE Emergency Order and extensions thereof, assessments of the direct, indirect, and cumulative impacts resulting from the actions, and consideration of alternative actions that DOE could take that could lessen the adverse effect of any additional future extension of the Order.

Issued in Washington DC on November 22, 2006.

David R. Hill,

General Counsel.

[FR Doc. E6–20225 Filed 11–28–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–301–150]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 21, 2006.

Take notice that on November 16, 2006, ANR Pipeline Company (ANR) tendered for filing and acceptance six copies of an amended negotiated rate arrangement between ANR and United Wisconsin Grain Producers, LLC. ANR requests that the negotiated rate arrangement become effective December 8, 2006, or such subsequent date as determined by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20188 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–72–000]

CenterPoint Energy Gas Transmission Company, Notice of Tariff Filing

(November 21, 2006)

Take notice that on November 17, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to be effective December 18, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20196 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–426–004]

Destin Pipeline Company, L.L.C., Notice of Compliance Filing

November 21, 2006.

Take notice that on November 15, 2006, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 136.01, to be effective December 1, 2006.

Destin states copies of this filing are being served on all parties in the above proceeding, affected shippers, and applicable state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20190 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–10–001]

East Tennessee Natural Gas, LLC; Notice Of Supplemental Filing

November 21, 2006.

Take notice that on November 15, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 368, effective November 6, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20191 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–69–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2006.

Take notice that on November 15, 2006, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing revised tariff sheets, proposed to be effective April 1, 2006:

Sixty-Second Revised Sheet No. 7
Sixty-Second Revised Sheet No. 8

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20193 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–68–000]

Enbridge Pipelines (KPC), Notice of Proposed Changes in FERC Gas Tariff

(November 21, 2006)

Take notice that on November 15, 2006, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective on December 15, 2006:

Second Revised Sheet No. 117
Second Revised Sheet No. 301
Second Revised Sheet No. 312
Third Revised Sheet No. 324
Second Revised Sheet No. 337
Second Revised Sheet No. 345
Second Revised Sheet No. 357

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20192 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–70–000]

Northern Natural Gas Company, Notice of Proposed Changes in FERC Gas Tariff

(November 21, 2006)

Take notice that on November 17, 2006, Northern Natural Gas Company (Northern) tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 Second Revised Sheet No. 285A, to be effective December 18, 2006.

Northern states that the above sheet is being filed to clarify certain creditworthiness tariff language for interruptible storage service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20194 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–159]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 21, 2006.

Take notice that on November 16, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing and acceptance six copies of a negotiated rate arrangement between Tennessee and Constellation Energy Commodities Group, Inc. (Constellation) and First Revised Sheet No. 30G. Tennessee requests that the tariff sheet and the negotiated rate arrangement between Tennessee and Constellation become effective on January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

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This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on *the Web site that* enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20198 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–73–000]

Trailblazer Pipeline Company; Notice of Penalty Revenue Report

November 21, 2006.

Take notice that on November 17, 2006, pursuant to Section 40.10 of its General Terms and Conditions Trailblazer Pipeline Company (Trailblazer) tendered for filing a report informing the Commission of penalty revenues it has received in the quarter ended September 30, 2006.

Trailblazer states that it did not collect any penalty revenues for the quarter July 1, 2006 through September 30, 2006. Trailblazer states that it has no penalty revenue credits to report to the Commission under the provision of the General Terms and Conditions of its tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time November 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20197 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–71–000]

Transcontinental Gas Pipe Line Corporation, Notice of Proposed Changes in FERC Gas Tariff

(November 21, 2006)

Take notice that on November 17, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Thirty-Fourth Revised Sheet No. 28, to become effective December 1, 2006.

Transco states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20195 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–16–000]

Long Island Power Authority, Complainant, v. New York Independent System Operator, Inc., Respondent; Notice of Filing

November 20, 2006.

Take notice that on November 17, 2006, the Long Island Power Authority (Authority) and its operating subsidiary LIPA (LIPA), filed a complaint against

the New York Independent System Operators, Inc. (NYISO). LIPA is the operating subsidiary of the Authority, a corporate municipal instrumentality and political subdivision of the state of New York. LIPA requests that the Commission treat some of the information accompanying the complaint as privileged and confidential in accordance with section 388.112 of the Commission Rules of Practice and Procedure. LIPA asserts that it has served the complaint on representatives of the NYISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20185 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 20, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–613–002.
Applicants: ISO New England Inc.
Description: ISO New England Inc., submits its Compliance Report pursuant to the Order issued on 5/12/06 and an errata to this filing on to this filing 11/14/06.
Filed Date: 11/13/2006; 11/14/2006.
Accession Number: 20061116–0085; 20061116–0059.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER06–1014–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator Inc submits a compliance filing pursuant to the commission's order issued on July 14, 2006.
Filed Date: 11/13/2006.
Accession Number: 20061116–0045.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER06–1383–001.
Applicants: ISO New England Inc.; Northeast Utilities Service Company.
Description: Northeast Utilities Service Co., The Connecticut Light and Power Co., et al. notifies FERC that the sales transactions closed on 11/1/06.
Filed Date: 11/13/2006.
Accession Number: 20061116–0178.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–188–001; ER07–189–001; ER07–190–001; ER07–191–001; ER07–192–001.
Applicants: Duke Energy Carolina, LLC; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Shared Services, Inc.
Description: Duke Energy Carolinas LLC et al. submit a correction to its 10/21/06 filing.
Filed Date: 11/13/2006.
Accession Number: 20061117–0099.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–203–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc. on behalf of Southwestern Public Service Company submits a Connection Agreement with Golden Spread Electric Cooperative, Inc., Original Agreement No. 603–SPS,Original Volume No. 6.
Filed Date: 11/13/2006.
Accession Number: 20061116–0043.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–204–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits an executed interconnection service agreement with, RC Cape May Holdings LLC and Atlantic City Electric Company.
Filed Date: 11/13/2006.
Accession Number: 20061116–0044.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–205–000.
Applicants: Ameren Energy Marketing; Central Illinois Light Company; Central Illinois Public Service Company; Illinois Power Company; Union Electric Company.
Description: Ameren Energy Inc., Ameren Energy Marketing Co et al. submit an application for authorization to power sales to their affiliates pursuant to Section 205 of the FPA.
Filed Date: 11/09/2006.
Accession Number: 20061116–0046.
Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–211–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc., submits an executed Large Generator Interconnection Agreement with Flying Cloud, LLC and Southwestern Public Service Company.
Filed Date: 11/13/2006.
Accession Number: 20061116–0084.
Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–220–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Operating Companies on behalf Connecticut Light & Power Co., et al. submits its request to withdraw the NU Operating Companies FERC Electric Rate Schedule 62.
Filed Date: 11/15/2006.
Accession Number: 20061117–0100.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER07–221–000.
Applicants: Geysers Power Company, LLC.
Description: Geysers Power Company, LLC submits revisions to certain Rate Schedules of its Reliability Must-Run Agreement with the California Independent System Operator Corp.
Filed Date: 11/15/2006.
Accession Number: 20061117–0097.
Comment Date: 5 pm Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER07–222–000.

Applicants: Gilroy Energy Center, LLC.

Description: Gilroy Energy Center, LLC submits revisions to certain Rate Schedules of its Reliability Must-Run Agreement with California Independent Systems Operator Corp.

Filed Date: 11/15/2006.

Accession Number: 20061117–0098.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER07–223–000.

Applicants: Los Medanos Energy Center LLC.

Description: Los Medanos Energy Center LLC submits an unexecuted Must-Run Service Agreement with California Independent System Operator Corporation.

Filed Date: 11/15/2006.

Accession Number: 20061117–0061.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–20186 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 21, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–19–000.

Applicants: Allegheny Energy Supply Company, LLC; Allegheny Energy Supply Gleason Generation.

Description: Allegheny Energy Supply Company, LLC et al. submit an application for authorization under Section 203 of the Federal Power Act for the disposition of jurisdictional facilities and request for expedited consideration.

Filed Date: 11/13/2006.

Accession Number: 20061117–0062.

Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: EC07–20–000.

Applicants: NEO California Power LLC; NRG Power Marketing Inc.; Wayzata California Power Holdings, LLC.

Description: NEO California Power LLC, et al., submit a joint application for authorization of the disposition of jurisdictional facilities under Section 203 of the Federal Power Act.

Filed Date: 11/13/2006.

Accession Number: 20061120–0069.

Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: EC07–21–000.

Applicants: Wachovia Investment Holdings, LLC.

Description: Babcock & Brown LP et al. submits an Application for Order Authorizing Disposition of Jurisdictional Facilities under EC07–21.

Filed Date: 11/14/2006.

Accession Number: 20061120–0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 05, 2006.

Docket Numbers: EC07–22–000.

Applicants: MACH Gen, LLC, Millennium Power Partners, L.P.; New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating, LLC; Satellite Senior Income Fund, LLC; MG Orbit Group, Ltd.

Description: MACH Gen, LLC et al. submit an application for order authorizing upstream disposition of jurisdictional facilities under Section 203 of the FPA and request for waivers.

Filed Date: 11/15/2006.

Accession Number: 20061120–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: EC07–23–000.

Applicants: San Diego Gas & Electric Company; Otay Mesa Energy Center, LLC.

Description: San Diego Gas & Electric Company and Otay Mesa Energy Center, LLC submit a joint application for authorization under Section 206 of the FPA.

Filed Date: 11/15/2006.

Accession Number: 20061120–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–14–000.

Applicants: Brush Cogeneration Partners.

Description: Brush Cogeneration Partners submit a notice of self-certification of exempt wholesale generator status.

Filed Date: 11/16/2006.

Accession Number: 20061120–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, December 07, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2230–005.

Applicants: Niagara Mohawk Power Corporation; New York Independent System Operator, Inc.

Description: Niagara Mohawk Power Corp Grid et al. submit an amendment of its Joint Refund Report filed 11/2/06.

Filed Date: 11/15/2006.

Accession Number: 20061120–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER01–3103–013; ER04–617–002; ER99–3911–005; ER02–1884–005; ER99–3502–007.

Applicants: Energy Investors Funds Group, LLC; Project Finance Fund III, L.P.; United States Power Fund, L.P.;

United States Power Fund II, L.P.; USPF II Institutional Fund, L.P.

Description: Energy Investors Funds Group, LLC et al. submits Notice of Change in Status to reflect a change in upstream ownership.

Filed Date: 11/16/2006.

Accession Number: 20061120–0199.

Comment Date: 5 p.m. Eastern Time on Thursday, December 07, 2006.

Docket Numbers: ER03–739–001.

Applicants: El Dorado Irrigation District.

Description: El Dorado Irrigation District submits an amendment to its updated market power analysis for Market Based Rate Authorization filed 9/16/06.

Filed Date: 11/15/2006.

Accession Number: 20061117–0096.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER05–1065–004.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc submits a compliance filing, Transmission Service Criteria pursuant to the Commission's Orders issued 4/24/06 and 10/18/06.

Filed Date: 11/16/2006.

Accession Number: 20061120–0207.

Comment Date: 5 p.m. Eastern Time on Thursday, December 07, 2006.

Docket Numbers: ER05–1497–003; ER05–1497–004.

Applicants: Dearborn Industrial Generation, LLC.

Description: Dearborn Industrial Generation, LLC submits a notice of cancellation of cost-based tariff and Re-Pagination of Reactive Power Supply Tariff, Original Volume No. 2.

Filed Date: 11/15/2006.

Accession Number: 20061120–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 06, 2006.

Docket Numbers: ER06–1353–001.

Applicants: Duke Power Company LLC; Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits its compliance filing involving a non-conforming long-term Transmission Service Agreement with North Carolina Municipal Power Agency 1 pursuant to FERC's 10/10/06 Order.

Filed Date: 11/09/2006.

Accession Number: 20061120–0055.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–33–001.

Applicants: New York Independent System Operator, Inc.

Description: NYISO submits a completion Notification of Timing of Software Fix and Identification of Specific Period For Tariff Waiver Request.

Filed Date: 11/15/2006.

Accession Number: 20061115–5041.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2006.

Docket Numbers: ER07–201–000.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England, Inc et al. submits Revised Sheet 7118C et al. to FERC Electric Tariff 3, reflecting proposed changes to the criteria for selecting units in the Regulation market, as specified in Market Rule 1.

Filed Date: 11/13/2006.

Accession Number: 20061116–0047.

Comment Date: 5 p.m. Eastern Time on Monday, December 04, 2006.

Docket Numbers: ER07–224–000.

Applicants: NE Energy Management, LLC.

Description: NE Energy Management, LLC informs FERC that, as a result of a name change, it has succeeded to the market-based rate tariff of ECP Energy LLC etc.

Filed Date: 11/16/2006.

Accession Number: 20061120–0056.

Comment Date: 5 p.m. Eastern Time on Thursday, December 07, 2006.

Docket Numbers: ER07–226–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits adjustments to transmission service rates under the Interconnection Agreement with Sacramento Municipal Utility District.

Filed Date: 11/17/2006.

Accession Number: 20061120–0201.

Comment Date: 5 p.m. Eastern Time on Friday, December 08, 2006.

Docket Numbers: ER07–227–000.

Applicants: NE Hydro Generating Company.

Description: NE Hydro Generating Co informs FERC that as a result of a name change, it has succeeded to the market-based rated tariff of Northeast Generation Company.

Filed Date: 11/16/2006.

Accession Number: 20061120–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, December 07, 2006.

Docket Numbers: ER07–228–000; ER01–1147–003.

Applicants: PECO Energy Company.

Description: PECO Energy Co submits a modification to its market-based tariff to remove the market behavior rules, delete the Code of Conduct and affiliate sales provision re Public Service Enterprise Group Inc.

Filed Date: 11/14/2006.

Accession Number: 20061120–0066.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 05, 2006.

Docket Numbers: ER07–229–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits the Restated Interconnection Facilities Agreement and Restated Interconnection Agreement with Calpine Corp.

Filed Date: 11/17/2006.

Accession Number: 20061120–0088.

Comment Date: 5 p.m. Eastern Time on Friday, December 08, 2006.

Docket Numbers: ER07–230–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Facilities Construction Agreement with Invenergy Cannon Falls LLC and Great River Energy-Transmission.

Filed Date: 11/17/2006.

Accession Number: 20061120–0198.

Comment Date: 5 p.m. Eastern Time on Friday, December 08, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20187 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

November 21, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2197–074.

c. *Date Filed:* October 5, 2006.

d. *Applicant:* Yadkin Division of Alcoa Power, Inc.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The project is located on the Yadkin/Pee Dee River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The project is comprised of four reservoirs: High Rock, Tuckertown, Narrows and Falls. The project does not contain any federal lands. This project does not occupy any Tribal or federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Robert Smet, Environmental and Natural Resources Manager; Yadkin Division of Alcoa Power, Inc. (APGI-Yadkin Division); P.O. Box 576; Badin, North Carolina 28009; Phone: 704–422–5644.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov*.

j. *Deadline for filing comments and/or motions:* December 22, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2197–074) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Yadkin Division of Alcoa Power, Inc., licensee for the Yadkin Hydroelectric Project, has requested Commission authorization to issue a permit for the Skipjack Harbor, LLC, to expand the boat dock facilities at the existing Skipjack Marina. The marina presently accommodates 61 boats. The proposed, expanded marina would accommodate 108 boats and provide new fueling facilities and a pump-out station. The additional docking spaces would be floating structures. No dredging or shoreline stabilization is proposed; therefore, no ground-disturbing activity would occur. The marina is located on the High Rock Reservoir in Davidson County, North Carolina.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''Comments'', ''Recommendations for Terms and Conditions'', ''Protest'', or ''Motion To Intervene'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20189 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

November 21, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor.

b. *Project No.:* P–12751–000.

c. *Date filed:* November 8, 2006.

d. *Applicant:* AquaEnergy Group, Ltd.

e. *Name of Project:* Makah Bay Offshore Wave Energy Pilot Project.

f. *Location:* Pacific Ocean in Makah Bay, Clallam County, Washington near the city of Neah Bay, Washington. The project would occupy about one acre of land on the Makah Indian Reservation and about seven acres of the Olympic Coast National Marine Sanctuary administered by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration and Flattery Rocks National Wildlife Refuge administered by the U.S. Department of the Interior, U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary Jane Parks, P.O. Box 1276, Mercer Island, WA 98059, (626) 568–0798.

i. *FERC Contact:* Nick Jayjack, (202) 502–6073, *Nicholas.Jayjack@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies

with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing requests for cooperating agency status:* January 8, 2007.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. The application is not ready for environmental analysis at this time.

m. *The project would consist of:* (1) Four, 250-kilowatt wave energy conversion buoys (''AquaBuOYs'') and an associated mooring/anchoring and electrical connection system placed 3.7 miles offshore in water depths of about 150 feet over a rectangular area about 625 feet by 450 feet of ocean floor; (2) a metal shore station that would be about 15 feet long by 15 feet wide by 10 feet high and located just inland of Hobuck Beach (on the Makah Indian Reservation near Neah Bay, Washington) adjacent to an existing power line for interconnection—the shore station would contain equipment necessary to connect to the electrical grid; (3) a driveway and parking area at the metal shore station; and (4) a 3.7-mile long submarine cable anchored to the ocean floor and connecting from one of the buoy's (''collector buoy'') power cable to the metal shore station. The total installed capacity of the project would be 1 megawatt, and the project would generate about 1,500,000 kilowatt-hours annually. AquaEnergy proposes to provide the power generated by the project to the Clallam County PUD for use in its service area.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

p. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—February 2007.

Notice soliciting final terms and conditions—February 2007.

Notice of the availability of the draft EA—August 2007.

Notice of the availability of the final EA—November 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20199 Filed 11–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.: RM01–8–000, ER02–2001–000]

Revised Public Utility Filing Requirements for Electric Quarterly Reports; Second Notice of Electric Quarterly Reports Users Group Meeting

November 20, 2006.

On November 8, 2006, the Federal Energy Regulatory Commission (Commission) announced a meeting of the Electric Quarterly Reports (EQR) Users Group to be held Wednesday, November 29, 2006, in the Commission Meeting Room at 888 First Street, NE., Washington, DC and via teleconference. The meeting will run from 9 a.m. to 5 p.m. (EST).

During the meeting, Commission staff and EQR users will discuss the staff draft of the EQR data dictionary, which is now available on the EQR Users Group and Workshops page on FERC.gov at *http://www.ferc.gov/docs-filing/eqr/groups-workshops.asp.* The revised final agenda for the conference is attached.

All interested persons are invited to attend or call in for the meeting. Those interested in participating were asked to do so by registering no later than November 20, 2006, on the FERC Web site at *https://www.ferc.gov/whats-new/registration/eqr-11–29-form.asp.* There is no registration fee. Information for the meeting will be sent to registered participants.

As previously announced, interested persons wishing to file comments may do so under the above-captioned Docket Numbers. Those filings will be available at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance accessing document on eLibrary, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

For additional information about the meeting, please contact Jennifer Newman of FERC's Office of Enforcement at (202) 502–6576 or by e-mail at *eqr@ferc.gov.*

Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the events calendar approximately one week after the meeting.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

Magalie R. Salas,

Secretary.

Attachment: Revised Meeting Agenda

Agenda, EQR Users Group Meeting

Commission Meeting Room

Wednesday, November 29, 2006

9–9:15 a.m. Welcome, Introductions, Logistics.

9:15–11 a.m. Update on status of mapping ISO/RTO settlement reports for EQR reporting from various ISO/RTOs.

Presentations by Panelists:

Mike Patterson, Business Analyst, New York ISO.

Jeff Evans, Lead Settlement Design Analyst, California ISO (via telephone).
Chris Parent, Supervisor, Business Analysis for the Market Analysis and Settlements Group, ISO-New England (via telephone).
Ken Donald, Settlements Lead and Al Borno, Settlements Lead, Midwest ISO (via telephone).
Harry Dessender, Manager, Market Settlement Services, PJM Interconnection (invited).

11–11:15 Break.
11:15–12 noon Data Dictionary: ID Data.
12–1 p.m. Lunch.
1–2:30 p.m. Data Dictionary: Contract Data.
2:30–2:45 p.m. Break.
2:45–4:15 p.m. Data Dictionary: Transaction Data.
4:15–4:45 p.m. New Business.
4:45–5 p.m. Review and Wrap-up.

[FR Doc. E6–20184 Filed 11–28–06; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0661; FRL–8087–4]

Chloropicrin Risk Assessments (Phase 3 of 6-Phase Process); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health and environmental fate and effects risk assessment(s) and related documents for the fumigant chloropicrin, and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED) for chloropicrin through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. EPA is also concurrently assessing the risks of five other soil fumigant pesticides to ensure that its assessment approaches are consistent and to ensure that risk trade offs and economic outcomes can be adequately predicted in reaching risk management decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 29, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0661, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0661. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Additional support documents for the soil fumigants in general can be viewed at EPA's electronic public docket www.regulations.gov under Docket ID EPA–HQ–OPP–2005–0168. The Agency has also established a soil fumigant web page at *http://www.epa.gov/oppsrrd1/reregistration/soil_fumigants/*. The public may also want to view the individual chemical specific dockets for other soil fumigant pesticides. These chemical specific dockets include: Telone (1,3-dichloropropene) at EPA–HQ–OPP–2005–0124, dazomet at EPA–HQ–OPP–2005–0128, metam sodium at EPA–HQ–OPP–2005–0125, metam potassium at EPA–HQ–OPP–2005–0125, and methyl bromide at EPA–HQ–OPP–2005–0123. These sites are provided for reference and review. However, the Agency is requesting that comments pertaining to chloropicrin be submitted only to the chloropicrin docket at EPA–HQ–OPP–2006–0061.

FOR FURTHER INFORMATION CONTACT: Nathan Mottl, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0208; fax number: (703) 308-7070; e-mail address: *mottl.nathan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health and environmental fate and effects risk assessments for chloropicrin. Chloropicrin is a non-selective pre-plant soil fumigant with fungicidal, herbicidal, insecticidal, and nematicidal properties. Chloropicrin is also used in combination with other soil fumigants and as a warning agent for other soil fumigants such as methyl bromide and telone (1,3-dichloropropene) and structural fumigations using sulfuryl flouride. Chloropicrin is primarily used for pre-plant soil uses for agricultural crops and greenhouses. However, chloropicrin is also used for fumigations of empty grain and storage bins, tree replant sites, and wood telephone poles and timber. The Agency developed these risk assessments as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

An estimated 5-9 million pounds of chloropicrin is applied annually. Crops on which over a million pounds are used annually include tobacco (3.6 million pounds), tomatoes (1.7 million pounds), and strawberries (1.4 million pounds). Strawberries (20 percent), tobacco (15 percent), and tomatoes (10 percent) are also the crops with the highest percentage of their overall acreage treated. Almost all of the pre-plant soil fumigation uses of chloropicrin occur in combination with either methyl bromide or telone.

Plant metabolism and environmental fate studies demonstrate that chloropicrin is degraded in both anaerobic and aerobic soil to carbon dioxide which is subsequently taken up by the plant. Therefore, the use of chloropicrin as a pre-plant soil fumigant is considered to be a non-food use and food tolerances are not required.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for chloropicrin. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or information about specific use practices for crops that are produced using chloropicrin. For example, the following information would be helpful to EPA in characterizing regional and crop differences in use practices and possible effects on potential risk. When providing this information to the Agency, consider providing pictures or video footage to help clarify your comments.

1. Crop.

2. Fumigant use.

3. Average acres grown per enterprise.

4. Maximum acres fumigated per day.

5. Percent of the acres grown that are fumigated.

6. Typical application rate (lb a.i./acre).

7. Minimum application rate used (lb a.i./acre)(for high pest pressure situations).

8. Time of year that soil is fumigated.

9. Fumigation cycle (every crop cycle, 1 time/year, 1 time/2 years).

10. Target pests (by category or specific pests).

11. Method of application (e.g., chemigation, soil injection, specific equipment used, etc.).

12. Methods or actions taken to reduce emissions (polyethylene tarps or soil cap).

13. Could high-density polyethylene (HDPE) or high barrier tarps be used on this crop?

14. Time between treatment and next production activity (e.g., time until planting).

15. Typical crops following the fumigated crop (only if they benefit from the fumigation).

16. Regulatory restrictions in your area on this fumigant or an alternative fumigant (such as weather restrictions).

17. Soil restrictions on this fumigant or an alternative fumigant.

18. Any restrictions or concerns about minimum soil temperature, hilly terrain, etc.

19. Best available alternative (another fumigant or strategy such as leaving land fallow, etc.).

20. Could the use of different soil fumigants be alternated (e.g., metam sodium followed by (1,3-D)? Specify how.

21. Yield or quality impacts that are likely to result from moving to the best available alternative (i.e., change in commodity price or grade).

22. Would moving to the next best alternative impact key market windows? How?

23. Cost per acre of active ingredient.

24. Cost per acre of other fumigation inputs (e.g., tarps and equipment).

25. Is there a crop budget available for your area and crop?

26. Do you know of any other contacts or other sources of information for this crop who could provide information on acreage, prices, pests, etc.?

27. Are there non-chemical alternatives that can be used in place of fumigants? Describe use.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural

practices, or other factors, may have atypical, unusually high exposure to chloropicrin, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review chloropicrin through the full, 6-Phase public participation process.

Comments should be limited to issues raised within the risk assessment(s) and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for chloropicrin. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 20, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–20145 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0348; FRL–8104–2]

Malathion Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide malathion and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the Malathion Docket. Malathion is a non-systemic, broad-spectrum organophosphate pesticide with numerous commercial agricultural and residential uses, as well as several wide-area application uses. EPA has reviewed malathion through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 29, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0348, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2004–0348. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Neil Anderson, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8187; fax number: (703) 308–8005; e-mail address: *anderson.neil@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a

wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

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2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, malathion under section 4(g)(2)(A) of FIFRA. Malathion is a broad-spectrum pesticide used on numerous commercial agricultural crops. Malathion is registered for wide-area treatments such as in the United States Department of Agriculture sponsored Boll Weevil Eradication Program, public health uses, and fruit fly abatement treatments. Malathion is also registered for outdoor residential uses on ornamental plants, vegetable gardens, fruiting trees, and for outdoor structural perimeter treatments. Malathion is also formulated into a pharmaceutical product (Ovide® Lotion) which is approved by the Food and Drug Administration for the control of head lice and their ova. EPA has determined that the database to support reregistration is substantially complete and that products containing malathion are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing malathion.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide-residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the malathion tolerances.

Although the Malathion RED was signed on July 31, 2006, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the summary of labeling changes, appendices, and other relevant information, have been added to the Malathion RED document.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA intended to review malathion through the 6–phase process, however, due to its uses, risks, and other factors, a third public comment period was added to the 6–phase public participation process for malathion. Throughout the process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for malathion.

The reregistration program is being conducted under congressionally mandated timeframes, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the Malathion RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for malathion. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

When providing comment, please provide sufficiently detailed information to allow the Agency to evaluate your position. For example, if commenting on a mitigated application rate, or a restricted entry interval (REI), explain why the mitigated use rate or REI would prove ineffective, and provide detailed information (such as pest pressure, pest timing, cultural practices, or the cost and efficacy of the available alternatives), to support your point.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 16, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–20150 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0202–FRL–8103–3]

Pentachloronitrobenzene (PCNB) Reregistration Eligibility Decision; Third Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of August 2, 2006, concerning the availability of the PCNB reregistration eligibility decision (RED) and the opening of the 60–day public comment period on the RED. The original comment period was to close on October 2, 2006. The Agency subsequently issued a notice in the **Federal Register** of September 29, 2006, extending the comment period to November 1, 2006. The Agency issued a notice in the **Federal Register** of October 25, 2006, extending the comment period for a second time to December 4, 2006. The Agency is now extending the comment period for a third time, to January 8, 2006.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0202 must be received on or before January 8, 2007.

ADDRESSES: Follow the detailed instructions for submitting comments as provided in the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 (71 FR 43746) (FRL–8066–6). In addition, comments may be submitted through the Federal Document Management System Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; e-mail address: *bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have 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 eour 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.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of August 2, 2006 (70 FR 43746) (FRL–8066–6) and later extended in the **Federal Registers** of September 29, 2006 (71 FR 57506) (FRL–8096–6) and October 25, 2006 (71 FR 62457) (FRL–8101–2). In the first notice, the Agency provided a 60–day comment period for public input on the reregistration decision for PCNB, particularly on the benefits associated with certain minor uses of PCNB. This original comment period was to close on October 2, 2006. EPA then extended the comment period twice more, first until November 1, 2006, and then to December 4, 2006. The Agency is hereby extending the comment period for a third time to January 7, 2007.The Agency is providing this third extension to allow public comment on two Phase 5 Response to Comments documents inadvertently omitted from and recently added to the docket.

III. What is the Agency's Authority for Taking this Action

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period.

However, the Administrator may extend the comment period if additional time for comment is requested.

List of Subjects:

Environmental protection, Pesticides and pests.

Dated: November 20, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division

[FR Doc. E6–20149 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–2006–0735; FRL–8249–5]

First Draft Staff Paper for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about December 4, 2006, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a first draft document, *Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information (Draft Staff Paper)*. The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, *Air Quality Criteria for Lead*, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for lead. On or about December 15, 2006, the OAQPS also will make available for public review and comment the related draft technical support document, *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas (Pilot Phase)*.

DATES: Comments on the draft Staff Paper and draft Risk Assessment must be received on or before January 26, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0735, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2006–0735.
- *Fax:* Fax your comments to: 202–566–1741, Attention Docket ID. No. EPA–HQ–OAR–2006–0735.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0735.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0735. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov*, or e-mail. The *www.regulations.gov* 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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744; fax (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pekar, Office of Air Quality Planning and Standards (mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *pekar.zachary@epa.gov*; telephone: (919) 541–3704; fax: (919) 541–0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Section 108(a) of the CAA directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *'' Under section 109 of the CAA, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. The EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. Presently, EPA is reviewing the criteria and NAAQS for lead. This review includes preparation of two key documents, the Air Quality Criteria for Lead (''Criteria Document'') and a related ''Staff Paper''. The EPA completed its final Criteria Document for lead in October 2006 (71 FR 57508; September 29, 2006).

The purpose of the first draft Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in the final Air Quality Criteria Document (AQCD) and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the AQCD and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

Availability of the first external review draft of the Air Quality Criteria for Lead (EPA/600/R–05/144aA–bA), was announced in the **Federal Register** on December 2, 2005 (70 FR 72300). The Clean Air Science Advisory Committee (CASAC) Lead Review Panel reviewed the first external review draft at a public meeting on February 28 and March 1, 2006.

The EPA considered comments of the CASAC review panel and the public in revising the draft AQCD for lead. Availability of the second external review draft of the Air Quality Criteria for Lead (EPA/600/R–05/144aB–bB), was announced in the **Federal Register** on May 19, 2006 (71 FR 29152). The CASAC Lead Review Panel reviewed the second external review draft at a public meeting on June 28, 2006. The EPA provided revised Integrative Synthesis and Executive Summary chapters of the draft AQCD for Lead to the public and CASAC for review in July 2006. The CASAC Lead Review Panel met via a publicly accessible teleconference on August 15, 2006, to review these revised chapters (71 FR 40516). The EPA has considered the comments of the CASAC Lead Review Panel and of the public in preparing the final Air Quality Criteria for Lead. The final AQCD for Lead was released in October, 2006 (71 FR 71 57508; September 29, 2006).

Based on the information contained in the AQCD, the draft Staff Paper includes assessments and analyses related to: (1) Air quality characterization; (2) integration and evaluation of health information; (3) exposure analysis; (4) health risk assessment; and (5) evaluation of information on vegetation damage and other welfare effects. The first draft Staff Paper contains no staff conclusions and recommendations with respect to possible revisions to the current standards. A second draft of the Staff Paper will include staff conclusions and recommendations on potential revision or retention of the primary (health-based) and secondary (welfare-based) lead NAAQS.

The draft technical support document *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas (Pilot Phase)* describes and present the results from a lead exposure analysis and health risk assessment involving several case study locations. A draft plan, *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Pb National Ambient Air Quality Standards*, was previously reviewed by CASAC and the public. Comments received on that plan have been considered in developing the *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas (Pilot Phase)* technical support document being released at this time. The exposure analysis and risk assessment methodologies and results are also discussed in the draft Staff Paper.

The EPA is soliciting early advice and recommendations from the CASAC by means of a consultation on the first draft Staff Paper and first draft Risk Assessment at an upcoming public meeting of the CASAC. A **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a second draft of the Staff Paper and the *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas (Full-Scale Phase)* technical support document. Preparation of this draft staff paper is consistent with the Agency meeting a court-ordered schedule for completion of the proposed rule (May 1, 2008) and final rule (September 1, 2008).

Dated: November 21, 2006.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–20220 Filed 11–28–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 15, 2006.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 29, 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 e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466 or via the Internet at *Allison_E._Zaleski@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License.

Form Number: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,217.

Estimated Time per Response: 0.67 hours—11.25 hours.

Frequency of Response: Eight-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 5,273 hours.

Total Annual Cost: $1,596,951.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 303–S is used in applying for renewal of a license for a commercial or non-commercial AM, FM, or TV broadcast station and FM translator, TV translator, low power TV (LPTV), or low power FM broadcast station. It can also be used to seek the joint renewal of licenses for FM or TV translator station and its co-owed primary FM, TV, or LPTV station. The form also can be used to seek the joint renewal of licenses for FM or TV translator station and its co-owed primary FM, TV, or LPTV station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20014 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 13, 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 of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 29, 2007. 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: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167, or via the Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1048.

Title: Section 1.929(c)(1), Computer Interference Contour (CIC).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 50.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirement and recordkeeping requirement.

Nature of Response: Required to obtain or retain benefits.

Total Annual Burden: 100 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours. Section 1.929(c)(1) requires any increase in the composite interference contour (CIC) [1] of a site-based licensee in the Paging and Radiotelephone Service, Rural Radiotelephone Service, or 800 MHz Specialized Mobile Radio Service is a major modification of a license that requires prior Commission approval. However, on April 28, 2003, the Commission released a Notice of Proposed Rulemaking (NPRM) in WT Docket No. 03–103 (68 FR 44003), which proposed to amend Section 1.929(c)(1) of the Commission's rules to specify that expansion of a composite

[1] A CIC connects the outmost points of the intersecting interference contour for the base station in a radio system. However, an incumbent's valid CIC does not include areas surrounded by the composite interior contour that are not part of the interference contours of the incumbent's individual sites. See Revision of Parts 22 and 90 of the Commission's Rules to Facilitate Future Development of Paging System's and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* 14 FCC Rcd 10030, 10055 ¶ 35 (1999).

interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water on a secondary, non-interference basis should be classified as a minor (rather than major) modification of a license. Such reclassification would eliminate the filing requirements associated with these license modifications, but require site-based licensees to provide the geographic area licensee (on the same frequency) with the technical and engineering information necessary to evaluate the site-based licensee's operation over water. The purpose of this collection is to enable the geographic licensee to have technical and engineering information regarding a site-based licensee's operations over water in order to guard against unacceptable interference to its own operations(s).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20015 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 16, 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 January 29, 2007. 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 e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0634.

Title: Section 73.691, Visual Modulation Monitoring.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 20.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 46 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.691(b) requires TV stations to enter into the station log the date and time of the initial technical problems that make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements. If this operation at variance is expected to exceed 10 consecutive days, a notification must be sent to the FCC. The licensee must also notify the FCC upon restoration of normal operations. Furthermore, a licensee must send a written request to the FCC if causes beyond the control of the licensee prevent restoration of normal operations within 30 days. The FCC staff use the data to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

OMB Control Number: 3060–1034.

Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service Broadcast Station Annual Employment Report.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,200.

Estimated Time per Response: 2 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 2,400 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In October 2002, the Commission released the First Report and Order (''Order''), Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, FCC 02–286, MM Docket 99–325, (67 FR 78193). Pursuant to this Order, the Commission selected in-band, on-channel (IBOC) as the technology that permits AM and FM radio broadcasters to introduce digital operations efficiently and rapidly. In addition, provisions of the Order required radio station licensees to provide information relative to implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary. Commercial and noncommercial AM and FM radio stations that choose to begin hybrid digital transmissions shall notify the Commission within 10 days of the commencement of digital operations. The notification letter shall certify that the digital operations conform to applicable rule and standards. Furthermore, implementation of the notification letter eliminates both the need for the FCC staff to issue a Special Temporary Authority (STA) to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20016 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 15, 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 of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 29, 2007. 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: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167, or via the Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1063.

Title: Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 19 respondents; 19 responses.

Estimated Time Per Response: 24 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirements.

Nature of Response: Mandatory.

Total Annual Burden: 483 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Entities may request confidential treatment of their applications and filings under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements, recordkeeping requirements, and third party disclosure requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance. There is no change in the number of respondents or burden hours. In 2003, the Federal Communications Commission (''Commission'') released a Second Report and Order (FCC 03–283) to adopt rules and policies pertaining to portable GMPCS transceivers, which include satellite telephones and other portable transceivers operated by end users for communication via direct radio links with satellites. The Commission requires interested parties to obtain equipment authorization pursuant to the certification procedures in part 2 of the Commission's rules. The part 2 certification procedure requires submission of an application (FCC Form 731) and exhibits to the Commission, including test data showing that a representative sample unit of the devices that would be covered by the certification, meets the Commission's applicable technical requirements.

Note: The FCC Form 731 is approved by the Office of Management and Budget (OMB) under OMB Control Number 3060–0057). The requirement applies to devices imported, sold, leased, shipped, or distributed after November 19, 2004. Without this collection of information, the Commission would not be able to prevent interference and reduce the radio-frequency (''RF'') radiation exposure risk of GMPCS devices.

OMB Control No.: 3060–1066.

Title: Renewal of Application for Satellite Space and Earth Station Authorization.

Form No: FCC Form 312–R.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 respondents; 6 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Nature of Response: Required to obtain or retain benefits.

Total Annual Burden: 12 hours.

Annual Cost Burden: $2,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance. There is no change in the number of respondents or burden hours or annual costs.

The FCC Form 312–R is used by earth station licensees to request renewals of their applications. The information collection requirements are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. All renewal earth station applications filed under part 25 are included in this collection. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20017 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 16, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 29, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1007.

Title: Streamlining and Other Revisions of part 25 of the Commission's Rules.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 28 respondents; 28 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion, annual and other reporting requirements and third party disclosure requirement.

Total Annual Burden: 9,688 hours.

Total Annual Cost: $95,194,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting or third party requirements) after this 60-day comment period to obtain the full three-year clearance from them. There is no change in the number of respondents, burden hours or annual costs.

The collection of information is used by the Federal Communications Commission (''Commission'') in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act and the World Trade Organization (WTO) Basic Telecom Agreement.

The information collection requirements accounted for in this collection are necessary to determine the technical, legal and financial qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. All satellite applications for both U.S. and non-U.S. entities are filed under part 25 of the Commission's rules. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control Number: 3060–1067.

Title: Qualification Questions.

Form No.: FCC Form 312–EZ.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,872 respondents; 3,872 responses.

Estimated Time Per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38,720 hours.

Total Annual Cost: $9,874,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting requirements) after this 60-day comment period to obtain the full three-year clearance from them. There is no change in the number of respondents, burden hours or annual costs.

The FCC Form 312–EZ is used by applicants for C-band and Ku-band earth stations who are eligible for the ''auto-grant'' procedure. This collection is used by the Commission in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act. This collection is also used by the Commission in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. All ''routine'' earth station applications that are consistent with all the technical requirements in part 25 applicable to earth stations, are included in this collection. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20019 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 21, 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 of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 29, 2007. 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: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167, or via the Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0270.

Title: Section 90.443, Content of Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 57,410 respondents; 57,410 responses.

Estimated Time Per Response: .083 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Nature of Response: Required to obtain or retain benefits.

Total Annual Burden: 4,765 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements and/or recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours.

Section 90.443 requires that each licensee of a station shall maintain records in accordance with the following: (1) For all stations, the results and dates of the transmitting measurements required by Section 90.215 of this part and the name of the person or persons making the measurements. (2) For all stations, the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records. (3) For private land stations that are interconnected with the public switched telephone network, the licensee must maintain a detailed description of how interconnection is accomplished. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request and (4) For shared land stations, the records as required by 47 CFR 90.179. The maintenance records may be used by the licensee or Commission field personnel to note any recurring equipment problems or conditions that may lead to degraded equipment and/or interference generation. Tower lighting records required are to ensure that the licensee is aware of the tower light condition and proper operation, in order to prevent and/or correct any hazards to air navigation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20242 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 22, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 29, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0496.

Title: The ARMIS Operating Data Report.

Report No.: FCC Report 43–08.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 56 respondents; 56 responses.

Estimated Time Per Response: 139 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 7,784 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, respondents are instructed on the appropriate procedures to follow to safeguard sensitive information. If respondents wish to submit information which they believe is confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting requirements) after this 60 day comment period to obtain the full three-year clearance from them.

ARMIS (Automated Reporting and Management Information Systems) was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The Operating Data Report, FCC Report 43–08, collects annual statistical data in a consistent format that is essential for the Commission to monitor network growth, usage, and reliability. The information contained in the ARMIS Report 43–08 provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data that are needed to administer its rules. Automating and organizing data submitted to the Commission facilitate the timely and efficient analysis of revenue requirements, rate of return and price caps, provide an improved basis for auditing and other oversight functions and enhance the Commission's ability to quantify the effects of policy proposals.

OMB Control Number: 3060–0895.

Title: Numbering Resource Optimization, CC Docket No. 99–200.

Form No.: FCC Form 502.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 2,780 respondents; 2,780 responses.

Estimated Time Per Response: 48 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 133,370 hours.

Total Annual Cost: $7,858,650.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Disaggregated, carrier specific forecast and utilization data will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. Section 552(b)(4).

Needs and Uses: The Commission will submit this information collection to OMB as a revision after this 60 day comment period to obtain the full three-year clearance from them. Carriers that receive numbering resources from the North American Numbering Plan (NANP) Administrator or that receive numbering resources from the Pooling Administrator in thousand-blocks must report forecast and utilization data semi-annually. These carriers are also required to maintain detailed internal records of their number usage. Carriers must file applications for initial and growth numbering resources. The information will be used by FCC, state regulatory commissions, and the NANP administrator to monitor numbering resource utilization and to project the date of area code and NANP exhaust. The total annual burden hours have been reduced to adjust for the elimination of a one-time reporting requirement for cost data support.

OMB Control Number: 3060–0942.

Title: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 759 respondents; 759 responses.

Estimated Time Per Response: 28.09 hours (average).

Frequency of Response: On occasion, annual, quarterly reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 21,321 hours.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission or to USAC. If the Commission requests respondents to submit information to the Commission that the respondents believe are confidential, respondents may request confidential treatment of such information pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting requirements, recordkeeping requirement and/or third party disclosure requirement) after this 60 day comment period to obtain the full three-year clearance from them.

When the Commission adopted a Report and Order, it took action to further accelerate the development of competition in the local and long-distance telecommunications market, and to further establish explicit universal service support that will be sustainable in an increasingly competitive marketplace, pursuant to the mandate of the Telecommunications Act of 1996 (1996 Act). The Commission requires the following information to be reported under the Coalitions for

Affordable Local and Long Distance Service (CALLS) Proposal: tariff filing, quarterly and annual data filings and cost support information.

OMB Control Number: 3060–1044.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01–338 and WC Docket No. 04–313, Order on Remand.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 645 respondents; 645 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,160 hours.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Cost: $103,200.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. However, in certain circumstances, respondents may voluntarily choose to submit confidential information pursuant to applicable confidentiality rules.

Needs and Uses: The Commission will submit this information collection to OMB as a revision after this 60 day comment period to obtain the full three-year clearance from them.

In FCC 03–36 (*Order*) the Commission adopted rules and regulations designed to eliminate operational barriers to competition in the telecommunications services market and implement certain provisions of Section 251, including the unbundled network elements (UNE) obligations of incumbent local exchange carriers (LECs). In the *Order on Remand* (FCC 04–290) the Commission responded to a decision by the United States Court of Appeals for the District of Columbia that vacated the ''sub-delegation'' of authority to state commissions and vacated and remanded certain nationwide impairment findings, including mass market switching and dedicated transport. This resulted in the removal of the ''State Commission UNE Proceeding'' section of this collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20243 Filed 11–28–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–71-A (Auction No. 71); DA 06–2298; AU Docket No. 06–206]

Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 71

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain broadband Personal Communications Services (PCS) licenses scheduled to commence on May 16, 2007 (Auction No. 71). This document also seeks comments on competitive bidding procedures for Auction No. 71.

DATES: Comments are due on or before December 4, 2006, and reply comments are due on or before December 11, 2006.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 06–206; DA 06–2298. The Bureau request that a copy of all comments and reply comments be submitted electronically to the following address: auction71@fcc.gov. In addition, comment and reply comments may be submitted by any of the following methods:

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, *Attn:* WTB/ASAD, 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. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. 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.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, *for auctions legal questions:* Stephen Johnson at (202) 418–0660. *For general auction questions:* Roy Knowles or Linda Sanderson at (717) 338–2888. Mobility Division, *for service rules questions:* Erin McGrath or Michael Connelly (legal) or Dwain Livingston (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 71 Comment Public Notice* released on November 17, 2006. The complete text of the *Auction No. 71 Comment Public Notice,* including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 71 Comment Public Notice,* including attachments and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number for example, DA 06–2298. The *Auction No. 71 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/71/.*

I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 38 broadband PCS licenses. This auction, which is designated Auction No. 71, is scheduled to commence on May 16, 2007.

II. Licenses To Be Offered in Auction No. 71

2. The spectrum to be auctioned has been offered previously in other auctions but was unsold and/or returned to the Commission as a result

of license cancellation or termination. A complete list of licenses available for Auction No. 71 is included as Attachment A of the *Auction No. 71 Comment Public Notice.*

3. Auction No. 71 includes licenses for A, C, D, E, and F blocks of broadband PCS spectrum. The table referenced in the *Auction No. 71 Comment Public Notice* cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in these blocks. That table indicates that the C and F block licenses are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 2000 decennial census figures, and Tier 2 comprising the remaining markets. No Tier 1 licenses will be offered in Auction No. 71. C1, C2, C3, and C4 licenses in Tier 2 are generally available only to entrepreneurs in closed bidding. This eligibility restriction no longer applies, however, to licenses that have been made available on that basis, but not won, in any auction beginning on or after March 23, 1999. Thus, certain licenses that were formerly subject to closed bidding and available only to entrepreneurs are now offered in open bidding in Auction No. 71.

4. Attachment A of the *Auction No. 71 Comment Public Notice* list C block licenses being offered that are available to all bidders in open bidding, while others are available only to entrepreneurs in closed bidding. The A, B, E, and F block licenses, as well as certain C block licenses, are available in open bidding. Size-based bidding credits will be available for C and F block licenses won in open bidding. In order to qualify as an entrepreneur for closed bidding, an applicant, including attributable investors and affiliates, must have had gross revenues of less than $125 million in each of the last two years and must have less than $500 million in total assets. Size-based bidding credits are not available for C block licenses won in closed bidding or for licenses in the A, D, or E blocks.

5. Because of the previous history of licenses for broadband PCS spectrum, certain of the licenses available in Auction No. 71 cover less bandwidth and fewer frequencies than noted in the table referenced in the *Auction No. 71 Comment Public Notice.* In addition, in some cases, licenses are available for only part of a market.

6. *Incumbency Issues.* While much of the private and common carrier fixed microwave services (FMS) operating in the 1850–1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders.

III. Bureau Seeks Comment on Auction Procedures

7. The Bureau seeks comment on the following issues relating to Auction No. 71.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

8. The Bureau proposes to auction all licenses included in Auction No. 71 using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

9. *Auction Format.* The Bureau has considered the possibility of using a simultaneous multiple-round auction format with package bidding (SMR–PB), but does not believe that an SMR–PB format is likely to offer significant advantages to bidders in Auction No. 71, given the nature of the auction inventory. Under the Commission's SMR–PB rules, bidders can place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them. The Bureau's standard SMR auction format offers all licenses for bid at the same time, and allows bidders to bid on and win multiple licenses on a license-by-license basis, thereby facilitating aggregations. The Bureau believes use of the SMR format for Auction No. 71 will be the simplest and most efficient means of auctioning the licenses in this inventory, and therefore, the Bureau proposes to conduct the auction using its standard SMR auction format. However, if commenters believe that the SMR–PB design would offer significant benefits, the Bureau invites their comments and request that they describe what specific factors lead them to that conclusion.

10. *Information Available to Bidders Before and During an Auction.* The Bureau also seeks comment on whether to implement procedures that would limit the disclosure of information on bidder interests and identities relative to the information procedures that have typically been used for Commission auctions. Commenters should indicate what factors support the position they take on this issue and specifically, how these factors apply to an auction of this nature, with a limited number of localized, mostly geographically non-contiguous licenses. Commenters should address whether technological considerations, equipment availability, or competitive concerns weigh in favor of or against limiting the disclosure of information on bidder interests and identities relative to most past Commission spectrum auctions, or whether the Commission should condition the implementation of such limits on a measure of the competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

ii. Round Structure

11. The Commission will conduct Auction No. 71 over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

12. The auction will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

13. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. The Bureau seeks comment on this proposal.

iii. Stopping Rule

14. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 71, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain

open on all licenses until bidding stops on every license.

15. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 71: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining waiver; and (c) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

16. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau proposes to retain the discretion to use such stopping rule with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

17. For Auction No. 71, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

18. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using a formula based on bandwidth and license area population: $0.05 * MHz * License Area Population with a minimum of $500 per license.

19. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 71 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

20. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A of the *Auction No. 71 Comment Public Notice.* The Bureau seeks comment on these proposals.

ii. Activity Rule

21. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

22. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue. The Bureau seeks comment on these proposals.

23. For Auction No. 71, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's

bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

24. The Bureau seeks comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

25. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

26. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

27. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

28. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

29. The Bureau proposes that each bidder in Auction No. 71 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

30. The Bureau proposes to establish minimum opening bid amounts for Auction No. 71. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose a separate reserve price for the licenses to be offered in Auction No. 71.

31. Specifically, for Auction No. 71, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population as follows: $0.05 * MHz * License Area Population with a minimum of $500 per license. This proposed minimum opening bid amount for each license available in Auction No. 71 is set forth in Attachment A of the *Auction No. 71 Comment Public Notice*. The Bureau seeks comment on this proposal.

32. If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau seeks comment on whether, consistent with Section 309(j) of the Communications Act, the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

33. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.

34. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

35. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round,

based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B of the *Auction No. 71 Comment Public Notice*.

36. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0.1), rounded, or (minimum acceptable bid amount) * 1.1, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.2, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.3, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using its standard rounding procedures. For Auction No. 71, the Bureau proposes to use a bid increment percentage of ten percent to calculate the eight additional acceptable bid amounts.

37. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on its proposals for minimum acceptable bids amount and additional percentages as described in the *Auction No. 71 Comment Public Notice*.

vi. Provisionally Winning Bids

38. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

39. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

40. For Auction No. 71, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

41. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

42. The Bureau proposes to limit each bidder to withdrawing provisionally winning bids in no more than two rounds during the course of the auction. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

C. Post-Auction Procedures

i. Establishing the Interim Withdrawal Payment Percentage

43. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent and twenty percent.

44. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with interest in deterring abuses of its bidding, the Bureau proposes a percentage below the

maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at fifteen percent for this auction. The Bureau seeks comment on this proposal.

ii. Establishing the Additional Default Payment Percentage

45. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

46. The *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, modified § 1.2104(g)(2) by, *inter alia*, increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

47. For Auction No. 71, the Bureau proposes to establish an additional default payment of ten percent. Balancing these considerations, the Bureau proposes an additional default payment of ten percent of the relevant bid. The Bureau seeks comment on this proposal.

IV. Conclusion

48. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

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FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Mediation and Conciliation Service

ACTION: Notice of Forms R–22, R–19, R–43 and F–7 to be submitted for extension to the Office of Management and Budget.

SUMMARY: This notice announces that four information collection requests contained among the Federal Mediation and Conciliation Service (FMCS) agency forms have come up for renewal. FMCS will submit to the Office of Management and Budget (OMB) a request for review of these four FMCS forms: Arbitrator's Report and Fee Statement (Agency Form R–19), Arbitrator's Personal Data Questionnaire (Agency Form R–22), Request for Arbitration Services (Agency Form R–43) and Notice to Mediation Agencies (Agency Form F–7). The request will seek OMB approval for a three-year extension with an expiration date of January 31, 2010, for Forms R–19, R–22, R–43 and F–7. FMCS is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be submitted on or before January 29, 2007.

ADDRESSES: Submit written comments by mail to the Office of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed **FOR FURTHER INFORMATION CONTACT**.

Comments may be submitted also by fax at (202) 606–3749 or electronic mail (e-mail) to *arbitration@fmcs.gov.* All comments must be identified by the appropriate agency form number.

No confidential business information (CBI) should be submitted through e-mail. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential publicly without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: Copies of each of the agency forms are available from the Office of Arbitration Services by calling, faxing or writing Vella M. Traynham at the address above. Please ask for the form by title and agency form number.

I. Information Collection Requests

FMCS is seeking comments on the following Information Collection Requests (ICRs).

Title: Arbitrator's Personal Data Questionnaire; Form R–22; OMB No. 3076–0001; Expiration date: January 31, 2006.

Type of Request: Extension of a previously approved collection with no change in the substance or method of collection.

Affected Entities: Parties affected by this information collection are individuals who apply for admission to the FMCS Roster of Arbitrators.

Frequency: Individuals complete this form once, which is at the time of application to the FMCS Roster of Arbitrators.

Abstract: Title II of the Labor Management Relations Act of 1947 (Pub. L. 90–101) as amended in 1959 (Pub. L. 86–257) and 1974 (Pub. L. 93–360), states that it is the labor policy of the United States that ''the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all

reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes'' 29 U.S.C. 201(b). Under its regulations at 29 CFR part 1404, FMCS has established policies and procedures for its arbitration function dealing with all arbitrators listed on the FMCS Roster of Arbitrators, all applicants for listing on the Roster, and all person or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or fact-finding. FMCS strives to maintain the highest quality of dispute resolution experts on its Roster. To ensure that purpose, it asks all candidates to complete an application form. The purpose of this collection is to gather information about applicants for inclusion in the FMCS Roster of Arbitrators. This questionnaire is needed in order that FMCS may select highly qualified individuals for the arbitrator Roster. The respondents are private citizens who make application for appointment to the FMCS Roster.

Burden Statement: The number of respondents is approximately 100 individuals per year, which is the approximate number of individuals who request membership on the FMCS Roster. The time required to complete this questionnaire is approximately one hour. Each respondent is required to respond only once per application and to update the information as necessary.

Title: Arbitrator's Report and Fee Statement; Form R–19; OMB No. 3076–0003; Expiration date: January 31, 2006.

Type of Request: Extension of a previously approved collection with no change in the substance or method of collection.

Affected Entities: Individual arbitrators who render decisions under FMCS arbitration policies and procedures.

Frequency: This form is completed each time an arbitrator hears an arbitration case and issues a decision.

Abstract: Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS assumes a responsibility to monitor the work of the arbitrators who serve on its Roster. This is satisfied by requiring the completion and submission of a Report and Fee Statement, which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, if there were any waivers by parties on the date the award was due, and the fees and days for services of the arbitrator. This information is contained in the agency's annual report to indicate the types of arbitration issues resolved, the applicable average or median arbitration fees and days spent on each case.

Burden Statement: FMCS receives approximately 2500 responses per year. The form is filled out each time an arbitrator hears a case and the time required is approximately ten minutes. FMCS uses this form to review arbitrator conformance with its fee and expense reporting requirements.

Title: Request for Arbitration Services; Form R–43; OMB No. 3076–0002; Expiration date: February 28, 2006.

Type of Request: Extension of a previously approved collection with no changes in the substance or method of collection.

Affected Entities: Employers and their representatives, and labor unions, their representatives and employees, who request arbitration services.

Frequency: This form is completed each time an employer or labor union requests a panel of arbitrators.

Abstract: Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with fact finding and interest arbitration issues as well. The need for this form is to obtain information such as name, address and type of assistance desired, so that FMCS can respond to requests efficiently and effectively for various arbitration services. The purpose of this information collection is to facilitate the processing of the parties' request for arbitration assistance. No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The current total annual burden estimate is that FMCS will receive requests from approximately 10,000 respondents per year. The form takes about 10 minutes to complete.

Title: Notice to Mediation Agencies; Form F–7; OMB No. 3076–0004; Expiration date: January 31, 2006.

Type of Request: Extension of a previously approved collection with no changes in the substance or method of collection.

Affected Entities: Parties affected by this information collection are private sector employers and labor unions involved in interstate commerce that file notices for mediation services to the FMCS and State, local and territorial agencies.

Frequency: Parties complete this form once, which is at the time of an impending expiration of a collective bargaining agreement.

Abstract: Under the Labor Management Relations Act of 1947, 29 U.S.C. 158(d), Congress listed specific notice provisions so that no party to a collective bargaining agreement can terminate or modify that contract, unless the party wishing to terminate or modify the contract sends a written notice to the other party sixty days prior to the expiration date (29 U.S.C. 158(d)(1)), and offers to meet and confer with the other party for the purpose of negotiating a new or modified contract (29 U.S.C. 158(d)(2)). Furthermore, the Act requires that parties notify the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute and simultaneously notify any State or Territory where the dispute occurs (29 U.S.C. 158(d)(3)). The 1974 amendments to the National Labor Relations Act, which extended coverage to nonprofit health care institutions, also created a notification procedure in the health care industry requiring parties to notify each other 90 days in advance of termination and 60 days in advance to FMCS (29 U.S.C. 158(d)). This amendment also requires 30-day notification of bargaining for an initial agreement to the FMCS. To facilitate handling of more than 18,000 such notices a year, FMCS created a specific information collection form. The purpose of this information collection activity is for FMCS to comply with its statutory duty to receive these notices, to facilitate assignment of mediators to assist in labor disputes, and to assist the parties in knowing whether or not proper notice was given. The information from these notices is sent electronically to the appropriate field manager who assigns the cases to a mediator so that the mediator may contact labor and management quickly, efficiently, and offer dispute resolution services. Either party to a contract may make a request in writing for a copy of the notice filed with FMCS. The F–7 form was created to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of the employer or employer association, address and phone number, e-mail address, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry or type of business, principal product or service, union address, phone number, e-mail address and official contact, contract expiration date or renewal date, whether the notice is on file on behalf of the employer or the

union, and whether this is a health care industry notice for an initial contract, is critical for reporting and mediation purposes.

Burden Statement: The current annual burden estimate is approximately 18,000 respondents. This one-page form takes about 10 minutes to complete.

II. Request for Comments

FMCS solicits comments to:

(i) 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.

(ii) Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official record is the paper electronic record maintained at the address at the beginning of this document. FMCS will transfer all electronically received comments into printed-paper form as they are received.

Dated: November 24, 2006.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. E6–20207 Filed 11–28–06; 8:45 am]

BILLING CODE 6732–01–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 December 15, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Garry D. Peterka, Miller, South Dakota and Dan R. Peterka, Eden Prairie, Minnesota, individually, and as part of a group in concert with Jerry A. Peterka, Marianne D. Peterka, HoniAnn Peterka, Lori A. Peterka, Howard J. Peterka, Michael T. Peterka, Ryan A. Peterka, Kristen N. Peterka, Adam J. Peterka, David J. Peterka, Tom J. Peterka, Jordan D. Peterka, Darin M. Peterka, and Jena N. Peterka, all of Miller, South Dakota; Judy K. Dylla, Ann M. Dylla, Bernie G. Dylla, and Mark J. Dylla, all of Littleton, Colorado; Kathy A. King, Stephen J. King, Brian P. King, and Gary P. King, all of Apple Valley, Minnesota; Patricia A. Friend Peterka, Jeffrey D. Peterka, John A. Peterka, and Kathryn M. Peterka, all of Eden Prairie, Minnesota; and Susan A. King Borchardt, Castlerock, Colorado; to acquire voting shares of M&H Financial Services and thereby indirectly acquire First State Bank of Miller, both of Miller, South Dakota.

Board of Governors of the Federal Reserve System, November 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–20233 Filed 11–28–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Mercantile Bankshares Corporation, Baltimore, Maryland, and thereby indirectly acquire: Marshall National Bank and Trust Company, Marshall, Virginia; The National Bank of Fredricksburg, Fredricksburg, Virginia; The Annapolis Banking and Trust Company, Annapolis, Maryland; Mercantile Eastern Shore Bank, Kent, Maryland; Westminster Union Bank, Carroll, Maryland; Mercantile County Bank, Cecil, Maryland; Mercantile Southern Maryland Bank, Leonardtown, Maryland; The Citizens National Bank, Laurel, Maryland; Mercantile Peninsula Bank, Selbyville, Delaware; Farmers & Mechanics Bank, Fredrick, Maryland; and Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland.

Board of Governors of the Federal Reserve System, November 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–20234 Filed 11–28–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Privacy Act System of Records

AGENCY: General Services Administration

ACTION: Notice of proposed system of records.

SUMMARY: The General Services Administration (GSA), Public Buildings Service (PBS) proposes to establish a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system

of records, eLease (GSA/PBS-5), is an electronic system for managing Federal real property leases and for tracking leasing projects and associated documents. The system will ensure that the leasing program collects, assembles, and maintains information necessary for efficient and cost effective operation, control, and management of Federal leasing by PBS. The system will include personal information of individuals who engage in leasing activities with PBS.

DATES: The system of records will become effective on January 8, 2007 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments should be directed to the eLease Program Manager, Systems Development Division (PGAB), Office of the PBS Chief Information Officer, General Services Administration, 1800 F Street NW, Washington DC 20405.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405; telephone (202) 501–1452.

Dated: October 25, 2006.

Cheryl M. Paige,

Acting Director, Office of Information Management.

GSA/PBS–5

SYSTEM NAME:

eLease

SYSTEM LOCATION:

The system records and documents are maintained at the Enterprise Service Center of the GSA Public Buildings Service (PBS). Contact the System Manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system maintains information on individuals, as well as businesses, who have made an offer on a PBS lease solicitation or who have entered into a contract with PBS regarding a building lease.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains information required throughout the lifecycle of a PBS building lease including information about leases, offerors, and lessors. In addition to business contact and identification information (address, telephone number, and Taxpayer Identification Number (TIN)), the system includes personal information on individuals who use personal contact and identification information (home address, telephone, e-mail, and fax numbers, and Social Security Number) for business purposes as sole proprietors.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act, as amended (40 U.S.C. Sec. 585).

PURPOSE:

To establish and maintain a system for operating, controlling, and managing the Federal property leasing program; tracking leasing projects and workflow activities; and managing associated documents.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees and contractors to conduct official duties associated with Federal government building leases. Information from this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.

e. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

f. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

System records and documents are electronically stored on servers and/or compact discs.

RETRIEVABILITY:

Records may be retrieved by name and/or other personal identifier or appropriate type of designation.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the eLease System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the data. Security measures include password protections, assigned roles, and transaction tracking.

RETENTION AND DISPOSAL:

Disposition of records will be according to the National Archives and Records Administration (NARA) guidelines, set forth in the GSA Records Maintenance and Disposition System (OAD P 1820.2A) handbook.

SYSTEM MANAGER AND ADDRESS:

eLease Program Manager, Systems Development Division (PGAB), Office of the PBS Chief Information Officer, General Services Administration, 1800 F Street NW, Washington DC 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about their records from the eLease Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the eLease Program Manager. GSA rules for individuals requesting access to their records are published in 41 CFR part 105–64.

CONTESTING RECORD PROCEDURES:

Individuals may contest their records' contents and appeal determinations according to GSA rules published in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who are offerors or lessors of GSA PBS building leases.

[FR Doc. E6–20201 Filed 11–28–06; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Court Improvement Program—New Grants.

OMB No.: 0970–0307.

Description: The President signed the Deficit Reduction Act of 2005 (DRA), Public Law 109–171, into law on February 8, 2006. The law authorizes and appropriates funds for two new grants under the Court Improvement Program in title IV–B, section 438, of the Social Security Act. The highest State court in a State with an approved title IV–E plan is eligible to apply for either or both of the new grants. The new grants are for the purposes of (1) Ensuring that the needs of children are met in a timely and complete manner through improved case tracking and analysis of child welfare cases, and (2) training judges, attorneys, and other legal personnel in child welfare cases and conducting cross-training with child welfare agency staff and contractors.

The DRA requires separate applications for these two new grants. The annual burden estimates below describe the estimated annual burden for the two new grants. The Administration for Children and Families (ACF) proposes to collect information from the States about their work under these grants (applications, program reports) by way of a Program Instruction that was issued on June 15, 2006. This Program Instruction described the programmatic and fiscal provisions and reporting requirements for each of the grants, specified the application submittal and approval procedures for the grants for fiscal years 2006 through 2010, and identified technical resources for use by State courts during the course of the grants. ACF will use the information received to ensure compliance with the DRA and provide training and technical assistance to the grantees.

Respondents: State courts.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden huors per response	Total burden hours
Application	52	2	40	4,160
Annual Program Report	52	2	36	3,744

Estimated Total Annual Burden Hours: 7,904.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Karen_Y._Matsuoka@omb.eop.gov.*

Dated: November 21, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–9440 Filed 11–28–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0097]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study of Qualified Health Claims: Consumer Inferences About Monounsaturated Fatty Acids From Olive Oil, EPA and DHA Omega-3 Fatty Acids, and Green Tea

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Experimental Study of Qualified Health Claims: Consumer Inferences About Monounsaturated Fatty Acids From Olive Oil, [eicosapentaenoic acid] EPA and [docosahexaenoic acid] DHA Omega-3 Fatty Acids, and Green Tea'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 22, 2006 (71 FR 29340), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0592. The approval expires on November 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 22, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–20200 Filed 11–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 15, 2006, from 8 a.m. to 3:30 p.m.

Location: Crown Plaza Silver Spring, 8777 Georgia Ave., Silver Spring, MD. The hotel telephone number is 301–589–0800.

Contact Person: William Freas, or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 15, 2006, the committee will discuss FDA's risk assessment for potential exposure to variant Creutzfeldt-Jakob disease in human plasma-derived antihemophilic factor (FVIII) products manufactured from U. S. plasma donors and related communication materials. In the afternoon, the committee will discuss levels of transmissible spongiform encephalopathy clearance in the manufacture of plasma-derived Factor VIII products. FDA intends to make background material available to the public no later than one business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2006 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 11, 2006. Oral presentations from the public will be scheduled between approximately 10:25 and 10:55 a.m. and 1:35 and 2:05 p.m. on December 15, 2006. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 7, 2006. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 8, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Rosanna L. Harvey at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 22, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–20251 Filed 11–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; 67 FR 46519, July 15,2002; and 68 FR 787–793, January 7, 2003; 68 FR 64357–64357, November 13, 2003; 68 FR 64357–64357–64358, and as last amended at 70 FR 42347–42348, July 22, 2005.)

This notice reflects organizational changes in the Health Resources and Services Administration, Bureau of Primary Health Care (RC). Specifically, this notice updates the functional statements of the Bureau of Primary Health Care.

Chapter RC—Office of the Associate Administrator

Section RC–10, Organization

Delete in its entirety and replace with the following: The Bureau of Primary Health Care (BPHC) is headed by an Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Bureau of Primary Health Care includes the following components:

(1) Office of the Associate Administrator (RC);

(2) Office of Minority and Special Populations (RCG);

(3) Office of Policy and Program Development (RCH);

(4) Office of Quality and Data (RCK);

(5) Office of Administrative Management (RCM);

(6) Eastern Division (RCN);

(7) Central Mid-Atlantic Division (RCP);

(8) Western Division (RCQ);

(9) Division of National Hansen's Disease Programs (RC7); and

(10) Division Immigration Health Service (RC9).

Section RC–20, Functions

(1) Delete the functional statement for the Office of the Associate Administrator (RC) and replace in its entirety; (2) Establish the Office of Administrative Management (RCM); (3) Delete the Division of Health Center Management (RCJ) in its entirety and replace with the following new Divisions: Eastern Division (RCN), Central Mid-Atlantic Division (RCP), and Western Division (RCQ); (4) Delete the Division of State and Community Assistance (RCL) in its entirety; (5) Re-title the Division of Policy and Development (RCH) as the Office of Policy and Program Development (RCH) and replace its functional statement in its entirety; (6) Re-title the Division of Clinical Quality (RCK) as the Office of Quality and Data (RCK) and replace its functional statement in its entirety; and (7) Delete the functional statement for the Office of Minority and Special Populations (RCG) and replace in its entirety.

Office of the Associate Administrator (RC)

Provides overall leadership, direction, coordination, and planning in support of Bureau programs: (1) Establishes program goals, objectives and priorities, and provides oversight as to their execution; (2) plans, directs, coordinates and evaluates Bureau-wide management activities; and (3) maintains effective relationships within HRSA and with other Department of Health and Human

Services (HHS) organizations, other Federal agencies, State and local governments, and other public and private organizations concerned with primary health care, eliminating health disparities, and improving the health status of the Nation's underserved and vulnerable populations.

Office of Minority and Special Populations (RCG)

Serves as the organizational focus for the coordination of Bureau activities relating to the delivery of health services to minority and special populations, including migrant and seasonal farmworkers, homeless persons, and residents of public housing. Specifically, (1) ensures that the needs and special circumstances of minority and special populations and the provider organizations that serve them are addressed in BPHC programs and policies; (2) advises BPHC about the needs of minority and special populations; (3) identifies, provides and coordinates assistance to communities, community-based organizations and BPHC programs related to the development, delivery and expansion of services targeted to minority and special populations; (4) coordinates Bureau activities for minority and special populations within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations concerned with primary health care, eliminating health disparities, and improving the health status of the Nation's underserved and vulnerable populations; and (5) provides support to the National Advisory Council on Migrant Health.

Office of Policy and Program Development (RCH)

Serves as the organizational focus for the development of BPHC policies and programs. Specifically, (1) leads and monitors the development and expansion of health centers and health systems infrastructure; (2) identifies, provides and coordinates assistance to communities, community-based organizations and BPHC programs related to the development and expansion of health centers and health systems infrastructure; (3) manages the Bureau's loan guarantee program; (4) oversees and coordinates the Federally Qualified Health Center (FQHC) Look-Alike program; (5) leads and coordinates the analysis, development and drafting of policy impacting BPHC's programs; (6) consults and coordinates with other components within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations on issues affecting BPHC's policies and programs; (7) performs environmental scanning on issues that affect BPHC's programs; (8) monitors BPHC's activities in relation to HRSA's Strategic Plan; and (9) serves as the Bureau's focal point for communication and program information.

Office of Quality and Data (RCK)

Serves as the organizational focus for quality and program performance reporting. Specifically, (1) provides leadership for implementing BPHC clinical and quality strategies; (2) oversees BPHC Federal Tort Claims Act (FTCA) malpractice programs, clinical, quality improvement, risk management, and patient safety activities to improve policies and programs for primary health care services; (3) serves as the Bureau's focal point for the design and implementation of data systems to assess and improve program performance, including health information technology systems; (4) coordinates BPHC clinical, quality, workforce, health information technology, and performance reporting activities within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations concerned with primary health care, eliminating health disparities, and improving the health status of the Nation's underserved and vulnerable populations; and (5) identifies, provides and coordinates assistance to BPHC programs around clinical, quality and performance reporting activities.

Office of Administrative Management (RCM)

Plans, directs and coordinates Bureau-wide administrative management activities and has responsibilities related to the awarding of BPHC grant funds. Specifically, (1) serves as the Bureau's principal source for administrative and management advice and assistance; (2) formulates budget justifications for BPHC's programs and provides input into the analysis of BPHC budget execution; (3) provides advice, guidance and coordinates personnel activities for the Bureau including EEO, timekeeping, labor relations, and ethics; (4) provides organization and management analysis, coordinating the allocation of personnel resources, developing policies and procedures for internal operation, and interpreting and implementing the Bureau's management policies, procedures and systems; (5) develops and coordinates Bureau program and administrative delegations of authority activities; (6) provides guidance to the Bureau on financial management activities; (7) provides Bureau-wide support services such as continuity of operations and emergency planning, employee training, contracts, procurement, supply management, equipment utilization, printing, property management, space management, records management, and management reports; (8) performs a range of functions relating to the awarding of appropriated funds, working on recommended grant actions, and maintaining commitment levels for Bureau grantees and programs; (9) serves as the Bureau's Executive Secretariat; and (10) maintains effective relationships within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations.

Eastern Division (RCN)

Manages BPHC primary health care grant programs and activities within HHS Regions 1, 2 and 4. Specifically, for regions 1, 2 and 4: (1) Manages the post-award administration of the Bureau's primary health care grant programs; (2) serves as the BPHC representative to organizations receiving Bureau grants; (3) promotes a continued focus on efficient and effective care for underserved and vulnerable populations; (4) communicates and interprets program statutory/regulatory requirements, policy, expectations and reporting requirements, providing technical guidance to grantees on the management and integration of community-based systems of care, the adaptation of successful strategies/models, and the resolution of difficult issues; (5) monitors the performance of BPHC primary health care grantees, making programmatic recommendations and providing assistance to improve performance, where appropriate; (6) reviews findings and recommendations of periodic and episodic grantee assessments, developing actions needed to assure continuity of services to underserved and vulnerable populations and appropriate use of Federal resources; (7) identifies, provides and coordinates training and technical assistance activities for BPHC primary health care grant programs, including State-based training and technical assistance; (8) conducts State and regional surveillance on issues that affect BPHC grant programs; and (9) provides consultation to and coordinates activities within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations involved in the implementation of program activities.

Central Mid-Atlantic Division (RCP)

Manages BPHC primary health care grant programs and activities within HHS Regions 3, 5 and 6. Specifically, for regions 3, 5 and 6: (1) Manages the post-award administration of the Bureau's primary health care grant programs; (2) serves as the BPHC representative to organizations receiving Bureau grants; (3) promotes a continued focus on efficient and effective care for underserved and vulnerable populations; (4) communicates and interprets program statutory/regulatory requirements, policy, expectations and reporting requirements, providing technical guidance to grantees on the management and integration of community-based systems of care, the adaptation of successful strategies/models, and the resolution of difficult issues; (5) monitors the performance of BPHC primary health care grantees, making programmatic recommendations and providing assistance to improve performance, where appropriate; (6) reviews findings and recommendations of periodic and episodic grantee assessments, developing actions needed to assure continuity of services to underserved and vulnerable populations and appropriate use of Federal resources; (7) identifies, provides and coordinates training and technical assistance activities for BPHC primary health care grant programs, including State-based training and technical assistance; (8) conducts State and regional surveillance on issues that affect BPHC grant programs; and (9) provides consultation to and coordinates activities within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations involved in the implementation of program activities.

Western Division (RCQ)

Manages BPHC primary health care grant programs and activities within HHS Regions 7, 8, 9 and 10. Specifically, for regions 7, 8, 9 and 10: (1) Manages the post-award administration of the Bureau's primary health care grant programs; (2) serves as the BPHC representative to organizations receiving Bureau grants; (3) promotes a continued focus on efficient and effective care for underserved and vulnerable populations; (4) communicates and interprets program statutory/regulatory requirements, policy, expectations and reporting requirements, providing technical guidance to grantees on the management and integration of community-based systems of care, the adaptation of successful strategies/models, and the resolution of difficult issues; (5) monitors the performance of BPHC primary health care grantees, making programmatic recommendations and providing assistance to improve performance, where appropriate; (6) reviews findings and recommendations of periodic and episodic grantee assessments, developing actions needed to assure continuity of services to underserved and vulnerable populations and appropriate use of Federal resources; (7) identifies, provides and coordinates training and technical assistance activities for BPHC primary health care grant programs, including State-based training and technical assistance; (8) conducts State and regional surveillance on issues that affect BPHC grant programs; and (9) provides consultation to and coordinates activities within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations involved in the implementation of program activities.

Section RC–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

November 7, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–20171 Filed 11–28–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, December 12, 2006, 2 p.m. to December 12, 2006, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 3, 2006, FR–06–9030.

The December 12, 2006 meeting date was changed to December 11, 2006. The meeting is closed to the public.

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9457 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Closed 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 the following 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Childhood Asthma Follow-up Study.

Date: November 28, 2006.

Time: 10 a.m. to 1 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: Valerie L. Prenger, PhD, Health Scientist Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924. (301) 435–0270. *prengerv@nhlbi.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resource Research, National Institute of Health, HHS)

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9458 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 the following 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 Institute of Mental Health Special Emphasis Panel; MLSCN HTS Assay.

Date: December 14, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yon Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *yyao@mail.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9455 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cystic Fibrosis Research and Translation Core Centers (P30).

Date: January 10, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health; Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8894. *matsumotod@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9456 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 the following 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 Institute on Drug Abuse Special Emphasis Panel; Pathway to independence (PI) Award.

Date: December 11, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute of Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401. 301–402–6626. *gm145a@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9459 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed 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 the following 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 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

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; G08 Re-Review.

Date: December 1, 2006.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–496–4253. *petrosia@mail.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 21, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9460 Filed 11–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Policy Directorate; Homeland Security Advisory Council—Secure Borders and Open Doors Advisory Committee

[Docket No. DHS–2006–0072]

AGENCY: Policy Directorate, DHS.

ACTION: Notice of Federal Advisory Committee Subcommittee Meeting.

SUMMARY: The Secure Borders and Open Doors Advisory Committee, a subcommittee of the Homeland Security Advisory Council, will meet to receive progress reports on various programs and initiatives and to hold member deliberations. In the public interest and in an attempt to maximize openness, the Department of Homeland Security (DHS) is opening part of this meeting to the public even though Federal advisory committee subcommittee meetings are not required to be open. The meeting will be coordinated closely with the Department of State.

DATES: Wednesday, December 6, 2006.

ADDRESSES: The open portion of the meeting will be held at the Hilton Washington, 1919 Connecticut Avenue, NW., Washington, DC in the George Washington Room located on the Concourse Level from 1 p.m. to 2:30 p.m.

If you desire to submit written comments, they must be submitted by December 1, 2006. Comments must be identified by DHS–2006–0072 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov*. Include docket number in the subject line of the message.
- *Fax:* (202) 282–9207.
- *Mail:* Kezia Williams, Homeland Security Advisory Council, Department of Home Security, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2006–0072, the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kezia Williams, Homeland Security Advisory Council, Washington, DC 20528, (202) 447–3135, *HSAC@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Secure Borders and Open Doors Advisory Committee (''the committee'') is a subcommittee of the Homeland Security Advisory Council (HSAC). The committee's mission is to guide the current and future development of solutions to keep America secure while facilitating travel. The committee reports directly to the HSAC.

At the upcoming meeting, the committee will receive a progress report on various programs and initiatives within the Rice-Chertoff Initiative (''the Initiative''). The Initiative is a joint effort between the Departments of Homeland Security and State to allow regular outreach to the travel, business and academic communities to take their views into account, and to identify ''best practices'' when developing travel policies. The committee will also hold deliberations and discussions among members, including discussions regarding administrative matters. The committee will report its findings and conclusions at the next formal meeting of the HSAC.

Pursuant to 41 CFR 102–3.35 ''the requirements of the [Federal Advisory Committee] Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.'' Thus, while notice of the instant meeting need not be published in the **Federal Register,** nor the meeting itself opened to the public, DHS believes that, in the interest of openness and good government, the public should be informed of the meeting, and the meeting should be open to the extent practicable.

Public Attendance: A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her name and date of birth no later than 5 p.m. E.S.T., Friday, December 1, 2006, to Kezia Williams or an Executive Staff Member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 12:50 p.m.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Kezia Williams as soon as possible.

Dated: November 22, 2006.

Candace H. Stoltz,

Director, Private Sector Senior Advisory Committee.

[FR Doc. 06–9443 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Application for Replacement Naturalization/Citizenship Document; Form N–565, OMB Control Number 1615–0091.

The Department of Homeland Security, U.S. Citizenship and

Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 18, 2006, at 71 FR54679. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0091 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–565. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used to apply for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at *http://uscis.gov/graphics/ formfee/ forms/pra/index.htm.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone Number 202–272–8377.

Date: November 24, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–20205 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for T Nonimmigrant Status; Form I–914, I–914 Supplement A, I–914 Supplement B; OMB Control No. 1615–0099.

The Department of Homeland Security, U.S. Citizenship and Immigration Service (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 27, 2006, at 71 FR 56542, allowing for a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Ave., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0099 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914, I–914 Supplement A, and I–914 Supplement B. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386). The information on all three parts of the form will be used by the USCIS to determine whether applicants meet the eligibility requirements for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914 (500 responses at 2.25 hours per response); Supplement A (500 responses at 1 hour per response); Supplement B (200 responses at .5 hours per response).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 111 Massachusetts Ave., NW., Suite 3008, Washington, DC, 20529.

Dated: November 24, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–20224 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Environmental Impact Statement and Record of Decision for Incidental Take of the Endangered Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of a Final Environmental Impact Statement (FEIS), which analyzes the environmental impacts associated with incidental take permits that were previously issued under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), for take of the Alabama beach mouse (*Peromyscus polionotus ammobates*). The FEIS analyzes the consequences of the proposed action and alternatives to the proposed action. The incidental take permits, previously issued to Gulf Highlands LLC and Beach Club West, involve the construction, occupancy, use, operation, and maintenance of two residential/recreational condominium development projects on the Fort Morgan Peninsula in Baldwin County, Alabama. For Record of Decision (ROD) availability, see **DATES**.

DATES: The ROD will be available no sooner than December 29, 2006.

ADDRESSES: Persons wishing to review the FEIS may obtain a copy by writing either to the Service's Southeast Regional Office at Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or to the Alabama Field Office at U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Darren LeBlanc). Documents will be available for public inspection by appointment during normal business hours at both offices.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional HCP Coordinator (see **ADDRESSES** above), telephone: 404/679–4144; or Darren LeBlanc, Alabama Field Office (see **ADDRESSES** above), telephone: 251/441–5859.

SUPPLEMENTARY INFORMATION: On October 8, 2002, we advertised a notice of intent to prepare and EIS for this project and requested public comment (67 FR 62809). On October 29, 2002, we held a public scoping meeting and invited the public to provide relevant information on the project. The public comment period ended on November 22, 2002. We subsequently reopened the comment period for 15 days between December 18, 2002 and January 2, 2003 (67 FR 77505). On April 28, 2006, we published a notice of availability for the draft EIS with a 90-day comment period on the draft EIS (71 FR 25221). We also held a public hearing on June 26, 2006. For ROD availability, see **DATES**.

The FEIS analyzes the preferred alternative, as well as a full range of reasonable alternatives and the associated impacts of each. Alternative 5 (Preferred Alternative) concentrates the development on the eastern portion of the site and includes a 909-foot corridor connecting adjacent primary/secondary dunes and escarpment to the Interior. This alternative provides for dedication of 100.8 acres of Permittee-owned lands into conservation status via covenants, conditions, and restrictions attached to the property, and conditions of any incidental take permit that might be issued.

The environmental review of this project is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations.

Dated: November 3, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E6–20230 Filed 11–28–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Non-Native Deer Management Plan; Point Reyes National Seashore; Marin County, CA; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L.91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Non-Native Deer Management Plan for Pt. Reyes National Seashore. The formal no-action period was officially initiated August 18, 2006, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the Seashore will begin to implement as its new Non-Native Deer Management Plan the *Preferred Alternative (Alternative E)* contained in the Draft and Final EIS. The selected plan features a deliberate, long-term strategy targeting eradication of all fallow and axis deer from the Seashore by 2021. A combined program of fertility control (using long-lasting contraceptives) and lethal removal will be instituted, as well as an intensive monitoring program extending for at least 15 years.

As documented in the Final EIS, this course of action was deemed to be ''environmentally preferred''. The preferred plan and four alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in February, 2005). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were hosted. Approximately 2000 oral and written comments were received during the scoping phase or in response to the Draft EIS. Key consultations or other contacts which aided in preparing the Draft and Final EIS involved (but were not limited to) the California Department of Fish and Game, California State Parks, Marin County Parks and Open Space, Marin Municipal Water District, U.S. Dept. of Agriculture Animal Plant Health Inspection Service, and the U.S. Fish and Wildlife Service. Local communities, county and city officials, and interested organizations were contacted extensively during initial scoping and throughout the conservation planning and environmental impact analysis process.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Pt. Reyes National Seashore, Point Reyes, CA 94956; or via telephone request at (415) 464–5100.

Dated: October 17, 2006.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E6–20239 Filed 11–28–06; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission, Two Hundred Fifty-Ninth; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on December 15, 2006.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda,
2. Approval of Minutes of Previous Meeting (September 25, 2006),
3. Reports of Officers,
4. Reports of Subcommittees,
5. Superintendent's Report, Update on Dune Shacks and Report, ORV's and Piping Plover nesting impact, Herring River Restoration Project, Hunting EIS, Wind Turbines/Cell Towers, Highlands Center Update, News from Washington,
6. Old Business,
7. New Business,
8. Date and agenda for next meeting,
9. Public comment and,
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: November 13, 2006.

George E. Price, Jr.,

Superintendent.

[FR Doc. E6–20231 Filed 11–28–06; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, January 19, 2007, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, January 19, 2007.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson,
Mr. Charles J. Weir,
Mr. Barry A. Passett,
Mr. James G. McCleaf II,
Mr. John A. Ziegler,
Mrs. Mary E. Woodward,
Mrs. Donna Printz,
Mrs. Ferial S. Bishop,
Ms. Nancy C. Long,
Mrs. Jo Reynolds,
Dr. James H. Gilford,
Brother James Kirkpatrick,
Ms. Mary Ann D. Moen,
Dr. George E. Lewis, Jr.,
Mr. Charles D. McElrath,
Ms. Patricia Schooley,
Mr. Jack Reeder,
Ms. Merrily Pierce.

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.
4. Subcommittee Reports.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: October 24, 2006.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal, National Historical Park.

[FR Doc. E6–20228 Filed 11–28–06; 8:45 am]

BILLING CODE 4310–6V–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–550]

In the Matter of Certain Modified Vaccinia Ankara (''MVA'') Viruses and Vaccines and Pharmaceutical Compositions Based Thereon; Notice of Commission Decision To Review the Final Initial Determination; Extension of the Target Date for Completion of the Investigation; Schedule for Briefing on the Issues on Review and Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation and to extend the target date for completion of the investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 23, 2005, based on a complaint filed by Bavarian Nordic A/S (''Bavarian Nordic'') of Denmark. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain modified vaccinia ankara (''MVA'') viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of various claims of United States Patent Nos. 6,761,893 (''the '893 patent'') and 6,913,752 (''the '752 patent''). The complaint also alleged violations of section 337 in the importation of certain MVA viruses and vaccines and pharmaceutical compositions based thereon or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint named a single respondent, Acambis PLC (''Acambis'') of the United Kingdom.

On November 30, 2005, the ALJ issued an order (Order No. 10) denying Acambis' motion to terminate the investigation on the basis of 28 U.S.C. 1498.

On April 14, 2006, the ALJ issued an ID (Order No. 26) terminating the trade secret portion of this investigation based on an agreement to arbitrate between Bavarian Nordic and Acambis. On May 9, 2006, the Commission declined to review this ID.

On April 17, 2006, the ALJ issued an ID (Order No. 27) granting in part respondent's motion for summary determination with regard to the conversion claim, on the basis, *inter alia*, that it was insufficiently pled. In a separate notice issued on May 9, 2006, the Commission reviewed the ID on the conversion claim, affirming the dismissal of the conversion claim and taking no position on the ALJ's finding of no jurisdiction over the conversion claim.

After a hearing and post-hearing briefing, the ALJ issued a final initial determination (''final ID'') on September 6, 2006, finding no violation of section 337. The ALJ held that the patents were infringed but invalid.

Bavarian Nordic, Acambis, and the Commission investigative attorney filed petitions for review of the final ID. By notice of October 20, 2006, the Commission extended the deadline for determining whether to review the final ID to Wednesday, November 22, 2006 and extended the target date for completion of the investigation to Monday, January 8, 2007.

Having examined the relevant portions of the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety, as well as Order No. 10. The Commission has also determined to extend the target date for completion of the investigation to January 31, 2007.

The Commission requests briefing based on the evidentiary record on the issues on review. The Commission is particularly interested in responses to the following questions:

Regarding Both the '893 and '752 Patents

(1) Does 28 U.S.C. 1498(a) constitute an affirmative defense available in section 337 investigations? If so, has Acambis properly and timely raised and maintained this defense? What are the consequences of having successfully raised and maintained this defense in a section 337 proceeding?

Regarding the '893 Patent

(1) As a matter of claim construction, does ''virus deposited'' in claim 1 refer to an isolated, purified virus?

(2) Can the virus deposited be identified by sequence alone or is replication behavior a limitation of the virus deposited? If two viruses contain identical DNA coding region sequences, are the viral genomes necessarily identical? If not, *e.g.*, if viruses contained different inverted terminal repeats, is replication behavior necessarily the same? What are the consequences of replication behavior for determining anticipation and infringement of ''virus deposited * * * and derivatives'' in claim 1?

(3) May a mixture of viruses containing the claimed virus anticipate claim 1 regardless of the replication behavior of the mixture? Does MVA–572 or MVA–575 inherently anticipate claim 1 even if those prior art viruses were not homogenous?

(4) Is MVA–F6 homogenous and does MVA–F6 directly anticipate claim 1?

Regarding the '752 Patent

(1) Is there any evidence that the terms ''non-replicative'' and ''not capable of reproductive replication'' have different meanings, despite the use of different words? Should the terms ''non-replicative'' and ''permit replication'' as they appear in the asserted claims of the '752 patent be construed in conformance with the teaching from the specification that ''the term 'not capable of reproductive replication' means that the virus of the present invention

exhibits an amplification ratio of less than 1 in human cell lines, such as 293 (ECACC No. 85120602), 143B (ECACC No. 91112502), HeLa (ATCC No. CCL–2) and HaCat (Boukamp *et al.* 1988, J Cell Biol 106(3): 761–71) under the conditions outlined in Example 1 of the present specification''? '752 patent, col. 2, lines 53–59.

(2) Would a virus be considered to replicate if it sometimes replicated and other times did not? Is a person of ordinary skill in the art only concerned with mean values to the exclusion of standard error analysis? Would a person of ordinary skill in the art find viral replication if the mean value were above 1 even if the confidence intervals straddled 1? Would a person of ordinary skill in the art find no replication if the mean value were below 1 and the confidence intervals straddled 1?

(3) Is there evidence that MVA–575 possesses a replication ratio of 1 or greater in HaCaT and other human cells? Is there clear and convincing evidence that MVA–575 possesses a replication ratio less than 1 in HaCaT and other human cells?

(4) Given the claim construction in Order No. 31 regarding ''replication,'' would it matter to enablement, written description, infringement, or domestic industry of the '752 patent whether MVA–BN replicated less than MVA–575 if MVA–575 still possessed a replication ratio less than 1 in human cells? Is the ALJ's claim construction of this term correct to a person of ordinary skill in the art? Answers to the above should give precise citations to the record and should take into account the confidence interval.

(5) Figure 1A indicates that the replication rates for certain MVA viruses are different. This is especially apparent at higher replication rates. Does the difference in replication rates indicate that these viruses are not identical? Would the lack of identity be reflected in the genome? If so, what part of the genome would reflect the lack of identity? The coding region? The noncoding region? Both?

In connection with the final disposition of this investigation, the Commission may issue (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's September 6, 2006, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on December 12, 2006. Reply submissions must be filed no later than the close of business on December 22, 2006. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42–.46, .51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46, .51(a)).

By order of the Commission.

Issued: November 22, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–20178 Filed 11–28–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0071]

National Drug Intelligence Center; Agency Information Collection Activities: Proposed Reinstatement With Change of a Previously Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Reinstatement with Change of a Previously Approved Collection National Drug Threat Survey.

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 187, page 56552 on September 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension Reinstatement with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NDIC Form # A–34g.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and Local, law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the National Drug Intelligence Center. It provides direct access to detailed drug threat data from State and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,500 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,167 total annual burden hours associated with this collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 22, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–20222 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–DC–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

The Department of Justice, Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 185, pages 55805–55806 on September 25, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0006. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) whose eligibility is determined by statute. The Arrest Program was authorized through the Violence Against Women Act (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). The Arrest Program promotes mandatory or pro-arrest policies and encourages jurisdictions to treat domestic violence and sexual assault as a serious crime, establish coordinated community responses and facilitate the enforcement of protection orders. By statute, eligible grantees for the Arrest Program are States, Indian tribal

governments, State and local courts including juvenile courts, tribal courts, and units of local government. For the purpose of this Program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe that performs law enforcement functions as determined by the Secretary of Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and any Trust Territory of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the 200 respondents (Arrest Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in, (i.e.) training or developing a protection order registry, and the different types of grantees that receive funds, i.e. law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc. An Arrest Program grantee will only be required to complete those sections of the form that pertain to their own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimate completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 22, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–20223 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on November 3, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 19 new standards have been initiated and 7 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/09–15–06.html*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on August 4, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 8, 2006 (71 FR 53133).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9445 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0022]

Electronic Surveillance Technology Section; Agency Information Collection Activities: Current Collection; Comment Requested

ACTION: 60-Day Notice of Information Collection Under Review; Extension of a Currently Approved Information Collection; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 29, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Porter Dunn, Federal Bureau of Investigation, U.S. Department of Justice, ESTS, 14800 Conference Center Drive, Suite 200, Chantilly, Virginia 20151.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have the practical utility;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval, without change, of a currently approved collection for which approval is due to expire.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, 28 CFR 100.9 *et seq*.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Business or other for-profit. Other: None. The Cost Recovery Regulations have been adopted to assist the telecommunications industry in any submission of claims pursuant to Section 109(a) and (e) of the Communications Assistance for Law Enforcement Act, codified at 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 4 respondents to provide the information requested is approximately 4 hours per response and an estimated 5 responses (per respondent).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested through the Cost Recovery Regulations is therefore approximately 80 hours (4 respondents × 5 responses × 4 hours per response).

If additional information is required, contact: Lynn Bryant, Department Clearance Office, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Date: November 22, 2006.

Lynn Bryant,

Department Clearance Office, United States Department of Justice.

[FR Doc. E6–20226 Filed 11–28–06; 8:45 am]

BILLING CODE 4410–02–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27584; 812–13305]

Van Eck Worldwide Insurance Trust and Van Eck Associates Corporation; Notice of Application

November 21, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application 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 certain disclosure requirements.

SUMMARY OF 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: Van Eck Worldwide Insurance Trust (the ''Trust''), on behalf of the Van Eck Worldwide Absolute Return Fund (the ''Fund''), and Van Eck Associates Corporation (the ''Adviser'').

FILING DATES: The application was filed on June 16, 2005 and amended on November 16, 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 December 18, 2006, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 99 Park Avenue, 8th Floor, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust currently offers five series, including the Fund (each, a ''Portfolio'' and collectively, the ''Portfolios''), each of which has its own investment objectives, policies, and restrictions.[1] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Fund pursuant to an investment advisory agreement with the Trust (''Advisory Agreement''). The Advisory Agreement was approved by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust (''Independent Trustees''), and the Adviser as sole shareholder of the Fund.[2]

2. Under the terms of the Advisory Agreement, the Adviser is required to provide a continuous investment program for the Fund and to determine the composition of the assets of the Fund, including whether to purchase, retain or sell the securities, cash and other investments for the Fund. The Advisory Agreement permits the Adviser to delegate some or all of its investment advisory responsibilities to one or more sub-advisers (''Portfolio Managers'') pursuant to investment subadvisory agreements (each, a ''Portfolio Management Agreement''), subject to approval by the Board. The Adviser monitors and evaluates the Portfolio Managers and recommends to the Board their hiring or termination. The Board, including a majority of the Independent Trustees, and the shareholders of each Portfolio approve each Portfolio Management Agreement. Each Portfolio Manager is or will be an investment adviser registered under the Advisers Act. The Adviser compensates each Portfolio Manager out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request relief to permit the Adviser to enter into and materially amend Portfolio Management Agreements without obtaining shareholder approval. The requested relief will not extend to any Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Portfolio Manager

[1] Applicants request that any relief granted pursuant to the application also apply to all series of the Trust now existing or established in the future and all other registered open-end management investment companies and series thereof that: (i) Are advised by the Adviser (or any person controlling, controlled by, or under common control with the Adviser), (ii) operate in an Adviser/Portfolio Manager structure as described in the application, and (iii) comply with the terms and conditions of the application (included in the term ''Portfolios''). The Trust is the only existing registered investment company that currently intends to rely on the order. If the name of any Portfolio contains the name of a Portfolio Manager (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Portfolio will precede the name of the Portfolio Manager.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unitholders of any sub-account of a registered separate account for which a Portfolio serves as a funding medium.

to one or more of the Portfolios (''Affiliated Portfolio Manager'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Portfolio to disclose the fees paid by the Adviser to the Portfolio Managers. An exemption is requested to permit a Portfolio to disclose (as both a dollar amount and as a percentage of the Portfolio's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Portfolio Managers; and (b) the aggregate fees paid to Portfolio Managers other than Affiliated Portfolio Managers (collectively, ''Aggregate Fee Disclosure''). For any Portfolio that employs an Affiliated Portfolio Manager, the Portfolio will provide separate disclosure of any fees paid to the Affiliated Portfolio Manager.

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 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 Sub-Advisers.

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 state that the Portfolio's shareholders will rely on the Adviser to select the Portfolio Managers best suited to achieve the Portfolio's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Portfolio Managers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Portfolio Management Agreements would impose unnecessary costs and delays on the Portfolio and may preclude the prompt replacement of a Portfolio Manager when considered advisable by the Board and the Adviser. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) and rule 18f–2.

8. Applicants assert that some investment advisers use a ''posted'' fee schedule to set their fees. Applicants state that while investment advisers 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 better enable the Adviser to negotiate lower advisory fees with the Portfolio Managers, the benefits of which would be passed on to the shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Portfolio, within the meaning of the Act, or, in the case of a Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of the Portfolio are offered to the public.

2. The prospectus for each Portfolio will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio will hold itself out to the public as employing the Adviser/Portfolio Manager structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee Portfolio Managers and to recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of a new Portfolio Manager, the Adviser will furnish shareholders all information about the new Portfolio Manager 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 Portfolio Manager. To meet this obligation, the Adviser will provide shareholders within 90 days of the hiring of a new Portfolio Manager 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.

4. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Portfolio basis. The information will reflect the impact on profitability of the hiring or termination of any Portfolio Manager during the applicable quarter.

5. 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 at the discretion of the then-existing Independent Trustees. 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.

6. The Adviser will not enter into a Portfolio Management Agreement with any Affiliated Portfolio Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

7. When a change of Portfolio Manager is proposed for a Portfolio with an Affiliated Portfolio Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

8. Whenever a Portfolio Manager is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

9. The Adviser will provide general management services to each Portfolio, including overall supervisory responsibility for the general management and investment of the Portfolio's assets, and, subject to review and approval of the Board, will: (a) Set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Portfolio Managers to manage all or part of a Portfolio's assets; (c) allocate and, when appropriate, reallocate a Portfolio's assets among multiple Portfolio Managers; (d) monitor and evaluate the performance of Portfolio Managers; and (e) implement procedures reasonably designed to ensure that the Portfolio Managers comply with each Portfolio's investment objective, policies and restrictions.

10. No trustee or officer of the Portfolios, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Portfolio Manager, except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

11. Each Portfolio will include in its registration statement the Aggregate Fee Disclosure.

12. 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. E6–20213 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 68645, November 27, 2006].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting (Week of November 27, 2006).

A closed meeting has been scheduled for Thursday, November 30, 2006 at 2 p.m.

Commissioners and certain staff members who have an interest in the matter will attend the closed meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Campos as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Thursday, November 30, 2006 will be:

Institution and settlement of injunctive actions; and

Institution of an administrative proceeding.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–9473 Filed 11–27–06; 3:54 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 4, 2006:

An open meeting will be held on Monday, December 4, 2006 at 10 a.m. in the Auditorium, Room LL–002 and a closed meeting will be held on Wednesday, December 6, 2006 at 11 a.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii), and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the open meeting scheduled for Monday, December 4, 2006 will be:

1. The Commission will consider whether to approve the budget of the Public Company Accounting Oversight Board and will consider the annual accounting support fees under section 109 of the Sarbanes-Oxley Act of 2002.

2. The Commission will consider whether to propose a new rule under the Securities Act of 1933 to revise the criteria for natural persons to be considered ''accredited investors'' for purposes of investing in certain privately offered investment vehicles.

3. The Commission will consider whether to propose a new rule under the Investment Advisers Act of 1940 to prohibit advisers from making false or misleading statements to investors in certain pooled investment vehicles they manage, including hedge funds.

4. The Commission will consider whether to propose amendments to Rule 105 of Regulation M that would further safeguard the integrity of the capital raising process and protect issuers from manipulative activity that can reduce issuers' offering proceeds and dilute security holder value.

5. The Commission will consider whether to propose an amendment to the short sale price test of Rule 10a–1. In addition, the Commission will consider whether to propose an amendment to the ''short exempt'' marking requirement of Regulation SHO.

The subject matters of the closed meeting scheduled for Wednesday, December 6, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–9474 Filed 11–27–06; 3:55 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54804; File No. SR–CBOE–2006–98]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Hybrid Electronic Quoting Fee

November 21, 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 November 20, 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, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) 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

CBOE proposes to amend its Fees Schedule to adopt a Hybrid Electronic Quoting Fee. The text of the proposed rule change is available on the CBOE's Web site at (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish a new Hybrid Electronic Quoting Fee applicable to all Market-Makers, RMMs, DPMs, e-DPMs, and LMMs (collectively ''Market-Makers'') in order to promote and encourage more efficient quoting.

As proposed, CBOE would assess all Market-Makers who are submitting electronic quotations to the Exchange a monthly fee of $450. Each month, each Market-Maker will receive an allocation of 1,000,000 quotes. If a Market-Maker submits to CBOE more than 1,000,000 quotes in a month, the Market-Maker will be assessed an additional fee of $.03 per 1,000 quotes in excess of 1,000,000.

The Hybrid Electronic Quoting Fee is assessed by Market-Maker acronym. In the event a Market-Maker owns more than one membership and submits electronic quotations for all of the memberships under the same acronym, the Hybrid Electronic Quoting Fee will be assessed per membership owned by the Market-Maker.

The Hybrid Electronic Quoting Fee is only applicable to Market-Makers submitting electronic quotations in option classes traded on the Hybrid Trading System. If a Market-Maker is assessed the Hybrid Electronic Quoting Fee, the Market-Maker does not pay a member dues fee. The Exchange intends to implement the Hybrid Electronic Quoting Fee effective February 1, 2007.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] since it establishes or changes a due, fee or other charge imposed by the Exchange.

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–98 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–2006–98. This file

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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 No. SR–CBOE–2006–98 and should be submitted on or before December 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20214 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54805; File No. SR–CBOE–2006–92]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Penny Pilot Program

November 21, 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 November 8, 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, II, and III below, which Items have been substantially prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to implement a Pilot Program to quote and trade certain option classes in pennies. The text of the proposed rule change is available on the Exchange's Web site at *http://www.cboe.com,* at the Office of the Secretary, CBOE, 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 CBOE 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

CBOE proposes to amend its rules in connection with the Penny Pilot Program, which is scheduled to commence on January 26, 2007. Specifically, the following 12 classes[3] will participate in the Penny Pilot Program, which is scheduled initially to last for six months.

IWM—Ishares Russell 2000
QQQQ—QQQQ
SMH—SemiConductor Holders
GE—General Electric
AMD—Advanced Micro Devices
MSFT—Microsoft
INTC—Intel
CAT—Caterpiller
WFMI—Whole Foods
TXN—Texas Instruments
FLEX—Flextronics International
SUNW—Sun Micro

The minimum increments for all classes in the Penny Pilot Program, except for the QQQQs, will be $0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). With respect to the QQQQs, the minimum increment will be $0.01 for all option series. For all other option classes not participating in the Penny Pilot Program, the current quoting and trading minimum increments will remain the same.

In connection with the Penny Pilot Program, CBOE proposes to amend CBOE Rule 6.42 relating to the minimum increments for option classes. In particular, CBOE proposes to include a subparagraph stating that the decimal increments for bids and offers for all series of option classes participating in the Penny Pilot Program will be announced to the membership via Regulatory Circular and published by the Exchange on its Web site. Because the Penny Pilot Program is expected to commence on January 26, 2007, on a rolling basis with one or more Pilot classes beginning on that date and the other Pilot classes quoting and trading in penny increments shortly thereafter, CBOE believes it is more appropriate to notify its members as to the minimum increments for Pilot Classes and their start date in the Pilot Program via Regulatory Circular as opposed to codifying this information in CBOE Rule 6.42. CBOE has filed for Commission approval a copy of the proposed Regulatory Circular that it intends to issue.

CBOE also proposes to amend CBOE Rule 6.54 relating to accommodation liquidations (''cabinet trades'') to state that the rule is not applicable to trading in option classes participating in the Penny Pilot Program. Currently, CBOE Rule 6.54 sets forth the terms and conditions in which cabinet trades can be executed on CBOE. Because cabinet trades involve orders priced at $1 per option contract, the specific terms and conditions for cabinet trading are not applicable to option classes participating in the Penny Pilot Program.

Due to the anticipated demands on CBOE's system capacity and the option industry's capacity for processing quotations and transactions in penny increments, CBOE has implemented or intends to implement several quote mitigation strategies.

• *Limitation on Messages.* Pursuant to CBOE Rule 6.23A, CBOE currently limits the number of messages sent by members accessing CBOE electronically in order to protect the integrity of the Hybrid Trading System. Limiting the number of messages sent by members accessing CBOE electronically reduces the number of quotations sent by CBOE

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE understands that another option class will be added to the Penny Pilot Program to bring the total number of classes in the Penny Pilot Program to 13.

to the Options Price Reporting Authority (''OPRA'').

• *Imposition of Fees.* CBOE is developing an objective and fair method to encourage electronic quoters at CBOE to reduce the number of quotations that are sent to CBOE by imposing fees that will go into effect on February 1, 2007.[4]

• *Amendment to Market-Maker Obligations.* CBOE proposes to amend CBOE Rule 8.7 to modify the continuous electronic quoting obligation of Market-Makers and Remote Market-Makers (''RMMs''). Currently, as set forth in CBOE Rule 8.7(d)(ii) and (e), Market-Makers and RMMs, respectively, are obligated to provide continuous electronic quotes in 60% of the series of his/her appointed option class. CBOE proposes to amend these obligations to provide that Market-Makers and RMMs shall provide continuous electronic quotes in 60% of the series of his/her appointed class that have a time to expiration of less than nine months. CBOE believes that excluding series that are nine months or more to expiration, *i.e.*, LEAPS, from Market-Makers' and RMMs' continuous quoting obligations should reduce the number of quotes CBOE disseminates to OPRA, while continuing to impose upon Market-Makers and RMMs significant quoting obligations. CBOE also notes that this proposed change is consistent with CBOE Rule 5.8 which provides that the continuity rules do not apply to option series until the time to expiration is less than nine months.[5]

• *Delisting Policy.* CBOE is adopting the following delisting policy: equity option classes with national average daily volume (''ADV'') of less than 20 contracts will be delisted.

• *Oversight of Member Quoting.* CBOE continuously monitors the quotation activity of its members submitting electronic quotations to CBOE, and regularly notifies any member that appears to be disseminating significantly more quotations than other members. CBOE also regularly communicates with independent vendors who provide quotation services to members to encourage the vendors to modify their systems to provide efficient quotation systems and to alert them whenever it appears that users of their system appear to be submitting significantly more quotations than other members.

Finally, CBOE, along with the other options exchanges, intends to submit to the Commission following the fourth month of the Penny Pilot Program (*i.e.*, by the end of May 2007) a report analyzing the first three months of the Penny Pilot Program. In particular, CBOE anticipates that its report will assess the impact of the changes to the minimum increments during the first three months of the Program, including its effects on (i) Market participants and customers; (ii) market performance and quality, such as quoted spreads, effective spreads, and the displayed size in the Pilot classes; and (iii) OPRA, vendor and exchange capacity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that the proposed rule change is designed 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2006–92 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–CBOE–2006–92. 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 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–CBOE–2006–92 and should be submitted on or before December 20, 2006.

[4] *See* Securities Exchange Act Release No. 54804 (November 21, 2006) (File No. SR–CBOE–2006–98).

[5] The Commission recently approved a similar proposal from the Philadelphia Stock Exchange. *See* Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR–Phlx–2006–52).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20219 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54794; File No. SR–FICC–2006–18]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Administrative Provisions of the Rules of the Government Securities Division and the Mortgage-Backed Securities Division

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 12, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on October 17, 2006, amended[2] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to amend certain administrative provisions of the rules of FICC's Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') to create more uniformity between FICC's rules and the rules of FICC's affiliate, the National Securities Clearing Corporation (''NSCC''). FICC is also making technical amendments to the administrative rules of FICC.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment deleted a proposal that would have enabled FICC to rely on signatures transmitted, recorded, or stored by any electronic, optical, or similar means because a substantively similar rule already exists.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC believes that amending certain administrative provisions of the rules of GSD and MBSD to create more uniformity between the rules of FICC and NSCC will provide more clarity to the members of FICC and NSCC.

(i) Proposed GSD Rule Changes

Rule 28—Forms

Currently, GSD Rule 28 states that the delivery of forms of lists, notices, and other documents may be delivered by the use of any media, including magnetic tape, discs, or cards. FICC proposes to remove language referring to ''magnetic tapes, discs, or cards'' since these modes of delivery are outdated.

Rule 29—Release of Clearing Data

FICC proposes to amend GSD Rule 29 so that it is structured in a way that is similar to the analogous NSCC rule. Therefore, FICC proposes to delete numbered section subheadings and identify provisions going forward with the letters (a) through (g). FICC proposes to delete Section 7 of Rule 29 since FICC no longer follows this procedure.

Rule 30—Lists To Be Maintained

FICC proposes to amend GSD Rule 30 so that it includes Sponsored Members as a category of members for which FICC will maintain a list.

Rule 31—Distribution Facilities

Since FICC does not currently maintain distribution facilities, FICC proposes to amend GSD Rule 31 by including language indicating that ''if deemed necessary'' FICC will ''establish'' distribution facilities. FICC does not propose to alter the guidelines listed in the rule.

[5] The Commission has modified the text of the summaries prepared by FICC.

(ii) Proposed MBSD Rule Changes

Clearing Rule 8 and EPN Rule 8—Arbitration of Disputes

FICC proposes to delete MBSD Clearing Rule 8 of Article V and MBSD EPN Rule 8 of Article X since the provisions are outdated and have never been invoked by MBSD.

Clearing Rule 10 and EPN Rule 10—Amendment of Rules

FICC proposes to revise MBSD Clearing Rule 10 of Article V and MBSD EPN Rule 10 of Article X with language similar to that of the GSD and NSCC rules.[6] The rule will continue to provide for prompt notification to all participants, limited purpose participants, EPN users, and registered clearing agencies of proposals made to change, revise, add, or repeal any MBSD Rule. Participants may submit comments to FICC upon receipt of the notification.

Clearing Rule 12 and EPN Rule 12—Waivers, Etc.

FICC proposes to modify MBSD Clearing Rule 12 of Article V and MBSD EPN Rule 12 of Article X with language similar to that of the GSD and NSCC rules.[7] Pursuant to the proposed rule, the Board of Directors or any FICC officer having a rank of Vice President or higher may waive or suspend times fixed by the rules or regulations issued by FICC whenever waiver or suspension is deemed necessary or expedient in his or her judgment. The waiver or suspension shall not continue in effect for more than sixty calendar-days unless approved by the Board of Directors within the sixty calendar-day period.

(iii) MBSD Administrative Rule Additions

FICC proposes to add certain provisions to MBSD Clearing Rules and MBSD EPN Rules that are currently contained in the rules of the GSD. FICC believes the additions will provide guidance to MBSD members on administrative matters.

Clearing Rule 19 and EPN Rule 19—Forms

FICC proposes to add a rule identical to GSD Rule 28 to MBSD Clearing Rules Article V and MBSD EPN Rules Article X allowing FICC to use forms of lists, notices, or other documents in connection with any transactions. Information required to be delivered to FICC may be delivered by the use of any media, to be prescribed by FICC from time to time.

[6] GSD Rule 33 and NSCC Rule 33.

[7] GSD Rule 22 and NSCC Rule 42.

EPN Rule 18—Release of Processing Data

FICC proposes to add a rule similar to GSD Rule 29 to MBSD EPN Rules Article X governing the release of EPN processing data upon written request or pursuant to a written agreement between an EPN user and FICC.

Clearing Rule 20 and EPN Rule 19—Lists to be Maintained

FICC proposes to add a rule similar to GSD Rule 30 to MBSD Clearing Rules Article V and MBSD EPN Rules Article X providing that MBSD will maintain lists of all participants, limited purpose participants, and EPN users to be made available upon request.

Clearing Rule 9 and EPN Rule 9—Captions

FICC proposes to add a rule regarding captions to MBSD Clearing Rules Article V and MSBD EPN Rules Article X to clarify that captions to rules are for information and guidance only and should not be considered by participants as substantive language.

Clearing Rule 21 and EPN Rule 20—Distribution Facilities

FICC proposes to add a rule similar to GSD Rule 31 to MBSD Clearing Rules Article V and MBSD EPN Rules Article X regarding distribution facilities. Though MBSD does not currently maintain a distribution facility, the rule will provide guidance if a facility is established in the future.

FICC believes the proposed rule change is consistent with Section 17A of the Act,[8] as amended because it is concerned solely with the administration of FICC and as such does not affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

[8] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(3)[10] thereunder because the rule effects a change in an existing service of FICC that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible. At any time within sixty days of the filing of the proposed rule change,[11] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2006–18 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–FICC–2006–18. 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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/commondocs/rule.filings/rule.filing.06–18.amendment1.pdf.* 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–FICC–2006–18 and should be submitted on or before December 20, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20210 Filed 11–28–06; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] For purposes of calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54809; File No. SR–ISE–2006–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

November 21, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

Rule 19b–4(f)(2) 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 Schedule of Fees to remove the surcharge fee for transactions in options on the NASDAQ–100 Index Tracking Stock® (''QQQQ®'') and the iShares NASDAQ Biotechnology Index Fund (''IBB''). The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to remove the surcharge fee previously adopted for transactions in options on the QQQQ® [5] and options on the IBB.[6] The Exchange is proposing to remove the surcharge fee from its Schedule of Fees because it no longer pays a license fee to The NASDAQ Stock Market, Inc. in connection with transactions in options on QQQQ® and IBB. Accordingly, there is no longer a need for this surcharge fee. The Exchange will, however, continue to charge an execution fee and a comparison fee for transactions in options on QQQQ® and IBB.

Additionally, the Exchange proposes to remove IYE from the list of Premium Products on the Schedule of Fees as IYE no longer trades on the Exchange.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act [7] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act [8] and rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–63 and should be submitted on or before December 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20216 Filed 11–28–06; 8:45 am]

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[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 44151 (April 4, 2001), 66 FR 19266 (April 13, 2001) (ISE–2001–09).

[6] *See* Securities Exchange Act Release No. 45765 (April 16, 2002), 67 FR 19786 (April 23, 2002) (ISE–2002–10).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54798; File No. SR–NASD–2006–104]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Reflect Nasdaq's Complete Separation From the NASD Upon the NASDAQ Stock Market LLC's Operation as a National Securities Exchange for Non-Nasdaq Exchange-Listed Securities

November 21, 2006.

I. Introduction

On September 5, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various NASD rules to reflect the complete separation of the NASD from The Nasdaq Stock Market, Inc. (''Nasdaq''), which would permit the Nasdaq Stock Market LLC (''Nasdaq Exchange'') to begin operations as a national securities exchange for securities reported to the Consolidated Transaction Association Plan (''CTA Plan Securities''). NASD also proposes to amend its NASD/Nasdaq Trade Reporting Facility (''TRF'') rules to allow members to report over-the-counter (''OTC'') trades in CTA Plan Securities. On September 14, 2006, the NASD submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 21, 2006.[4] The Commission received no comments on the proposed rule change. On November 3, 2006, the NASD submitted Amendment No. 2 to the proposed rule change.[5]

II. Background

Prior to 2000, Nasdaq was wholly-owned by the NASD. The NASD and Nasdaq began restructuring their relationship in 2000 with the goal of completely separating Nasdaq from the NASD. As part of this restructuring, Nasdaq filed with the Commission an application to register one of its subsidiaries, the Nasdaq Exchange, as a national securities exchange.[6] The Commission approved the Nasdaq Exchange's registration as a national securities exchange on January 13, 2006.[7]

In the Nasdaq Exchange Order, the Commission conditioned the Nasdaq Exchange's operation as a national securities exchange on the satisfaction of certain enumerated requirements. The Nasdaq Exchange Order and the conditions therein reflected the Nasdaq Exchange's original intent to begin trading at the same time CTA Plan Securities and Nasdaq securities reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan Securities''). In March 2006, however, the Nasdaq Exchange requested that the Commission modify the conditions in the Nasdaq Exchange Order so that it could begin operations as a national securities exchange for Nasdaq UTP Plan Securities before all the conditions were satisfied. In response to the request, this Commission modified the conditions in the Nasdaq Exchange Order.[8] All conditions for the Nasdaq Exchange to begin trading Nasdaq UTP Plan Securities were fulfilled,[9] and the Nasdaq Exchange commenced operations with respect to these securities on August 1, 2006.[10]

The condition remaining to be satisfied before the Nasdaq Exchange may commence trading CTA Plan Securities is that ''the NASD must represent to the Commission that control of Nasdaq through the Preferred D share is no longer necessary because the NASD can fulfill through other means its obligations with respect to securities reported to the CTA Plan under Section 15A(b)(11) of the Exchange Act, Rules 602 and 603 of Regulation NMS, and the national market system plans in which the NASD participates.'' NASD currently has delegated to Nasdaq authority to perform obligations under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the ''Delegation Plan'') with respect to NASD members' OTC activities, including quoting, trading, and trade reporting of CTA Plan Securities. Because Nasdaq continues to operate pursuant to the Delegation Plan, the NASD retains control of Nasdaq through the outstanding share of Nasdaq Series D preferred stock.[11] In this proposed rule change, the NASD proposes to complete its separation from Nasdaq by, among other things, amending its Delegation Plan to completely eliminate its delegation of authority to Nasdaq.

In addition to amending the Delegation Plan, the NASD proposes to: (1) Delete the By-laws of Nasdaq and amend the By-laws of the NASD, NASD Regulation, Inc. (''NASDR''), and NASD Dispute Resolution, Inc. to reflect that Nasdaq will no longer be a subsidiary of the NASD; (2) delete NASD rules that are specific to Nasdaq and its operating systems and amend NASD rules to reflect Nasdaq's complete separation from the NASD; (3) modify certain NASD rules to clarify the NASD's continued regulation of the OTC market in CTA Plan Securities and to reflect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD clarified that (1) The effective date of the proposed rule change would be the date upon which the Nasdaq Exchange commences operation as an exchange for CTA Plan Securities; (2) the NASD's Market Regulation Committee would perform substantially the same functions as performed by the Nasdaq's Quality of Markets Committee; and (3) the proposed rule change would reflect NASD's continued participation in the Intermarket Trading System (''ITS'') Plan.

[4] *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243.

[5] In Amendment No. 2, the NASD (i) Amended the definition of Consolidated Quotation Service in NASD Rule 6320 to clarify that CQS Market Makers will send their quotations to the ITS/CAES System; (ii) conformed NASD Rule 6420(d)(3)(B), which relates to riskless principal transactions in the proposed ITS/CAES System to NASD Rule 4632(d)(3)(B), which relates to the same transactions in the NASD/Nasdaq TRF; and (iii) amended NASD Rule 11890(b)(2) to provide that an officers designated by an Executive Vice President of NASD's Market Regulation Committee or NASD's Transparency Services Department could also take action under that rule.

[6] In connection with the Nasdaq Exchange registration, Nasdaq became a holding company with the Nasdaq Exchange as its wholly-owned subsidiary.

[7] *See* Securities Exchange Act Release No. 53128, 71 FR 3350 (January 23, 2006) (''Nasdaq Exchange Order'').

[8] *See* Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006) (''Order Modifying Nasdaq Exchange Conditions'').

[9] *See e.g.*, Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087) (amending the Delegation Plan to eliminate Nasdaq's authority over NASD members' over-the-counter (''OTC'') activities in Nasdaq UTP Plan Securities). The NASD also established the NASD/Nasdaq Trade Reporting Facility.

[10] *Id.*

[11] The share of Series D preferred stock gives the NASD the right to cast one vote more than one-half of all votes entitled to be cast at an election by all holders of capital stock of Nasdaq. The voting right of the NASD immediately terminates upon the date on which Nasdaq no longer operates pursuant to authority delegated by NASD under the NASD's Delegation Plan. *See* Nasdaq Certificate of Incorporation, Certificate of Designation of Series D Preferred Stock of Nasdaq, Section 4.

NASD's continued participation in the ITS Plan; and (4) expand the scope of the NASD/Nasdaq TRF rules to allow NASD members to report OTC transactions in CTA Plan Securities.[12]

III. Discussion

A. Condition With Regard to CTA Plan Securities

As noted above, before the Nasdaq Exchange can commence operations as a national securities exchange for CTA Plan Securities, ''the NASD must represent to the Commission that control of Nasdaq through the Preferred D share is no longer necessary because the NASD can fulfill through other means its obligations with respect to securities reported to the CTA Plan under Section 15A(b)(11) of the Exchange Act, Rules 602 and 603 of Regulation NMS, and the national market system plans in which the NASD participates.''

1. OTC Quotations and Transaction Reports

Section 15A(b)(11) of the Exchange Act requires the NASD to have rules that govern the ''form and content of quotations relating to securities sold otherwise than on a national securities exchange * * *.'' [13] These rules also must be designed to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.[14]

Rule 602 of Regulation NMS also requires the NASD to collect bids, offers, quotation sizes, and aggregate quotation sizes from those members who are responsible broker or dealers.[15] The NASD must then make available to vendors, at all times when last sale information is reported, information about the best bids, best offers, and quotation sizes communicated otherwise than on an exchange by its members that act as OTC market makers, and their identity.

The NASD has retained its rules that allow its members to register as CQS Market Makers [16] and ITS/CAES Market Makers.[17] These rules are essential to the NASD's ability to fulfill its statutory and regulatory obligations, and to NASD members' ability to fulfill their regulatory obligations to submit their OTC quotes to the NASD.[18] These rules provide that members communicating quotations in CTA Plan Securities off an exchange must register as CQS Market Makers and ITS/CAES Market Makers.

Rule 601 of Regulation NMS [19] requires the NASD to file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities that are executed by its members otherwise than on a national securities exchange.[20] Under Rule 603 of Regulation NMS,[21] national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks.

Currently, the NASD satisfies these requirements with regard to CTA Plan Securities by participating in the Consolidated Quotation System Plan (''CQ Plan'') and CTA Plan and by operating the SuperIntermarket [22] pursuant to authority delegated to Nasdaq under the Delegation Plan.[23]

The NASD intends to continue to participate in the CQ Plan and CTA Plan. To satisfy its obligations under these plans, the NASD proposes to continue to use the ITS/CAES System for quote collection and trade reporting.[24] Quotes that are submitted to the ITS/CAES System will continue to be reported to the CQ Plan for dissemination. Transactions that are effected in the ITS/CAES System would be locked in by the system and reported to the CTA Plan for dissemination.[25] For transactions that are not effected in the ITS/CAES System, the NASD will allow members to report their trades to the ITS/CAES System for dissemination to the CTA Plan.[26] The NASD proposes to amend its Rule 4720 and Rule 6400 to provide that NASD members may report trades in CTA Plan Securities that are not effected in the ITS/CAES System to ITS/CAES System.

2. ITS Plan

Rule 608 of Regulation NMS requires the NASD to comply with and enforce compliance with the terms of each national market system plan of which it is a sponsor or participant.[27] In addition to the CQ Plan and CTA Plan, the NASD is a participant in the ITS Plan. The ITS Plan establishes the rules under which ITS Participants interact with regard to CTA Plan Securities and contains a trade-through rule. The NASD currently satisfies its obligations under the ITS Plan through the ITS/CAES System, which, as noted above, is currently operated by Nasdaq pursuant to the Delegation Plan. The NASD also enforces compliance by its members with the terms of the ITS Plan. The NASD intends to remain a participant in the ITS Plan until the termination of the ITS Plan, which is expected to take place on the Trading Phase Date.[28] Accordingly, it must comply with, and enforce compliance by its members with, the provisions of the ITS Plan.[29]

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[12] The proposed rule change also includes corrections of minor grammatical or typographical errors as well as the renaming and renumbering of certain rules, including redesignation of Commission rules adopted under Section 11A of the Exchange Act with the appropriate Regulation NMS references.

[13] 15 U.S.C. 78*o*–3(b)(11).

[14] *Id.*

[15] 17 CFR 242.602.

[16] *See* NASD Rule 6300 Series. NASD members that submit quotes in CQS securities must be registered as CQS market makers. *See* NASD Rule 6320(a). CQS market makers must also register as ITS/CAES market makers. *See* NASD Rule 6320(e).

[17] *See* NASD Rule 5200 Series. NASD members that participate in ITS must register as ITS/CAES market makers. *See* NASD Rule 5220. ITS/CAES market makers must also register as CQS market makers. *See* NASD Rule 5220(a). *See* also NASD Rule 6320(e).

[18] *See* Rule 602(b) of Regulation NMS under the Exchange Act, 17 CFR 242.602.

[19] 17 CFR 242.601.

[20] Under Rule 601(b) of Regulation NMS, broker-dealers are prohibited from executing a transaction otherwise than on a national securities exchange unless there is an effective transaction reporting plan. NASD Rule 5000 requires NASD members to report transactions in exchange-listed securities effected otherwise than on an exchange to the NASD.

[21] 17 CFR 242.603.

[22] The SuperIntermarket is referred to as the ITS/CAES System under NASD rules. *See* NASD Rule 4700 Series.

[23] Through its delegation to Nasdaq, the NASD currently uses technology owned by Nasdaq, as its facility to collect quotes and transaction reports in CTA Plan Securities.

[24] The NASD will contract with Nasdaq for the use of the ITS/CAES System for these purposes. The ITS/CAES System will remain a facility of the NASD.

[25] The ITS/CAES System would also provide the necessary clearing information regarding the transaction to the National Securities Clearing Corporation.

[26] Non-ITS/CAES market makers that wish to use this trade reporting functionality must register as ''Trade Reporting Only Participants'' pursuant to proposed NASD Rule 4705(a).

[27] 17 CFR 242.608(c).

[28] The Trade Phase Date is the required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS. The Commission previously extended compliance dates for Rule 610 (Access Rule) and Rule 611 (The Order Protection Rule) of Regulation NMS. The Commission established the Trading Phase Date as February 5, 2007. *See* Securities Exchange Act Release No. 34–53829 (May 18, 2006), 71 FR 30038 (May 24, 2006). The termination of the ITS Plan will be subject to a separate filing.

[29] On September 29, 2006, the Commission issued an exemption to the ITS Plan participants from certain provisions of the ITS Plan. Because the NASD is not participating in The Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Linkage Plan''), *see* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006), it was not granted the same exemptions as were granted to the Linkage Plan participants. *See* letter to Robert Hill,

Continued

The NASD proposes to continue to use the ITS/CAES System to support its participation in the ITS Plan.[30] Members, including electronic communication networks (''ECNs'') that wish to become ITS/CAES Market Makers, must register with the NASD.[31] Registration and compliance requirements for NASD members continue to be provided in amended NASD Rules 4705, 5220, 6320, and 6330. All ITS/CAES Market Makers must continue to display and maintain continuous two-sided quotes.[32]

The rules that govern the ITS/CAES System are found in NASD Rule 4700 and 5200 Series. The NASD proposes to amend its Rule 4700 Series to eliminate certain functionalities that are not necessary for compliance with the ITS Plan. For example, the NASD proposes to eliminate the automatic execution functionality of the ITS/CAES System.[33] Therefore, all references to automatic executions and execution algorithms have been deleted. In addition, the NASD proposes to eliminate reserve size and certain order types such as ''discretionary,'' ''non-directed,'' ''sweep,'' ''fill or return,'' ''good-till-cancelled,'' and ''total good-till-canceled'' orders.[34] The Commission finds that the deletion of these rules is consistent with the Exchange Act because they are not required for compliance with the ITS Plan.

In the proposed rule change, the NASD also proposes to delete NASD Rules 5240 and 5250 relating to the ITS Pre-Opening Application functionality. The Commission believes that eliminating these rules is consistent with the Exchange Act because the other ITS participants are exempt from Section 7 Pre-Opening Application and Exhibit A Pre-Opening Application Rule under the ITS Plan.[35]

ITS/CAES Market Markers will continue to access other ITS/CAES Market Makers' bids and offers by entering ''Preferenced Orders,'' [36] but the proposed rule change requires that the Preferenced Order be entered using the immediate or cancel designation (*i.e.*, IOC or IOX).[37] Under the proposed rules, Preferenced Orders may only be sent to another ITS/CAES Market Maker when that ITS/CAES Market Maker is at the best bid/offer in the proposed ITS/CAES System and only in an amount equal to or less than the ITS/CAES Market Maker's displayed quote.[38] The proposed system would reject a Preferenced Order sent to an ITS/CAES Market Maker that is not at the best bid/offer in the system, or where the execution of the Preferenced Order would result in the violation of the trade through rule set forth in NASD Rule 5262.[39]

ITS/CAES Market Makers may interact with other ITS exchanges' bids and offers via inbound and outbound ITS Commitments.[40] Inbound ITS Commitments would have a uniform time-in-force (''TIF'') of 5 seconds.[41] Since the proposed ITS/CAES System would not provide automatic executions, ITS Commitments received by ITS/CAES Market Makers must be responded to or executed by an affirmative response within 5 seconds. If the ITS Commitment is not responded to within that time period, it would be returned to the sending exchange. Similarly, ITS/CAES Market Makers would be able to send outbound ITS Commitments to access quotes displayed by other ITS exchanges. All outbound ITS Commitments entered by ITS/CAES Market Makers would be treated as ''immediate or cancel'' and would have a TIF of 5 seconds.[42] Once an ITS Commitment is entered, it cannot be cancelled by the ITS/CAES Market Maker.[43]

The proposed ITS/CAES System will reject all quotes that lock or cross the NASD best bid or offer (''BBO'') or the National BBO.[44] Since the system will no longer permit ITS/CAES Market Makers to initiate a locking or crossing quote, the NASD is proposing to replace the current NASD Rule 5263, which provides procedures relating to locking and crossing markets, with a new NASD Rule 5263 that prohibits such quoting activities altogether.

The Commission finds that the NASD's proposed changes to its ITS/CAES System is consistent with Section 15A(b)(6) of the Exchange Act.[45] In addition, the Commission believes that it will allow the NASD to continue to fulfill its statutory and regulatory obligations and will enable NASD members to fulfill their regulatory obligation to submit their OTC quotations to the NASD and to continue to comply with the requirements of the ITS Plan. Further, the NASD's rules are designed to produce fair and informative quotations and promote orderly procedures for collecting, distributing and publishing quotations as required by Section 15A(b)(11) of the Exchange Act.[46] The Commission finds that the modifications to the proposed ITS/CAES System are consistent with Section 15A(b)(6) of the Exchange Act and that under the proposed ITS/CAES System rules the NASD will be able to continue to satisfy its obligations under Rules 601, 602, and 603 of Regulation NMS.

3. Changes to Governing Documents

The NASD proposes to amend the Delegation Plan to eliminate its delegation of authority to Nasdaq. The removal of Nasdaq from the Delegation Plan terminates the NASD's control of Nasdaq pursuant to the share of Series D preferred stock. Specifically, the NASD will lose its voting right and Nasdaq will be able to redeem the share for $1.00.[47] Because the NASD has represented that it is able to fulfill its obligations with regard to CTA Plan Securities, the Commission believes that it is consistent with Section 15A(b)(6) of the Exchange Act to approve the NASD's proposal to eliminate its delegation of functions to Nasdaq from the NASD's Delegation Plan.

Because the NASD proposes to eliminate the delegation to Nasdaq, the NASD also proposes to eliminate the Quality of Markets Committee, which was a committee appointed by the Nasdaq Board. The NASD represents that its existing Market Regulation

Chairman, ITS Operating Committee, from David Shillman, Associate Director, Division of Market Regulation, Commission, dated September 29, 2006 (''ITS Exemption Letter'').

[30] *See supra* note 24.

[31] *See* NASD Rule 5210(e).

[32] *See* NASD Rule 5220(e).

[33] The ITS/CAES System will be an order delivery system, which will require a market maker's response to execute an order delivered in response to its quote. *See* NASD Rule 4710(b)(1).

[34] NASD Rule 4701 (nn), (p), (rr), (ll), (ii) and (tt), respectively, have been deleted. Under the proposed ITS/CAES System, an order must be either a market or limit orders, must indicate whether it is a buy, short sale, short-sale exempt or long sale and may be designated ''immediate or cancel,'' ''day,'' ''total day,'' ''total immediate or cancel'' or ''summary.'' *See* NASD Rule 4706(a)(1).

[35] *See* ITS Exemption Letter, *supra* note 29.

[36] Preferenced Orders may be designated to be delivered to a particular ITS/CAES Market Maker or a particular ITS exchange. *See* NASD Rule 4701(aa).

[37] *See* NASD Rule 4701(aa).

[38] *See* NASD Rule 4710(b)(1)(B).

[39] *Id.*

[40] *See* NASD Rule 5230 for requirements regarding ITS Commitments.

[41] *See* NASD Rule 4708(b)(3).

[42] The TIF would be 30 seconds in the limited circumstance where the ITS Commitment is sent to an ITS exchange that is unable to accept a TIF of 5 seconds. *See* NASD Rule 4708(c). *See also* NASD Rule 5230 (NASD Rule 4708 states that outbound ITS Commitments must be consistent with the applicable provisions of NASD Rule 5200 Series and the ITS Plan).

[43] *Id.*

[44] *See* NASD Rule 4708(a)(2) and NASD Rule 4710(b)(1)(C)(2). In addition, market and limit orders designated as IOC and limit orders designated as ''total IOC,'' whose displayed price would lock or cross another quote/order if they were displayed shall be rejected. *See* NASD Rule 4706(a)(1)(E).

[45] 15 U.S.C. 78*o*–3(b)(6).

[46] 15 U.S.C. 78*o*–3(b)(11).

[47] *See supra* note 11.

Committee will perform substantially the same functions as those performed by the Quality of Markets Committee.[48]

Furthermore, the NASD proposes to delete references to the Market Operations Review Committee (''MORC''), which was appointed by the Nasdaq Board and which reviewed transactions under the clearly erroneous procedures of NASD Rule 11890 and related NASD Rule 5626.[49] The NASD proposes to amend the Delegation Plan to reflect that the authority of the Uniform Practice Code (''UPC'') Committee has been expanded to enable it to the review appeals under NASD Rule 11890 of determinations relating to all transactions (including those in CTA Plan Securities), not only those involving Nasdaq UTP Plan Securities and OTC Equity Securities.[50]

In addition, the NASD proposes to remove all references in the Delegation Plan to Nasdaq as a subsidiary of the NASD. For example, the Delegation Plan has been amended to reflect that the NASDR will no longer, in conjunction with Nasdaq, develop and adopt rules to establish trading practices with respect to OTC Equity Securities, including OTC Bulletin Board securities.[51] In the proposal, the NASD also revises the By-laws of the NASD, NASDR and NASD Dispute Resolution, Inc. to remove references to Nasdaq as a subsidiary of the NASD. In addition, the NASD proposes to delete the Nasdaq By-Laws.

The NASD also proposes to eliminate its delegation of authority to Stockwatch, which handles the trading halt functions for CTA Plan Securities traded in the OTC market because this function will now be performed by the NASD.[52]

The Commission finds that these changes to the NASD's governing documents are consistent with the Exchange Act because they will accurately reflect the complete separation of Nasdaq from the NASD once the Nasdaq Exchange begins to operate as a national securities exchange for CTA Plan Securities.

4. Other Deleted Rules To Reflect Nasdaq's Separation

The NASD also proposes to delete several rules in their entirety because the NASD will no longer require these rules after the Nasdaq Exchange commences operations as a national securities exchange for CTA Plan Securities. For example, the NASD proposes to delete the rules that govern member activities in BRUT and the Inet. These trading systems are Nasdaq trading systems and when the Nasdaq Exchange begins operations as an exchange for CTA Plan Securities, they will be facilities of the Nasdaq Exchange.[53] Because these systems will cease to be NASD facilities, the Commission finds that deletion of these rules is consistent with Section 15A(b)(6) of the Exchange Act.[54]

The NASD also proposes to delete NASD Rule 4400, which describes the treatment of securities that are dually-listed on the New York Stock Exchange, Inc. and the Nasdaq Exchange.[55] These dually-listed securities are considered CTA Plan Securities, and thus are not currently trading on the Nasdaq Exchange. Upon approval of this proposed rule change, these dually-listed securities will be eligible to trade on the Nasdaq Exchange along with the other CTA Plan Securities, and thus NASD Rule 4400 will no longer be necessary. The Nasdaq Exchange currently has the same rule in its rules, which continues to describe these securities as CTA Plan Securities for purposes of quoting and trade reporting.[56] Accordingly, the Commission finds the deletion of this rule to be consistent with Section 15A(b)(6) of the Exchange Act.

In addition, the NASD proposes to delete NASD Rule 0140, which provides procedures for fingerprint-based background checks of Nasdaq employees and independent contractors for purposes of enhancing the physical security of Nasdaq facilities, systems and data. Once Nasdaq separates from the NASD, these procedures will no longer be governed by NASD rules.[57] The Commission finds that the deletion of this rule is consistent with Section 15A(b)(6) of the Exchange Act because it relates solely to the operation of the Nasdaq Exchange.

B. Proposed Changes to NASD/Nasdaq Trade Reporting Facility Rules

Currently, the NASD/Nasdaq Trade Reporting Facility only accepts trade reports in Nasdaq UTP Plan Securities.[58] The NASD proposes to redefine ''designated securities'' in NASD Rule 4100 to include any NMS stock as defined in Rule 600(b)(47) of Regulation NMS.[59] This change will permit NASD members to report OTC transactions in CTA Plan Securities to the NASD/Nasdaq Trade Reporting Facility.[60] In addition, to accommodate transaction reports in CTA Plan Securities, the NASD proposes to incorporate the trade reporting requirements for CTA Plan Securities currently set forth in the NASD Rule 6400 Series into NASD Rules 4100, 4200, 4600, and 6100 Series, which are rules relating to the NASD/Nasdaq TRF. Specifically, the NASD proposes to incorporate the exclusions set forth in current NASD Rules 6420(e)(6) and (7) into proposed NASD Rule 4632(e). Current NASD Rules 6420(e)(6) and (7) provide that the following transactions are not to be reported to the NASD: (i) Acquisitions of securities by members as a principal in anticipation of making an immediate distribution or offering on an exchange; and (ii) purchase of securities off the floor of an exchange pursuant to a tender offer. These exclusions are specific to exchange trading and, therefore, did not apply to reporting of transactions in Nasdaq UTP Plan Securities. However, now that the NASD/Nasdaq Trade Reporting Facility will accept transaction reports in all exchange-listed securities, the NASD proposes that these exclusions be applied to trade reporting to the NASD/Nasdaq Trade Reporting Facility. The Commission finds that including these exclusions in NASD Rule 4632(e) is consistent with Section 15A(b)(6) of the Exchange Act.

Members that report to the NASD/Nasdaq Trade Reporting Facility currently can enter into ''give-up'' arrangements[61] whereby one member

[48] *See In the Matter of National Association of Securities Dealers, Inc.*, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996), Administrative Proceeding File No. 3–9056.

[49] *See* Delegation Plan, Section III.C.2.

[50] *Id. See* NASD Rule 6610(d) (defining OTC Equity Security).

[51] *See* Delegation Plan, Section II.A.1(t).

[52] *See* Delegation Plan, Sections II and IV.

[53] BRUT and Inet are already facilities of the Nasdaq Exchange for the purposes of trading Nasdaq UTP Plan Securities. *See also* Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006).

[54] 15 U.S.C. 78*o*–3(b)(6).

[55] Under current NASD Rule 4400, these securities are subject to the CTA and CQ Plans and are treated as CTA Plan Securities under the NASD rules.

[56] *See* Nasdaq Exchange Rule IM–4390. Like the NASD Rule 4400, Nasdaq Exchange Rule IM–4390 provides that the Nasdaq Exchange will send all quotes and trade reports in dually-listed securities to the processor of the CTA Plan. In addition, the Nasdaq Exchange Rule IM–4390 states that market makers in the dually-listed securities will be subject to the obligations set forth in Nasdaq Exchange Rule 5200 regarding quoting, trading, and transaction reporting of CTA Plan Securities and that the Nasdaq Exchange will honor the trade halt authority of the primary market under the CQ and CTA Plans.

[57] The Nasdaq Exchange has a similar rule. *See* Nasdaq Exchange Rule 0140.

[58] *See supra* note 9.

[59] 17 CFR 242.600(b)(47).

[60] *See also* proposed NASD Rule 4200(a)(2).

[61] These arrangements are similar to those currently in place in the ITS/CAES System. *See* NASD Rule 4720.

reports transactions to the NASD/Nasdaq Trade Reporting Facility on behalf of another member. Proposed NASD Rule 4632(h) codifies this process and provides that the member with the reporting obligation will remain responsible for the transaction report submitted on its behalf. Further, under the proposed rule, both the member with the reporting obligation and the member submitting the trade to the NASD/Nasdaq Trade Reporting Facility will be responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations. The Commission finds that codifying this existing practice, which is currently being applied in the ITS/CAES System, is consistent with Section 15A(b)(6) of the Exchange Act since it should clarify the reporting obligations of market participants and promote coordination in trade reporting.

The NASD also proposes to amend NASD Rule 4632(d)(3)(B) relating to requirements for reporting ''riskless principal'' transactions to the NASD/Nasdaq Trade Reporting Facility.[62] The proposed rule change will clarify that where the initial leg of a riskless principal transaction (media leg) has been reported to the NASD/Nasdaq Trade Reporting Facility, the second leg (non-media leg) must also be reported to the NASD/Nasdaq Trade Reporting Facility. However, where the initial leg of the riskless principal transaction has been executed on an exchange and thus reported by the exchange, the NASD member will be permitted, but not required, to report the second leg to the NASD/Nasdaq Trade Reporting Facility. NASD members that choose to report such second leg transactions to the NASD/Nasdaq Trade Reporting Facility must include all data required under NASD Rule 4632. NASD members should not submit the principal transaction (media leg) to the NASD/Nasdaq Trade Reporting Facility for a transaction that was executed on and reported by an exchange, because that would result in double reporting of the same transaction.[63] The Commission finds that this proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act since it codifies an existing practice and clarifies the rules relating to riskless principal transaction reporting.

Finally, the NASD proposes to amend the definition of ''Reporting ECN'' in NASD Rule 6110(i) to clarify that the term includes alternative trading systems, as well as ECNs, as those terms are defined in Rule 600 of Regulation NMS, for purposes of reporting transactions to the NASD/Nasdaq Trade Reporting Facility.[64] The Commission believes that this proposed change to NASD Rule 6110(i) is consistent with Section 15A(b)(6) of the Exchange Act because it will ensure that ECNs and ATSs are subject to the same clearing and comparison rules of the NASD and should promote consistency in the NASD's treatment of market participants.

In its filing, the NASD represented that it will have an integrated audit trail of CTA Plan Securities transactions that are reported to the ITS/CAES System and the NASD/Nasdaq Trade Reporting Facility. The NASD also represented that it will have integrated surveillance capabilities. Until the implementation of a comprehensive automated audit trail and surveillance is complete, the NASD has represented that its staff will create an integrated audit trail on a manual basis as needed for regulatory purposes.[65]

C. Other Changes

The NASD proposes to move certain trading practice requirements relating to exchange-listed securities currently found in NASD Rule 6440 to NASD Rule 5120, thus making them applicable to OTC trading of all exchange-listed securities. Currently, NASD Rule 6440 only applies to CTA Plan Securities. The NASD proposes to extend these rules prohibiting certain manipulative practices with respect to Nasdaq UTP Plan Securities. The Commission believes that proposed NASD Rule 5120 is consistent with the Section 15A(b)(6) of the Exchange Act because it extends the NASD's rules that prohibit manipulative trading practices to Nasdaq UTP Plan Securities. The Commission believes that this change will promote uniformity in NASD's rules.

In addition, the NASD proposes to add a new NASD Rule 5130 to explicitly require that NASD members participating in any NASD system or facility must provide information to the staff of the NASD when the NASD staff requests information relating to a specific NASD rule, Commission rule, or provision of a joint industry plan (*e.g.*, UTP, CTA, CQ and ITS). A failure to comply in a timely, truthful and/or complete manner with such request may be deemed conduct inconsistent with just and equitable principles of trade. This rule is substantially similar to former NASD Rule 4625, which imposed obligations on NASD members to respond to requests from the staff of Nasdaq MarketWatch and Nasdaq Market Operations and which was inadvertently deleted from NASD rules.[66] The Commission finds that proposed NASD Rule 5130 is consistent with Section 15A(b)(6) of the Exchange Act, and with Section 15A(b)(2) of the Exchange Act because it is designed to allow the NASD to conduct more efficient surveillance and investigation of its members' activities for potential violations of NASD rules and the federal securities laws.

Finally, the NASD proposes to amend NASD Rule 11890 Series (Clearly Erroneous Transactions). Specifically, the NASD proposes to delete those provisions that provide Nasdaq with the authority to break trades as a result of a complaint. The proposed rule change also reallocates to the NASD authority previously allocated to Nasdaq to break trades in CTA Plan Securities on its own motion, which is consistent with the NASD's current authority with respect to Nasdaq UTP Plan Securities and OTC Equity Securities. The Commission finds that these changes are consistent with Section 15A of the Exchange Act because it updates the NASD's rules to reflect the separation of Nasdaq.

The NASD also proposes to amend NASD Rule 11890(c) to delete references to the MORC, which currently reviews appeals of erroneous transactions in CTA Plan Securities. Instead, proposed NASD Rule 11890(b) and (c) will provide that the NASD's UPC Committee will have its authority expanded so that it may review appeals relating to all transactions (including transactions in CTA Plan Securities), and not just transactions relating to Nasdaq UTP Plan Securities and OTC Equity Securities as provided in the

[62] A riskless principal transaction is a transaction in which a member, after having received a customer order, executes an offsetting transaction, as principal, with another customer or broker-dealer to fill that customer order and both transactions are executed at the same price. Such transactions are reported to the NASD/Nasdaq Trade Reporting Facility as one transaction in the same manner as an agency transaction (excluding the mark-up or mark-down, commission equivalent or other fee) or otherwise, as specified in NASD Rule 4632. *See* NASD 4632(d)(3)(B).

[63] *See also* NASD Rule 4632(e)(6). In the proposed rule change, the NASD proposes a similar amendment to NASD Rule 6420(d)(3)(B) with regard to riskless principal transactions in CTA Plan Securities reported to the NASD via the ITS/CAES System.

[64] The amended definition of ''Reporting ECN'' shall also apply to the trade reporting service of the ITS/CAES System. *See* NASD Rule 6110(m).

[65] In its filing, the NASD stated that it expects that an automated comprehensive audit trail and integrated surveillance will be completed by the end of fourth quarter 2006.

[66] NASD Rule 4625 was inadvertently deleted as part of File No. SR–NASD–2005–087, *supra* note 9.

current rule.[67] The Commission finds that these proposed changes are consistent with Section 15A(b)(6) of the Exchange Act as they adequately reflect the structure and obligations of the NASD's committee with respect to NASD Rule 11890 upon Nasdaq's complete separation from the NASD.

In Amendment No. 2, the NASD clarified that the Consolidated Quotation Service referred to in NASD Rule 6320 is the ITS/CAES System. The Commission finds that this proposed change is consistent with Section 15A(b)(6) of the Exchange Act[68] because it clarifies NASD's rule and reflects the fact that CQS Market Makers, who are required to be registered as ITS/CAES Market Makers, will send their quotations to the ITS/CAES System. In Amendment No. 2, the NASD also amended NASD Rule 6420(d)(3)(B), which relates to riskless principal transactions in the proposed ITS/CAES System so that it would conform to NASD Rule 4632(d)(3)(B), which relates to the same transactions in the NASD/Nasdaq TRF. The NASD also amended NASD Rule 11890(b)(2), which relates to clearly erroneous transactions to provide that officers designated by an Executive Vice President of NASD's Market Regulation Committee or NASD's Transparency Services Department could also take action under that rule. The Commission finds that these proposed changes are consistent with the Section 15A(b)(6) of the Exchange Act since they clarify the NASD's rules and accurately reflect NASD's proposed ITS/CAES System and its review of clearly erroneous transactions. For these reasons, the Commission finds good cause for approving Amendment No. 2 to the proposal prior to the 30th day after the date of publication of filing thereof in the **Federal Register**. Accordingly, the Commission finds that it is consistent with Section 15A(b)(6) and Rule 19(b)(2) of the Exchange Act[69] to approve Amendment No. 2 on an accelerated basis.

D. Effective Date of Proposed Rule Change

The NASD proposes that the changes to its governing documents, including the Delegation Plan, and its rules become effective on the date on which the Nasdaq Exchange commences operation as a national securities exchange for CTA Plan Securities. The Commission finds that this effective date is consistent with Section 15A of the Exchange Act because until the Nasdaq Exchange begins operations, the NASD must maintain its current rules to fulfill its statutory and regulatory obligations.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2006–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2006–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File No. SR–NASD–2006–104 and should be submitted on or before December 20, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–2006–104), as amended by Amendment No. 1, is approved and that Amendment No. 2 is approved on an accelerated basis.[70]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[71]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20215 Filed 11–28–06; 8:45 am]

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[67] *See supra* notes 50–51 and accompanying text. In contrast to the MORC's decisions, decisions by UPC Committee may be submitted by the parties to arbitration. *See* NASD Rule 11890(c)

[68] 15 U.S.C. 78*o*–3(b)(6).

[69] 15 U.S.C. 78*o*–3(b)(6) and 15 U.S.C. 78s(b)(2).

[70] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[71] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54811; File No. SR–NASD–2006–066]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Allow Certain Institutional Customers To Elect Not To Receive Account Statements

November 22, 2006.

On May 23, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed amendment to NASD rule 2340 (Customer Account Statements). On August 17, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on October 16, 2006.[4] The Commission received one comment on the proposal.[5] This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD proposed to partially amend the text of proposed amended Rule 2340.

[4] *See* Exchange Act Release No. 54566 (Oct. 3, 2006), 71 FR 60784 (Oct. 16, 2006).

[5] *See* letter from Noland Cheng, Chairman, Operations Committee, Securities Industry and Financial Markets Association (''SIFMA''), to Nancy M. Morris, Secretary, Commission, dated November 3, 2006 (''SIFMA letter'') (available for review on the Commission's Web site at *http://www.sec.gov/comments/sr-nasd-2006-066/nasd2006066-1.pdf*).

I. Description

The proposed amendment to NASD Rule 2340 would allow institutional customers with Delivery versus Payment/Receive versus Payment (''DVP/RVP'') accounts to elect not to receive quarterly account statements.[6] A DVP/RVP account is an arrangement whereby payment for securities purchased is made to the selling customer's agent/and or delivery of securities sold is made to the buying customer's agent in exchange for payment at the time of settlement, usually in the form of cash.

Rule 2340, in pertinent part, requires any member that conducts a general securities business and also carries customer accounts or holds customer funds or securities to send account statements to customers at least once each calendar quarter. The statement of account must contain a description of any securities positions, money balances, or account activity, and must be sent to each customer whose account had a security position, money balance, or account activity during the time since the last statement was sent.

The proposed amendment would provide relief from this requirement with regard to customer accounts that are carried solely for the purpose of DVP/RVP transactions. NASD states that account statements for DVP/RVP accounts (chiefly institutional accounts) generally do not reflect any cash balance or security position at the end of a quarter, and that DVP/RVP customers generally rely on trade runs or customer confirmations issued pursuant to Rule 10b–10 under the Exchange Act for transaction-related information.

The proposed amendment would relieve members from the obligation to send quarterly statements to customers with DVP/RVP accounts if: (1) The customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions in the account are handled on a DVP/RVP basis in conformity with Rule 11860;[7] (3) there are no securities or cash positions in the account at the end of the quarter (other than positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions); (4) the customer consents to the suspension in writing and the member maintains such consents in a manner consistent with NASD Rule 3110 and Rule 17a–4 under the Exchange Act;[8] (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member undertakes to promptly reinstate the delivery of such statements to the customer upon request. The proposed rule change specifies that Rule 2340 does not qualify or condition the obligations of a member under Rule 15c3–2 under the Exchange Act concerning quarterly notices of free credit balances on statements.[9] The proposed rule change would also define ''DVP/RVP account'' for purposes of Rule 2340.[10] Finally, the proposed rule change includes a technical amendment that would replace the reference to ''the Association'' in paragraph (e) of Rule 2340 with ''NASD.''

II. Summary of Comments

The Commission received one comment on the proposal, which was supportive, did not suggest any changes to the proposal, and did not require a response from NASD.[11]

III. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, should remove impediments to and perfect the mechanisms of a free and open market and national market system by removing an unnecessary and potentially costly obligation on firms to deliver quarterly account statements to DVP/RVP customers. At the same time, the proposal maintains certain investor protections (*i.e.*, requiring NASD members to obtain affirmative consent to the suspension of quarterly account statements, preserving the ability of customers to obtain particular statements upon request and to resume receipt of statements promptly upon request, and precluding member organizations from unilaterally terminating delivery of such statements). The Commission therefore believes the proposal is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[13] that the proposed rule change (SR–NASD–2006–066) be, and hereby is, approved,[14] effective immediately.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20217 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

[6] The proposed rule change is similar to a rule change proposed by the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC). *See* Securities Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

[7] Prior to accepting an order in a DVP/RVP account, a member must comply with Rule 11860, which requires, among other things, that the member obtain certain information from the customer, including the name and address of the agent and the account number of the customer on file with the agent.

[8] Under NASD Rule 3110(a), NASD members are, among other things, required to make and preserve books and records as prescribed by Rule 17a–3 under the Exchange Act. Rule 3110(a) also states that the recordkeeping format, medium, and retention period must comply with Rule 17a–4 under the Exchange Act. Rule 17a–4 specifies the manner in which broker-dealers must maintain the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, and the required retention periods for these records.

[9] Rule 15c3–2 under the Exchange Act requires broker-dealers to provide each of their customers for whom a free credit balance is carried, not less frequently than once every three months, a written statement informing the customer of the amount due to the customer, and written notice that the funds are not segregated and may be used in the broker-dealer's business operations, and that the funds are payable on the customer's demand.

[10] Proposed Rule 2340(d)(6) would define a ''DVP/RVP account'' as ''an arrangement whereby payment for securities purchased is made to the selling customer's agent and/or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.''

[11] *See* SIFMA letter, footnote 5, *supra.*

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(2).

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] NASD initially requested that the effective date of the proposed rule change be 30 days following NASD's publication, within 60 days of the Commission's approval of the rule change, of a *Notice to Members* announcing the rule change. NASD withdrew its request to delay effectiveness of the proposal in a telephone conversation between Shirley Weiss, Associate General Counsel, NASD, and Brice Prince, Special Counsel, Division of Market Regulation, Commission, on November 21, 2006.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54808; File No. SR–NSX–2006–15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Rule Regarding Third-Party Routing Services in Respect of Orders Entered Into NSX BLADE

November 21, 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 November 21, 2006, the National Stock Exchange, Inc. (''NSX'' 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. NSX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new NSX Rule 2.12 describing the terms under which the Exchange would provide routing services procured from a third party with respect to orders entered into its new state of the art trading system, NSX BLADE. The text of the proposed rule change is below. Proposed new language is in *italics*.

RULES OF NATIONAL STOCK EXCHANGE, INC.

* * * * *

CHAPTER II—ETP Holders of the Exchange

* * * * *

Rule 2.11 NSX Securities, LLC

(a)–(b) No change.

(c) This Rule 2.11 shall become effective on March 1, 2007.

Rule 2.12 Order Routing Services

The Exchange will route orders to other trading centers under certain circumstances (''Routing Services'') as described in Chapter XI of these Rules. The Exchange will provide its Routing Services pursuant to the terms of three separate agreements: (1) an agreement between the Exchange and each ETP Holder on whose behalf orders will be routed; (2) an agreement between the Exchange and each third-party broker-dealer that will serve as a ''give-up'' on an away trading center when the ETP Holder on whose behalf an order is routed is not also a member or subscriber of the away trading center; and (3) an agreement between the Exchange and a third-party service provider (''Technology Provider'') pursuant to which the Exchange licenses the routing technology used by the Exchange for its Routing Services (''Exchange-Technology Provider Agreement''). This Rule 2.12 shall be effective through February 28, 2007.

Interpretations and Policies

.01 (a) The Exchange will provide its Routing Services in compliance with these Rules, as well as other provisions of the Exchange's By-Laws and Rules where applicable, and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(b) As provider of the Routing Services, the Exchange will license the necessary routing technology for use within its own systems and accordingly will control the logic that determines when, how, and where orders are routed away to other trading centers.

(c) The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Technology Provider, and, to the extent the Technology Provider reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Technology Provider to legitimate business purposes necessary for the licensing of routing technology.

(d) The Exchange-Technology Provider Agreement will include terms and conditions that enable the Exchange to comply with this Interpretation and Policy .01.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX 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. NSX 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 add a new NSX Rule 2.12 relating to the routing of orders to other trading centers by the Exchange. The proposed Rule would apply to orders entered into the Exchange's new state of the art trading system, NSX BLADE, and would be effective through February 28, 2007. NSX states that this Rule is proposed to be effective for a finite period so that the Exchange can offer routing services through NSX BLADE while the Exchange's wholly-owned subsidiary, NSX Securities, LLC (''NSX Securities'') completes its registration process as a broker-dealer with the National Association of Securities Dealers, Inc. (''NASD'') (and thus becomes available to provide routing services), and while the Exchange evaluates its options for providing routing services to ETP Holders. The Exchange states that the ability to route orders entered into NSX BLADE to away markets for execution at the best available prices is a key feature of NSX's new system.

Proposed NSX Rule 2.12 provides that the Exchange's routing services would be provided under the terms of (i) an agreement between the Exchange and each ETP Holder on whose behalf the orders would be routed, (ii) an agreement between the Exchange and each third party broker-dealer that would serve as a ''give-up'' on any away trading center when the ETP Holder on whose behalf an order is routed is not also a member or subscriber at the away trading center, and (iii) an agreement between the Exchange and a third-party service provider pursuant to which the Exchange licenses the routing technology used by the Exchange for its routing services, as well as in compliance with the provisions of the Act and the rules thereunder, and other applicable provisions of the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

By-Laws and Rules. Proposed NSX Rule 2.12 also provides for (i) the equitable allocation of dues, fees and other charges, (ii) Exchange control of the routing logic, and (iii) the establishment and maintenance of procedures and internal controls designed to protect confidential and proprietary information.

Proposed NSX Rule 2.12 provides that the Rule would be effective through February 28, 2007.[5] The Exchange intends to provide routing services in accordance with proposed NSX Rule 2.12 until February 28, 2007, unless the Exchange, with the Commission's approval, amends proposed NSX Rule 2.12 before such date. During such time period, the Exchange intends to evaluate its options for providing routing services. At the conclusion of such time period, the Exchange may decide to (i) continue the approach provided for in proposed NSX Rule 2.12 on a permanent basis and not use NSX Securities as the outbound router (by filing a proposed rule change to delete NSX Rule 2.11 and renumber proposed NSX Rule 2.12), (ii) use the Exchange's original approach of NSX Securities as an outbound router and discontinue the approach provided for in proposed NSX Rule 2.12 (by filing a proposed rule change to delete proposed NSX Rule 2.12), or (iii) file a proposed rule change to allow ETP Holders to use either NSX Securities or the approach provided for in proposed NSX Rule 2.12 for outbound routing. The Exchange's use of NSX Securities as an outbound router would be contingent on NSX Securities' successful completion of its registration process as a broker-dealer with NASD.

2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that NSX has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

NSX has fulfilled the five-day pre-filing requirement. NSX has requested that the Commission waive the 30-day operative delay requirement. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately provide NSX and its market participants with the ability to route orders to away markets for execution at the best available prices, a key feature of NSX BLADE, which is now operational. The Commission notes that this proposed rule change is substantially similar to the rules of another self-regulatory organization.[10] For these reasons, the Commission hereby waives the 30-day operative delay requirement.[11] The Commission notes that NSX intends to offer outbound routing to its ETP Holders beginning on November 27, 2006.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2006–15 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-NSX–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 NSX. 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–2006–15 and should

[5] With this rule filing the Exchange also proposes to amend NSX Rule 2.11, relating to NSX Securities' Outbound Router function, to provide that such Rule would become effective on March 1, 2007, immediately after proposed NSX Rule 2.12 ceases to be effective.

[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] Rule 126B-AEMI of the American Stock Exchange LLC. See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (approving File No. SR–Amex-2005–104).

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

be submitted on or before December 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20218 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54810; File No. SR–NYSE–2005–90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Allow Certain Institutional Customers To Elect Not To Receive Account Statements

November 22, 2006.

On December 21, 2005, the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed amendment to NYSE Rule 409 (Statements of Accounts to Customers). On March 28, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on May 25, 2006.[5] The Commission received two comments on the proposal.[6] On August 14, 2006, the NYSE filed Amendment No. 2 to the proposed rule change.[7] This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission is providing notice of filing of Amendment No. 2 and granting accelerated approval of Amendment No. 2.

I. Description

The proposed amendment to NYSE Rule 409 would allow institutional customers conducting a Delivery versus Payment and Receive versus Payment (''DVP/RVP'') business to elect not to receive quarterly account statements. Rule 409, in pertinent part, specifies the obligations of member organizations with respect to customer statements, including frequency of delivery and elements of content.

NYSE Rule 409(a) requires that, except with the permission of the Exchange, members and member organizations shall send statements at least quarterly to customers for accounts showing security and money positions and entries during the preceding quarter. The proposed amendment would provide relief from this requirement for customer accounts that are carried solely for the purpose of DVP/RVP transactions. A DVP/RVP account is an arrangement whereby delivery of securities sold is made to the buying customer's bank in exchange for payment, usually in cash, at settlement. Such accounts must comply with the requirements outlined in NYSE Rule 387 (COD Orders).[8]

Due to the nature of DVP/RVP accounts, their statements do not generally reflect any cash balance or security position at the end of a quarter. Consequently, according to NYSE, DVP/RVP customers (chiefly institutional customers) generally rely on confirmations (issued pursuant to Rule 10b–10 under the Exchange Act) or trade runs for transaction-related information. Such records provide critical transactional information (such as security name and price, commission or markup, if applicable, trade date, settlement date, etc.) in a timely fashion. According to NYSE, institutional investors prefer transaction confirms or trade run information to quarterly account statements.

The proposed amendment to NYSE Rule 409 would relieve member organizations of the obligation to send quarterly statements to customers if: (1) The customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387; (3) the account does not show security or money positions at the end of the quarter; (4) the customer consents to the suspension of such statements in writing and such consents are maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a–4 under the Exchange Act;[9] (5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request. The proposed rule change specifies that Rule 409 does not qualify or condition the obligations of a member organization under Rule 15c3–2 under the Exchange Act concerning quarterly notices of free credit balances on statements.[10]

II. Summary of Comments

The Commission received two comments on the proposal, both of which generally were supportive.[11] BNP opposed condition number (3) of the proposal (*i.e.*, that the account not show security or money positions at the end of the quarter). BNP believed that proposed condition (3) could, among other things, require members to monitor qualifying accounts to ensure that they had no money or positions at the end of the quarter. BNP also contended that the condition could be triggered as a result of a failed receipt

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the NYSE proposed to partially amend the text of proposed amended Rule 409.

[5] *See* Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

[6] *See* letter from Tom DiSpaldo, Compliance Officer, BNP Paribas Securities Corporation, to Nancy M. Morris, Secretary, Commission, dated June 12, 2006 (''BNP letter'') (available for review on the Commission's Web site at *http://www.sec.gov/comments/sr-nyse-2005–90/tdispaldo7238.htm*); and letter from Noland Cheng, Chairman, Operations Committee, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated June 16, 2006 (''SIA letter'') (available for review on the Commission's Web site at *http://www.sec.gov/comments/sr-nyse-2005–90/sia061606.pdf*).

[7] In Amendment No. 2, the NYSE proposed to partially amend the text of proposed amended Rule 409 as discussed in Section III below.

[8] NYSE Rule 387 sets out specific prerequisites for the acceptance of such orders:

(1) The member or member organization must have previously received the name and address of the agent, together with its customer number;

(2) The order must note the payment on delivery or collect on delivery nature of the trade;

(3) The member or member organization must deliver to the customer a confirmation in the specified form; and

(4) The member organization must have obtained an agreement from the customer regarding the furnishing of appropriate instructions for the settlement of the trade.

[9] Under NYSE Rule 440, NYSE member organizations are, among other things, required to make and preserve books and records as prescribed by Rule 17a–3 under the Exchange Act. Rule 440 also states that the recordkeeping format, medium, and retention period must comply with Rule 17a–4 under the Exchange Act. Rule 17a–4 specifies the manner in which broker-dealers must maintain the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, and the required retention periods for these records.

[10] Rule 15c3–2 under the Exchange Act requires broker-dealers to provide each of their customers for whom a free credit balance is carried, not less frequently than once every three months, a written statement informing the customer of the amount due to the customer, and written notice that the funds are not segregated and may be used in the broker-dealer's business operations, and that the funds are payable on the customer's demand.

[11] *See* footnote 6, *supra*.

or delivery at the end of the quarter. In such case, the customer would receive a quarterly statement even though it had consented not to receive one. BNP contended that the customer would be confused by such statement and the statement would not benefit the customer.[12]

The SIA letter supported the proposed amendment to NYSE Rule 409 but commented that the proposal would unnecessarily and impractically require individual firms to retain a record that reflects each institution's consent to the suspension of statements. SIA proposed that the NYSE interpret proposed amended Rule 409 to make an institution's notification to Omgeo [13] and Omgeo's population of their database sufficient for recordkeeping purposes.

III. NYSE's Response to Comments

In filing Amendment No. 2, NYSE addressed comments on the proposal by revising proposed amended Rule 409(a)(3) to confirm that transactional positions, such as those arising from a fail to receive or deliver money or securities, will not be deemed money or security positions for purposes of this rule. This proposed change is intended to avoid the possibility raised by BNP that firms could be in violation of the rule due to a failed receipt or delivery at the end of a quarter.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act.[15] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, should remove impediments to and perfect the mechanisms of a free and open market and national market system by removing an unnecessary and potentially costly obligation on firms to deliver quarterly account statements to DVP/RVP customers. At the same time, the proposal maintains certain investor protections (*i.e.*, requiring NYSE member organizations to obtain affirmative consent to the suspension of quarterly account statements, preserving the ability of customers to obtain particular statements upon request and to resume receipt of statements promptly upon request, and precluding member organizations from unilaterally terminating delivery of such statements). Therefore, the Commission believes the proposal is consistent with the Exchange Act.

Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change, as amended, prior to the thirtieth day after Amendment No. 2 is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[16] Amendment No. 2 clarifies that transactional positions, such as those arising from a fail to receive or deliver money or securities, will not be deemed money or security positions for purposes of the proposed amended rule. The Commission finds that Amendment No. 2 appropriately addresses a concern raised by a commenter.[17] For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 2.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[18] that the proposed rule change (SR–NYSE–2005–90), as amended by Amendment No. 1 thereto, be, and hereby is, approved, and that Amendment No. 2 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20227 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

[12] In its comment, discussed below, SIA does not believe that condition (3) should apply to those accounts that show a money or position balance at the end of the quarter because of unsettled items or a ''DK.''

[13] According to SIA, Omgeo, LLC is the leading industry provider of institutional processing services. SIA believes that other vendors would also provide such indicators.

[14] In approving this proposed rule change, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] *See* BNP letter, footnote 6, *supra.*

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54796; File No. SR–NYSEArca–2006–85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Six-Month Pilot Program To Adopt New Initial and Continued Listing Standards

November 20, 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 November 17, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as a six-month pilot, until May 29, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, on a six-month pilot program basis (the ''Pilot Program''), to make significant revisions to its initial and continued financial listing standards for operating companies.[3] The text of the proposed rule change is available on the Exchange's Web site at *www.nysearca.com*, at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the proposed changes are primarily to the initial and continued listing standards of common stock and common stock equivalent securities, preferred stock and similar issues and secondary classes of common stock. Some changes are also being made to the listing standards for bonds and debentures, warrants, contingent value rights, other securities, and index-linked exchangeable notes.

the places specified in Item III below. The self-regulatory organization 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

On March 7, 2006, Archipelago Holdings, Inc. and the New York Stock Exchange, Inc. completed their merger (the ''Merger''), creating NYSE Group, Inc. (''NYSE Group''). NYSE Group is a holding company that operates, among other subsidiaries, two securities exchanges: New York Stock Exchange LLC (''NYSE'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation'').[4] NYSE Arca Equities conducts its equities trading operations through its equities trading facility, NYSE Arca, L.L.C. (also referred to as the ''NYSE Arca Marketplace'').

In connection with the Merger, NYSE Arca Marketplace examined all aspects of its listings program, and as a result, determined to make substantial modifications and enhancements to its listing standards. Accordingly, with this filing, NYSE Arca is proposing significant revisions to the initial and continued listing criteria applicable to operating companies set forth in NYSE Arca Equities Rule 5, completely replacing the current tiered structure with a single set of numerical and financial requirements.[5] The principal objectives of these proposed revisions are to upgrade the financial condition, shareholder interest, and stature of issuers listing on NYSE Arca Marketplace; more closely align NYSE Arca Marketplace's listing standards and structure with the NYSE; and enhance NYSE Arca Marketplace's competitive position.[6]

NYSE Arca Equities Rule 5.1(a) provides that the Board of the Directors of the Exchange will make determinations as to whether to list securities or admit securities to unlisted trading privileges on the Exchange. Similarly, current NYSE Arca Equities Rule 5.2(a) provides that the prescribed forms of applications to list securities on the Exchange will be determined by the Board of Directors. This filing proposes to amend both of the aforementioned requirements to state that the Exchange will make such determinations. Such decisions will be made by the chief executive officer of the Exchange or by staff of the Exchange pursuant to authority delegated by the chief executive officer. In addition, NYSE Arca Equities Rule 5.2(a) would be amended to state that the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination could be made even if the company meets the standards set forth below.

Summary of Current and Proposed Initial Listing Standards

Summary of Current Initial Listing Standards for Operating Companies

Currently, the NYSE Arca Marketplace has a two-tier listing structure, classifying listed securities as either Tier I or Tier II. For their common stock to qualify for initial listing as a Tier I security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.2(c).[7] To qualify for initial listing as a Tier II security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.2(k). Both Rule 5.2(c) and Rule 5.2(k) also provide that an issuer may qualify under either a Basic or an Alternate set of listing criteria. To be eligible to list, an issuer need only satisfy all of the criteria under one of these four separate sets of standards.[8]

[4] The Commission notes that NYSE Arca is actually the registered national securities exchange and NYSE Arca Equities is a wholly-owned subsidiary of NYSE Arca.

[5] This filing relates only to quantitative (financial) original and continued listing standards applicable to operating companies. It does not relate to listing standards for corporate governance, exchange traded funds, open and closed-end funds, commodity-based trusts, trust issued receipts, portfolio depositary receipts, investment company units or other types of structured products. *See supra* note 3.

[6] The Commission recently approved substantial revisions to NYSE Arca's listing fees. *See* Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR–PCX–2006–16).

[7] In addition to the numerical criteria set forth in Rules 5.2(c) and 5.2(k), issuers must also satisfy certain qualitative requirements, including corporate governance-related standards set forth in NYSE Arca Equities Rule 5.3. These corporate governance rules are not the subject of this proposal.

[8] NYSE Arca Equities Rule 5.2(a) provides that approval of listing applications is a matter solely within the discretion of NYSE Arca Equities, and the fact that an issuer may meet the applicable listing requirements does not necessarily mean that its application will be approved.

These requirements are:

	Tier I (Rule 5.2(c))		Tier II (Rule 5.2(k))	
	Basic	Alternate	Basic	Alternate
Net tangible assets [9]	.....	.....	$2,000,000	.....
Net worth [10]	$4,000,000	$12,000,000	.....	$8,000,000
Pre-tax income [11]	$750,000	.....	.....	.....
Net income [12]	.....	.....	$100,000	.....
Public float (shares)	500,000	1,000,000	500,000	1,000,000
Public beneficial holders [13]	800 or 400	400	500	500
Market value	$3,000,000	$15,000,000	$1,500,000	$2,000,000
Operating history	.....	3 years	3 years	.....
Price [14]	$5	$3	$3	$1

Proposed Initial Listing Standards for Common Stock and Common Stock Equivalent Securities

With this filing, NYSE Arca is proposing to eliminate the Tier I and II classifications and replace, in their entirety, the current Tier I and Tier II numerical standards for initial listing for common stock set forth in NYSE Arca Rules 5.2(c) and (k), respectively. Companies whose common stock is listed with a Tier II designation will be able to remain listed under the existing Tier II rules as long as they are in compliance with the maintenance requirements of Arca Equities Rule 5.5(h). However, the Exchange will no longer list any new issuers or additional classes of securities with a Tier II designation.

In place of the existing Tier I and Tier II standards, this filing proposes to require for initial listing that, at the time of initial listing, the listed class of common stock or common stock equivalent securities [15] shall have:

- At least 1.1 million publicly held shares.
- A closing price per share of $5 or more.
- A minimum of 400 round lot shareholders.

In addition, the requirements of one of Standards One, Two or Three below must be met:

Standard One

- The issuer of the security had annual income from continuing operations before income taxes of at least $1 million in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.
- The market value of publicly held shares is at least $8 million.
- The issuer of the security has stockholders' equity of at least $15 million.

Standard Two

- The issuer of the security has stockholders' equity of at least $30 million.
- The market value of publicly held shares is at least $18 million.
- The issuer has a two-year operating history.

Standard Three

- The market value of publicly held shares is at least $20 million.
- The issuer has:

○ A market value of listed securities of $75 million (currently traded issuers must meet this requirement and the $5 closing price requirement for 90 consecutive trading days prior to applying for listing); or

○ Total assets and total revenue of $75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

In evaluating compliance with these standards, the Exchange will consider amounts contained in a company's pro forma financial statements provided in a filing with the Commission pursuant to Commission rules and regulations governing Article 11 ''Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements.'' This shall include, without limitation, adjustments relating to the proceeds of an offering. In the case of foreign private issuers (as such term is defined in Rule 3b–4 under the Act), the Exchange will take into account global market capitalization in evaluating compliance with the market capitalization requirements of this rule.

This revised rule shall apply to common stock and common stock equivalents, including, but not limited to: Ordinary shares, American Depository Receipts (''ADRs''), American Depository Shares, global depository shares, depository shares, shares or certificates of beneficial interest of trusts, and other similar issues that have the same characteristics of common stock.

Summary of Current Initial Listing Standards for Preferred Stock and Similar Issues

Currently, as set forth in NYSE Arca Equities Rule 5.2(d), in the case of preferred stock and similar issues, the following listing requirements among others must be met:

- The issuer must meet the net worth and earnings requirements as set forth in the Tier I Basic Listing Requirements under Rule 5.2(c), and must meet and appear to be able to service the dividend requirements for the preferred stock.
- If the company's common stock is traded on NYSE Arca or on either the American Stock Exchange LLC

[9] NYSE Arca Equities Rule 5.1(b)(10) defines ''net tangible assets'' as the amount of funds remaining after deducting intangible assets from stockholders' equity. This rule further provides that intangible assets include, but are not limited to, goodwill, patents, copyrights, trademarks, leaseholds, franchises, licenses, permits, research and development costs, organization costs, and similar types of property rights.

[10] NYSE Arca Equities Rule 5.1(b)(9) defines ''net worth'' as total assets (excluding the value of goodwill) less total liabilities.

[11] NYSE Arca Equities Rule 5.2(c)(4) provides that an issuer must have pre-tax income from continuing operations of at least $750,000 in the last fiscal year or two of the last three fiscal years.

[12] NYSE Arca Equities Rule 5.2(k)(4) provides that an issuer must have net income from continuing operations of at least $100,000 in the last fiscal year or in two of the last three fiscal years, or total net tangible assets of $2,500,000.

[13] NYSE Arca Equities Rule 5.2(c)(2) provides that issuers must have at least 800 public beneficial holders if the issuer has at least 500,000 and less than 1,000,000 shares publicly held, or a minimum of 400 public beneficial holders if the issuer has either: (i) At least 1,000,000 shares publicly held; or (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares for the six months preceding the date of application.

[14] NYSE Arca Equities Rules 5.2(c)(5) and 5.2(k)(5) provide that the issuer must maintain the minimum price for the majority of business days for the most recent six-month period prior to the date of application, and the price must be at or above the minimum per share at the time of application.

[15] Proposed NYSE Arca Equities Rule 5.1(b)(26) defines common stock equivalent as ''ordinary shares, ADRs, American Depository Shares, global depository shares, depository shares, shares or certificates of beneficial interest of trusts, and other similar issues that have the same characteristics of common stock.''

(''Amex'') or NYSE, the following public distribution requirements must be met: At least 100,000 preferred shares publicly held and an aggregate market value of at least $2,000,000, and a minimum closing bid price of $10.

• If the related common stock is not traded on any of the above referenced exchanges then the requirements are: At least 400,000 preferred shares publicly held and an aggregate market value of at least $4,000,000, and a minimum closing bid price of $10. At least 800 public beneficial holders of 100 shares or more shall also be required.

Proposed Initial Listing Standards for Preferred Stock and Similar Issues and Secondary Classes of Common Stock

For initial listing, if the common stock or common stock equity equivalent security of the issuer is listed on the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the issue shall have:

• At least 200,000 publicly held shares;

• A market value of publicly held shares of at least $4,000,000;

• A minimum closing price per share of $5;

• A minimum of 100 round lot shareholders.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the preferred stock and/or secondary class of common stock may be traded on the Exchange so long as the security satisfies the initial listing criteria for common stock.

Summary of Current and Proposed Continued Listing Standards

Current Continued Listing Standards for Common Stock

To qualify for continued listing as a Tier I security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.5(b). To qualify for continued listing as a Tier II security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.5(h).

These requirements are:

	Tier I (Rule 5.5(b))	Tier II (Rule 5.5(h))
Net tangible assets or Net worth	$2,000,000 or 4,000,000 [16]	$500,000 or 2,000,000.
Public float (shares)	200,000	300,000.
Public beneficial holders	400 [17]	250.
Market value	$1,000,000	$500,000.
Bid price [18]	$3	$1.

Proposed Continued Listing Standards for Common Stock and Common Stock Equivalent Securities

With this filing, NYSE Arca is proposing to eliminate the two tiered structure and replace, in their entirety, the current Tier I and Tier II numerical standards for continued listing for common stock set forth in NYSE Arca Rules 5.5(b) and (h), respectively, except that Rule 5.5(h) will continue to be applied to common stocks listed with a Tier II designation prior to the effectiveness of this filing. In their place, this filing proposes in new Rule 5.5(b) to require for continued listing that a listed common stock must meet the criteria set forth in either Continued Listing Standard One or Continued Listing Standard Two below to continue to remain listed on the Exchange. All of the existing Tier I issuers and securities currently meet the requirements of the proposed continued listing standards. As such, the Exchange does not need to provide a phase in period for compliance with the new rules and will be able to apply them as soon as the Commission approves the Pilot Program.

Under the proposed new standards, a listed common stock must meet each of the criteria set forth in Continued Listing Standards One or Two below to continue to remain listed on the Exchange.

Continued Listing Standard One

• 750,000 publicly held shares;

• Market value of publicly held shares of $5 million;

• The issuer has stockholders' equity of at least $10 million; and

• 400 shareholders of round lots.

Continued Listing Standard Two

• The issuer has:

○ A market value of listed securities of $50 million or, in the case of non-U.S. companies, a global market capitalization of $50 million; or

○ total assets and total revenue of $50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

• 1,100,000 shares publicly held;

• Market value of publicly held shares of $15 million; and

• 400 shareholders of round lots.

In the case of a non-U.S. company with ADRs listed on the Exchange, the term ''global market capitalization'' means (x) the closing sale price per share of the common stock or common stock equivalent security underlying the ADRs multiplied by (y) the number of shares of such common stock or common stock equivalent security outstanding worldwide (including any shares underlying outstanding ADRs).

In addition, an issuer will also be considered to be below compliance standards if the average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the issuer must bring its share price and average share price back above $1.00 by six months following receipt of the notification. The issuer must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. Once a U.S. issuer is notified that it is below compliance, it is required to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange concurrent with filing notice of such non-compliance with the SEC as required by Form 8–K. Once a foreign private issuer is notified that it is below compliance, the issuer has 30 days to issue a press

[16] If the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years, then it must have a minimum of $2 million in net worth. If the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years, then it must have a minimum of $4 million in net worth.

[17] Alternatively, an issuer must have at least 300 beneficial holders of 100 shares or more.

[18] NYSE Arca Equities Rules 5.5(b) and (h) provide that NYSE Arca Equities may waive the minimum bid price requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors NYSE Arca Equities deems appropriate. This proposal eliminates this provision and replaces it with the ''cure period'' set forth in revised Rule 5.5(b).

release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the foreign private issuer fails to issue this press release during the allotted 30 days, the Exchange will issue the requisite press release. In the event that at the expiration of the six-month cure period, both a $1.00 share price and a $1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures.

Notwithstanding the foregoing, if an issuer determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above the level for at least the following 30 trading days.

Notwithstanding the foregoing, if the subject security is not the primary trading common equity security of the issuer (*e.g.*, a tracking stock or a preferred class), as discussed in more detail below, the Exchange may determine whether to apply this test to such security after evaluating the financial status of the issuer.

Continued Listing Standards for Preferred Stock and Similar Issues and Secondary Classes of Common Stock

NYSE Arca proposes to replace its existing continued listing standards for preferred stock and similar issues with the requirements described below and to also apply those requirements to secondary classes of common stock.

For continued listing, if the common stock or common stock equity equivalent security of the issuer is listed on the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the issue shall have:

- At least 100,000 publicly held shares;
- A market value of publicly held shares of at least $1,000,000;
- A minimum closing price per share of $1;
- A minimum of 100 round lot shareholders.

If the preferred stock or similar issue is the issuer's only security listed on the Exchange, after evaluating the financial status of the issuer, the Exchange may choose to apply the six-month cure period provided under the proposed common stock continued listing standards to any failure to maintain a $1 closing price.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the preferred stock and/or secondary class of common stock may be listed on the Exchange so long as the security satisfies the continued listing criteria for common stock.

Other Securities Pre-Tax Income Requirement

To conform to the parallel provision in Standard One of the proposed common stock initial listing standards, the Exchange proposes to increase the pre-tax income from continuing operations standard of NYSE Arca Equities Rule 5.2(e) (''Bonds and Debentures''), NYSE Arca Equities Rule 5.2(g) (''Contingent Value Rights''), NYSE Arca Equities Rule 5.2(j)(1) (''Other Securities'') and NYSE Arca Equities Rule 5.2(j)(4) (''Index-Linked Exchangeable Notes'') from $750,000 to $1 million.[19]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act[21] in particular, because 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[19] The Commission notes that, among other things, the Exchange proposes other clarifying changes, additional definitions, and different net worth standards for bonds and debentures, contingent value rights, other securities, and index-linked exchangeable notes.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–85 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–NYSEArca–2006–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–85 and should be submitted on or before December 20, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to make significant changes to its initial and continued listing standards. Among other things, the Exchange would no longer have a two-tiered listing structure. The Exchange represents that all existing Tier I issuers would meet one of the proposed continued listing standards set forth in proposed NYSE Arca Equities Rule 5.5(h). Further, the proposal would include a grandfather clause to ensure that the existing Tier II issuers would have the option to remain listed on the Exchange for as long as they meet the continued listing standards. The Commission believes that the proposal is designed not to permit unfair discrimination among issuers, since the proposal would treat all prospective issuers and existing Exchange-listed issuers equally.

Although the proposal significantly restructures and changes NYSE Arca listing standards, as discussed below, the changes are substantially similar to The Nasdaq Global Market initial and continued listing standards. Based on this, the Commission believes it is reasonable for the Exchange to determine that companies that meet these new listing standards are appropriate for inclusion and continued listing on NYSE Arca. For these reasons, as discussed in more details below, the Commission finds that the proposal is consistent with the requirements of the Act.

A. Initial Listing Standards

As proposed, the Exchange's common stock or common stock equivalent securities [24] initial listing standards would be significantly modified and the Exchange would no longer have Tier I or Tier II securities. Common stock or common stock equivalent securities would need: (1) At least 1.1 million publicly held shares; (2) a closing price per share of $5 or more; and (3) a minimum of 400 round lot shareholders, in addition to meeting the additional standards set forth in one of three alternatives.[25] Among other things, Standard 1 and Standard 2 would replace the current net worth requirement with an increased stockholders' equity requirement of $15,000,000 and $30,000,000, respectively. In addition, under Standard 3, the current net worth requirement would be eliminated and the issuer would be required to have a market value of listed securities of $75,000,000 or total assets and total revenue of $75,000,000 each for the most recently completed fiscal year or two of the last three most recently completed fiscal years. The Commission notes that the proposed initial listing standards for common stock or common stock equivalent securities are substantially similar to The Nasdaq Global Market initial listing standards.[26]

The Exchange's proposed preferred stock (and similar issues) and secondary classes of common stock initial listing standards would also be significantly modified. The Exchange would eliminate the current net worth and earnings requirements, and increase the current publicly held shares requirement and market value requirement. The Exchange would also lower the current bid price requirement. As proposed, if the common stock or common stock equivalent security of the issuer is listed on the Exchange, NYSE, The Nasdaq Global Market, or Amex, these securities must have: (1) At least 200,000 publicly held shares; (2) a market value of publicly held shares of at least $4 million; (3) a closing price per share of $5 or more; and (4) a minimum of 100 round lot shareholders.[27] If the common stock or common stock equivalent security of the issuer is not listed on the Exchange, NYSE, The Nasdaq Global Market, or Amex, these securities must satisfy the initial listing standards for common stock.[28] The Commission notes that these requirements are substantially similar to The Nasdaq Global Market initial listing standards.[29]

The Exchange also proposes to amend the initial listing standards for bonds and debentures and contingent value rights by increasing the net worth requirement and pre-tax income requirement consistent with the proposed common stock initial listing standards. In addition, the Exchange proposes to amend the initial listing standards for other securities and index-linked exchangeable notes to add a pre-tax income requirement, consistent with the pre-tax income requirements of the common stock initial listing standards. The pre-tax income requirement for these securities is being raised from $750,000 to $1,000,000.

Based on the foregoing, the Commission believes that the proposed amendments to the NYSE Arca Equities initial listing standards are consistent with the requirements of the Act.

B. Continued Listing Standards

The Commission believes that the proposed amendments to the NYSE Arca Equities continued listing standards are consistent with the requirements of the Act. The Exchange proposes to amend the common stock or common stock equivalent securities continued listing standard, by requiring that common stock must meet the standards set forth in one of two alternatives.[30] Both common stock continued listing standards would increase the current publicly held shares requirement. In addition, the current $1,000,000 market value requirement would be increased to a $5,000,000 market value of publicly held shares requirement under Continued Listing Standard 1 and $15,000,000 under Continued Listing Standard 2. Continued Listing Standard 1 would replace the current net worth requirement of $2,000,000 or $4,000,000 with a higher stockholders' equity requirement of $10,000,000. Continued Listing Standard 2 would eliminate the current net worth requirement, but require companies to maintain a market value of listed securities of $50,000,000 (in the case of non-U.S. companies, a global market capitalization of $50,000,000), or total assets and total revenue of $50,000,000 each for the most recently completed fiscal year or two of the last three most recently completed fiscal years. In addition, the Exchange would require under both common stock continued listing standards that all common stock have an average closing price of at least $1.00 over a consecutive 30-day trading period, instead of the current $3 bid price requirement.[31] The Commission notes that the proposed continued listing standards for common stock, common stock equivalent securities and similar issues are substantially similar

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* proposed NYSE Arca Equities Rule 5.1(b)(26).

[25] *See* proposed NYSE Arca Equities Rule 5.2(c).

[26] *See* Nasdaq Rule 4420(a)–(c).

[27] *See* proposed NYSE Arca Equities Rule 5.2(d).

[28] *See* proposed NYSE Arca Equities Rule 5.2(d).

[29] *See* Nasdaq Rule 4420(k).

[30] See proposed NYSE Arca Equities Rule 5.5(b).

[31] As noted above, issuers would have six months to cure this deficiency. *See* proposed NYSE Arca Equities Rule 5.5(b).

to The Nasdaq Global Market continued listing standards.[32]

The Exchange also proposes to amend the preferred stock (and similar issues) and secondary classes of common stock continued listing standards.[33] The Exchange would eliminate the current net worth requirement and continuing operations requirements. In addition, the proposed new preferred continued listing standards would contain a new $1 bid price requirement. The Commission notes that the proposed continued listing standards for preferred stock and similar issues and secondary classes of common stock are substantially similar to The Nasdaq Global Market continued listing standards.[34]

C. Other Changes

The proposed rule change would permit the Exchange, rather than its board of directors, to approve securities for listing and to prescribe the form of listing applications.[35] In particular, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination could be made even if the company meets the standards set forth below. The Commission believes that it is reasonable for the Exchange, based upon its experience, to determine whether the security of a company would be appropriate for inclusion on NYSE Arca. The Commission notes that this amendment is similar to NYSE's listing standards.[36] Further, with respect to the continued listing standards of all securities, the Exchange proposes to require all issuers to comply with the Exchange's corporate governance qualitative standards, rather than only the independent directors/board committees requirement in current NYSE Arca Equities Rule 5.3(k).[37] The Commission believes that these amendments are consistent with the requirements of the Act.

D. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,[38] the Commission may not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Exchange has requested the Commission find good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**.

The Commission believes that it is reasonable to grant accelerated approval to allow for the efficient administration of the Exchange's initial and continued listing programs as promptly as possible. The Commission notes that the proposed listing standards, while significantly different than the Exchange's current listing standards, are substantially similar to The Nasdaq Global Market, which the Commission previously approved. In addition, the Commission notes that the proposed listing standards would be in effect only as a pilot program for a six-month period.[39] Accordingly, the Commission believes that there is good cause, pursuant to Sections 6(b)(5) of the Act[40] and 19(b)(2) of the Act,[41] to grant accelerated approval to the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[42]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[43] that the proposed rule change (SR–NYSEArca–2006–85), is hereby approved on an accelerated basis, as a six-month pilot, until May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20211 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* Nasdaq Rule 4450(a)–(b).

[33] *See* proposed NYSE Arca Equities Rule 5.5(c).

[34] *See* Nasdaq Rule 4450(h).

[35] *See* proposed NYSE Arca Equities Rule 5.1(a) and 5.2(a).

[36] *See* NYSE Listed Company Manual Section 101.00.

[37] *See also* NYSE Arca Equities Rule 5.5(k), which sets forth other reasons for suspending or delisting securities on the Exchange.

[38] 15 U.S.C. 78s(b)(2).

[39] In any request under Section 19(b) of the Act for permanent approval or an extension of the pilot period, the Exchange may wish to report on the operations of the new standards during the pilot period.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 15 U.S.C. 78f(b)(5). The staff of the Division of Market Regulation (''Staff'') would not recommend enforcement action to the Commission under Rules 15g–2 through 15g–9 under the Act if broker-dealers treat equity securities listed pursuant to the initial and continued listing requirements set forth in amended NYSE Arca Equities Rule 5 as meeting the exclusion from the definition of penny stock contained in Rule 3a51–1 udner the Act pursuant to paragraph (a)(2) thereof. In taking this position, the Staff notes in particular that these amended listing requirements are equivalent, in all material respects, to the listing requirments of the The Nasdaq Global Market.

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54793; File No. SR–OCC–2006–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accelerate the Expiration Date of American-Style Equity Options That Have Been Adjusted To Call for Cash-Only Delivery

November 20, 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 26, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to accelerate the expiration date of American-style equity options that have been adjusted to call for cash-only delivery to the earliest practicable regular expiration date. OCC currently has such authority with respect to European-style options that have been so adjusted.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In a cash-out merger, the common equity of the acquired company (''Security'') is converted into a right to receive a fixed amount of cash. On the day after the announced consummation date for the merger, the stock exchanges on which the Security is traded suspend all trading in the Security. Concurrently, the option exchanges discontinue trading in options overlying the Security. If a customer does not liquidate an out-of-the-money option position before the exchange halts trading, its broker must carry the position until it expires. With increasing volume and the proliferation of options with long expiration dates, clearing members' cost and operational overhead of carrying these positions is significant. In an effort to reduce these costs, OCC adopted Rule 807 in 1998 to provide for acceleration of the expiration date of European-style equity options that have been converted to a cash deliverable. OCC now proposes to extend Rule 807 to cover American-style equity options.

Under the proposed rule change, OCC typically would accelerate the expiration date of American-style and European-style equity options that are adjusted to call for a cash deliverable to the earliest practicable regular expiration date. OCC proposes to set the exercise by exception price threshold for the adjusted contracts at $.01 per share of the amount of the cash deliverable.[4]

OCC proposes to implement the rule change on January 1, 2008, to allow clearing members and customers sufficient time to prepare for the change of methodology. OCC will not implement the proposed rule change until definitive copies of an appropriate revision of or supplement to the options disclosure document, *Characteristics and Risks of Standardized Options*, are available for distribution.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it would eliminate inefficient procedures for clearance and settlement that impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. As such, OCC believes it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2006–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2006–20. 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 filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_06_20.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2006–20 and should be submitted on or before December 20, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20209 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54807; File No. SR–Phlx–2006–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Assignments in Options Based on Root Symbol

November 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] OCC also proposes to make a conforming change to Rule 1106. Every option contract that has an exercise price below (in the case of a call) or above (in the case of a put) the amount of the cash deliverable by $.01 or more will be deemed to have been exercised immediately prior to the accelerated expiration time unless the clearing member directs otherwise.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx.[3] On November 21, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 507, Application for Assignment in Streaming Quote Options, by adopting new Commentary .01 to the rule, which would authorize the Exchange's Options Allocation, Evaluation and Securities Committee (''OAESC''),[5] to assign trading privileges in options to Streaming Quote Traders (''SQTs'') [6] and Remote Streaming Quote Traders (''RSQTs'') [7] by ''root symbol'' (as defined more fully below), such that an SQT or RSQT may be assigned in only certain series of an option. The text of the proposed rule change, as amended, is set forth below. Italic indicates new text.

* * * * *

Application for Assignment in Streaming Quote Options

Rule 507. (a)—(g) No change.

Commentary:

.01. An applicant may request assignment by ''root symbol,'' such that an SQT or RSQT may be assigned in only certain series of an option. A root symbol is the options trading mnemonic used for each option. The Exchange may list different root symbols, as applied by the Options Clearing Corporation (''OCC''), in series overlying the same underlying security depending, without limitation, on the strike price of the series, the expiration of the series, the price of the underlying security, and/or mergers and acquisitions relating to the underlying security.

* * * * *

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 Phlx 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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to mitigate quote traffic and address quote capacity issues by reducing the number of quotations required to be submitted on the Exchange. The proposal would permit the OAESC to assign trading privileges to SQTs and RSQTs, upon their request, only in specific series of a particular option based on the ''root symbol'' of the series, instead of assigning trading privileges in all series of such option. Thus, as described below, SQTs and RSQTs would be required to submit quotations in fewer series.

Current Assignment Rule

Phlx Rule 507 currently provides the solicitation, application and review process to be followed by the OAESC when an SQT or RSQT submits an application for assignment in an option. Under Phlx Rule 507, an application for assignment must be submitted in writing to the Exchange's designated staff and would be required to include, at a minimum, the name of the SQT or RSQT applicant and written verification from the Exchange's Membership Services Department that such SQT or RSQT applicant is qualified as a ROT.

To ensure an SQT or RSQT applicant's technological readiness to submit electronic quotes, Phlx Rule 507(b)(ii) mandates that no application for assignment in Streaming Quote Options would be approved by the OAESC without written certification signed by an officer (Vice President or above) of the Exchange's Financial Automation Department [8] indicating that the SQT or RSQT applicant has sufficient technological ability to support his/her continuous quoting requirements as set forth in Phlx Rule 1014(b)(ii), and the SQT or RSQT applicant has successfully completed, or is scheduled to complete, testing of its quoting system with the Exchange.

SQT and RSQT Quoting Requirements

Currently, SQTs and RSQTs that do not receive Directed Orders [9] in a Streaming Quote Option [10] are responsible to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option in which such SQT or RSQT is assigned.[11]

An SQT or RSQT that receives Directed Orders (''DSQT'' or ''DRSQT'', respectively) is responsible to quote continuous, two-sided markets in not

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the Exchange's request, the Commission has made certain clarifying additions and deletions to the description of the proposed rule change. *See* Telephone Conversations between Richard S. Rudolph, Vice President and Counsel, Phlx, Cyndi Rodriguez, Special Counsel, Division of Market Regulation (''Division''), Commission and Johnna B. Dumler, Special Counsel, Division, Commission, on September 14, 2006 and September 20, 2006.

[4] In Partial Amendment No. 1, the Exchange clarified in the proposed rule text that root symbols are assigned to series by the Options Clearing Corporation.

[5] The OAESC is a standing committee of the Exchange that has jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. It is responsible for appointing specialists, alternate or assistant specialists or odd-lot dealers on the options and foreign currency options trading floors. It also establishes standards for the periodic review and evaluation of their performance and is empowered to suspend or revoke their appointments upon showing of reasonable cause therefore. *See* Phlx By-Law Article X, Section 10–7(a). *See also* Phlx Rule 500.

[6] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[8] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interface with the Exchange's systems.

[9] The term ''Directed Order'' means any customer order (other than a stop or stop-limit order as defined in Phlx Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. *See* Phlx Rule 1080(l)(i)(A).

[10] A Streaming Quote Option is an option in which SQTs may generate and submit option quotations if such SQT is physically present on the Exchange floor, and RSQTs may generate and submit option quotations from off the floor of the Exchange, electronically. *See* Phlx Rule 1080(k). Currently, all options trading on the Exchange are Streaming Quote options.

[11] *See* Phlx Rule 1014(b)(ii)(D)(1).

less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned.[12] Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day.[13]

The Proposal

The Exchange proposes to permit SQT and RSQT applicants to request assignment in an option by ''root symbol.'' Today, all assignments are by overlying option, meaning the SQT and RSQT applicants that are assigned in a particular option are assigned in all series of such option. Therefore, the calculation of the percentage of series required to be quoted is based on every series listed in such option, thus requiring SQTs and RSQTs to quote most series.

Root symbols are the basic symbols used to identify an option, such as, for example, ''ABQ'' for options on fictitious ''ABC Corporation.'' The various series of options on ABC Corporation are identified with two additional symbols reflecting the expiration month and the strike price, which also indicate whether it is a put or call option. ABC Corporation may have different root symbols other than ABQ because of the number of strike prices (there are not enough letters in the alphabet to capture all potential strike prices), the expiration months available, and whether any mergers or acquisitions have occurred. Thus, an option on the Exchange overlying a single underlying security could have several different root symbols.

The Exchange anticipates that, if options can be assigned by root symbol, SQTs and RSQTs may more carefully tailor their requests to the specific roots in which they are interested, which should encourage quality quoting. According to the Exchange, SQTs and RSQTs often submit quotes with bid/ask differentials as wide as the Exchange's rules permit in series that they have no interest in quoting.[14] The effect of this is that, in order to meet their quoting continuity requirements, SQTs and RSQTs submit continuous quotations that are not at or even near the best bid or offer on the Exchange, nor the National Best Bid or Offer. Such quotations result in unnecessary quote traffic on the Exchange, often causing issues of concern respecting quote capacity. This proposal should reduce the number of series assigned to SQTs and RSQTs by the OAESC, and consequently reduce the number of quotes submitted by SQTs and RSQTs.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by reducing the number of options quotations required to be submitted, which should enable the Exchange to mitigate quote traffic and capacity.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or,

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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–Phlx–2006–53 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–Phlx–2006–53. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Phlx. 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–Phlx–2006–53 and should be submitted on or before December 20, 2006.

[12] *See* Phlx Rule 1014(b)(ii)(D)(1).

[13] *See* Phlx Rule 1014(b)(ii)(D)(1).

[14] Streaming Quote Options trading on the Exchange's fully electronic trading platform for options, Phlx XL, may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 bid/ask differentials only apply to Streaming Quote Options trading on Phlx XL and only following the opening rotation in each security. *See* Phlx Rule 1014(c)(i)(A)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20212 Filed 11–28–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 3, 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–2006–26276.
Date Filed: November 3, 2006.
Parties: Members of the International Air Transport Association.
Subject:

CBPP/17 teleconference on 06 September 2006.
CBPP/17/Meet/003/06 dated 17 October 2006.
Finally Adopted Resolutions: 600a.
Intended effective date: 3 February 2007.

Docket Number: OST–2006–26263.
Date Filed: November 1, 2006.
Parties: Members of the International Air Transport Association.
Subject:

Mail vote 519—Resolution 002ii,
TC2 Europe between points in the ECAA,
(Memo 0642),
Mail vote 520—Resolution 002jj,
TC2 Europe except between points in the ECAA,
(Memo 0643),
Intended effective date: 1 December 2006.

Docket Number: OST–2006–26245.
Date Filed: Ocotober 31, 2006.
Parties: Members of the International Air Transport Association.
Subject:

Mail Vote 516—Resolution 010e,
TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution between Korea (Rep. of) and China excluding Hong Kong SAR and Macao SAR, Philippines (Memo 1003).
Intended effective date: 6 November 2006.

Docket Number: OST–2006–26243.
Date Filed: October 30, 2006.
Parties: Members of the International Air Transport Association.
Subject:

MAIL VOTE NUMBER A 132,
PAC2 (Mail A132),
Reporting & Remittance Cycle for Russia.
Intended effective date: 1 January 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–20179 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 10, 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–2006–26297.
Date Filed: 11–7–2006.
Parties: Members of the International Air Transport Association.
Subject:

TC23 Africa—South East Asia
Expedited Resolution 002c
(Memo 0312)
Intended effective date: 1 November 2006.

Docket Number: OST–2006–26289.
Date Filed: 11–6–2006.
Parties: Members of the International Air Transport Association.
Subject:

Mail Vote 517—Resolution 010f
PTC3/23/31/123 Special Amending Resolution—Sri Lanka
(Memo 1364)
Intended effective date: 17 November 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–20232 Filed 11–28–06; 8:45 am]

BILLING CODE 4910– 9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 27, 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–2006–26167.
Date Filed: 10–23–2006.
Parties: Members of the International Air Transport Association.
Subject:

Mail Vote 514—Resolution 010c,
TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution between Japan and China excluding Hong Kong SAR and Macao SAR (Memo 1002).
Intended effective date: 01 November 2006.

Docket Number: OST–2006–26186.
Date Filed: 10–25–2006.
Parties: Members of the International Air Transport Association.
Subject:

TC23/TC123 Mail Vote 511,
Between Africa and South West Pacific, Except between South Africa and Australia (Memo 0315).
Technical Correction: TC23/TC123 Mail Vote 511
Between Africa and South West Pacific Except between South Africa and Australia
(Memo 0317).
Intended effective date: 01 April 2007.

Docket Number: OST–2006–26188.
Date Filed: 10–25–2006.
Parties: Members of the International Air Transport Association.
Subject:

TC23/TC123 Mail Vote 512.
Between South Africa and Australia (Memo 0316).
Technical Correction: TC23/TC123 Mail Vote 512.
Between South Africa and Australia (Memo 0318).
Intended effective date: 01 April 2007.

Docket Number: OST–2006–26189.
Date Filed: 10–25–2006.
Parties: Members of the International Air Transport Association.
Subject:

PTC23/TC123 Middle East Japan/Korea.
Expedited Resolution 002ff.
(Memo 0311).
Intended effective date: 01 December 2007.

[17] 17 CFR 200.30–3(a)(12).

Docket Number: OST–2006–26194.
Date Filed: 10–25–2006.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Europe-South West Pacific Resolutions and Specified Fares Tables (Memo 0109).
Minutes: TC23 Europe-South West Pacific, South Asian Subcontinent (Memo 0111).
Intended effective date: 01 April 2007.

Docket Number: OST–2006–26196.
Date Filed: 10–25–2006.
Parties: Members of the International Air Transport Association.
Subject:
TC23 Mail Vote 509.
Between Europe and South Asian Subcontinent.
(Memo 0151).
TC23 Europe-South West Pacific, South Asian Subcontinent (Memo 0153).
Intended effective date: 01 April 2007.

Renee V. Wright,
Program Manager Docket Operations, Federal Register Liaison.
[FR Doc. E6–20236 Filed 11–28–06; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 27, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (see 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–26200.
Date Filed: October 25, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 15, 2006.
Description: Application of Global Jet Luxembourg, S.A., requesting a foreign air carrier permit to engage in charter foreign air transportation of persons and property between any point or points in Luxembourg and any point or points in the United States, either directly or via intermediate points in other countries, with or without stopovers, and beyond, coextensive with the rights provided under the U.S.-Luxembourg Air Transport Agreement and Fifth Freedom charter service pursuant to the prior approval requirements set forth in Part 212 of the Department's Regulations.

Docket Number: OST–2006–26199.
Date Filed: October 25, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 15, 2006.
Description: Application of Global Jet Austria GmbH, requesting a foreign air carrier permit to engage in charter foreign air transportation of persons and property between any point or points in Austria and any point or points in the United States, either directly or via intermediate points in other countries, with or without stopovers, and beyond, coextensive with the rights provided under the U.S.-Austria Air Services Agreement and Fifth Freedom charter service pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations.

Renee V. Wright,
Program Manager, Docket Operations. Federal Register Liaison.
[FR Doc. E6–20235 Filed 11–28–06; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 10, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–1657.
Date Filed: November 7, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 2006.
Description: Application of Alaska Central Express, Inc. requesting a fitness determination and reissuance of its certificate of public convenience and necessity to the extent necessary to permit Alaska Central to engage in interstate charter air transportation of passengers.

Docket Number: OST–2006–26328.
Date Filed: November 8, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 2006.
Description: Application of VistaJet Luftfahrtunternehmen GmbH, requesting an exemption and a foreign air carrier permit authorizing it to provide charter foreign air transportation of persons, property, and mail using small aircraft between any point or points in Austria and any point or points in the United States; and between any point or points in United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Austria for the purpose of carrying local traffic between Austria and the United States, and other charters between third countries and the United States.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. E6–20237 Filed 11–28–06; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–26431]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 21, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 29, 2006.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2006–26431.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Weaver, (202) 493–3153, Long-Term Planning Program (HRDI–13), Office of Research Development and Technology, Federal Highway Administration, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Mechanistic Empirical Pavement Design National Status Survey.

Background: In June 2004, the National Cooperative Highway Research Program (NCHRP) released the Mechanistic Empirical Pavement Design Guide (MEPDG) for New and Rehabilitated Pavement Structures. FHWA organized a Design Guide Implementation Team (DGIT) to immediately begin the process of informing, educating, and assisting FHWA field offices, State Highway Agencies, Industry, and others about the new design guide. FHWA considers implementation of mechanistic-empirical pavement design a critical element in improving the National Highway System. It ties directly into objectives listed in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Section 1503, which supports longer life pavements. Consequently, the impacts of long-life pavements include congestion mitigation and improved work zone safety.

The MEPDG represents a significant advancement in pavement design and includes the best available engineering theory and mechanistic principles to determine both the structural response and to predict performance over the lifetime of a pavement structure.

The mechanistic theory is balanced with over 525 empirical observations from the Long Term Pavement Performance database that represents a wide range of both material and climatic conditions. The use of both the mechanistic theory and a wide range of empirical observations make the MEPDG a robust design procedure.

The MEPDG can be considered a 40-year step forward in pavement design. The MEPDG is a more theoretical and mathematical based procedure, strongly bolstered by fundamental engineering principles and is readily useful to academia, researchers, and practitioners of pavement analysis and design.

The MEPDG provides significant potential benefits over the current AASHTO Guide in achieving cost-effective pavement designs and rehabilitation strategies. Most importantly, its user-oriented computational software implements an integrated analysis approach for predicting pavement condition over time. This analysis considers the complex interaction between traffic loadings, climatic conditions, materials and pavement structure.

Implementation of the MEPDG will require a significant amount of time, resources, and funding. However, the adoption of the guide has the potential for providing a substantial long-term savings based on the shear magnitude of annual expenditures for highway pavements. In 2003, over 79 billion dollars was used for highway purposes; based on data published in Highway Statistics 2003 from the Office of Highway Policy Information. Any improvement in the designs will have a significant implication in reducing costs to maintain these pavements and more than offset the resources required to implement the new pavement design guide.

The DGIT has put forth a strategic plan of action to aid the transportation community in deploying this new technology. The DGIT is an integral part of an extensive outreach campaign including Enhancement, Education, and Implementation strategies to promote the MEPDG. These activities include onsite and web based workshops that have already educated more than 1,200 engineers across the USA in 21 States and around the globe in Canada, Europe, China, India, Mexico, and Central and South America.

FHWA encourages States to evaluate the utility that the MEPDG offers and to carefully implement the guidelines and recommendations. The long-term goal of the AASHTO Joint Technical Committee on Pavements is to adopt the guide as an AASHTOWare product to replace the AASHTO 1993 design guide.

Moving towards a mechanistic-empirical design process represents a huge paradigm shift for the majority of states and will require a significant amount of education, training, new equipment, new testing requirements and data collection. Most importantly it will require better communication and coordination between the designers, materials engineers, traffic engineers, and consultants to collect and maintain the data needed to optimize the pavement designs and continue to validate and calibrate the models in the Guide. The DGIT is focused on being a leader in this effort by providing Education, Enhancement, and Implementation activities to the Transportation Community.

Burden Hours for Information Collection

Frequency: Bi-Annual.

Respondents: The Pavement Design Engineer in each State DOT, Puerto Rico, and the District of Columbia; for a total of 52.

Estimated Average Burden per response: Assuming 1 respondent per State plus Puerto Rico and the District of Columbia and 1 hr to respond to the survey the total will be approximately 52 burden hours. FHWA is seeking a 3-year approval and plans on conducting the survey in the first and third year of the approval time period. The estimated average annual burden is 35 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 22, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–20208 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Osage, Maries, and Phelps Counties, MO

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 proposed improvements along U.S. 63 between the U.S. 63 and U.S. 50 interchange in Osage County to a point in Phelps County, south of the Maries County Line.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Ridgeway, Environmental Review Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 638–2620 or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposal for improvements along U.S. 63 between the U.S. 63 and U.S. 50 interchange in Osage County to a point in Phelps County, south of the Maries County line. A location study will run concurrently with the preparation of the EIS and will provide definitive reasonable alternatives for evaluation in the EIS. The proposed action will accomplish several goals: (1) Improve safety, (2) decrease congestion, and (3) support community regional development.

The proposed project will include improvements to be located within a study area defined by existing improvements just south of the U.S. 63 and U.S. 50 interchange on the north in Osage County and existing improved roadway facility in Phelps County, south of the Maries County line. The east and west boundaries will extend approximately 1 to 2 miles on either side of existing U.S. 63. The study area is approximately 1 to 2 miles on either side of existing U.S. 63. The study area is approximately 50 miles in length and 2 miles in width. Known potential impacts include residential and/or commercial relocations and access changes. A U.S. Army Corps of Engineers Section 404 permit and a floodplain development permit from the State Emergency Management Agency may be required.

Alternatives under consideration included (1) No build, (2) build alternatives, (3) transportation system management options.

To date, substantial preliminary coordination has occurred with local officials. As part of the scoping process, an interagency coordination meeting will be held with all appropriate federal, state, and local agencies. In addition, public information meetings and further meetings with public officials will be held to solicit public and agency input on the reasonable range of alternatives. A location public hearing will be held to present the findings of the Draft EIS. Public notice will be given announcing the time and place of all public meetings and the public hearing. The Draft EIS will be available for 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 are 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 MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 20, 2006.

Mary Ridgeway,

Environmental Review Engineer, Jefferson City.

[FR Doc. 06–9449 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–27–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26274]

Medical Review Board Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of Meeting.

SUMMARY: FMCSA announces the next public meeting of its Medical Review Board (MRB). The MRB members will continue deliberations about current FMCSA medical standards, as well as consider recommendations for new science-based standards and guidelines to ensure that the physical condition of drivers is adequate to enable them to safely operate commercial motor vehicles (CMVs) in interstate commerce. In accordance with the Federal Advisory Committee Act (FACA), the meeting is open to the public.

DATES: The MRB meeting will be held from 9 a.m. to 12:30 p.m. on January 10, 2007.

ADDRESSES: The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room 2230, Washington, DC 20590–0001. The public must enter through the Southwest Visitor Entrance and comply with building security procedures, including provision of appropriate identification prior to being accompanied by a Federal employee to the meeting rooms. You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–2006–26274 using any of the following methods:

- Web site: *http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, 202–366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Kaye Kirby at 202–366–4001.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the meeting includes:

0900–0905 Call to Order, Agenda Review.
0905–0920 Medical Review Board (MRB) Actions.
0920–0945 Schedule II Medications.
0945–1015 Medications Expert Panel Recommendations.
1015–1045 MRB questions on Schedule II Medications.
1045–1145 Deliberations on Evidence Report & Panel Comments.
1145–1230 Public Comment Period.
1230 Adjourn.

*Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on FMCSA's Medical Review Board (MRB). Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB to ''establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them operate the vehicles safely.'' FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as proposing new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to all interested parties, including the general public, medical professionals, motor carriers, drivers and representatives of associations. Written comments for this MRB meeting are being accepted and will be accepted until January 25, 2007. Written comments should include the docket number that is listed in the **ADDRESSES** section. During the meeting, public oral comments are accepted for 45 minutes (11:45 a.m. to 12:30 p.m.). Individual comments may be limited depending on the number of persons who wish to comment. Oral comments will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: *www.fmcsa.dot.gov/mrb.*

Issued on: November 22, 2006.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulations.

[FR Doc. E6–20247 Filed 11–28–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Petition for Approval

Although not required, notice is hereby given that the Federal Railroad Administration (FRA) has received a petition for approval of a Railroad Safety Program Plan (RSPP) submitted pursuant to Title 49 Code of Federal Regulations (CFR) part 236, subpart H. The individual petition is described below, including the party seeking approval, the requisite docket number, and a brief summary of the petition.

Union Pacific Railroad

[Docket Number FRA–2006–24002]

The Union Pacific Railroad submitted a petition for approval of its RSPP Version 4.2. This RSPP is Union Pacific Railroad's strategic safety planning document for the development and implementation of Safety-Critical Processor-Based Signal and Train Control Systems or Active Highway-Rail Grade Crossing Warning Systems subject to the provisions of 49 CFR section 234.275 or 49 CFR part 236, subpart H.

Interested parties are invited to review the petition and associated documents at the following:

- Web site: *http://dms.dot.gov.* Follow the instructions for a simple search on the DOT electronic docket site (docket number 24002).
- DOT Central Docket Management Facility, 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.

All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all the comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, D.C. on November 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety, Standards and Program Development.

[FR Doc. E6–20177 Filed 11–28–06; 8:45 am]

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Federal Register

Vol. 71, No. 229

Wednesday, November 29, 2006

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Presidential Documents
Executive orders and proclamations **741–6000**
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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

64111–64438 1
64439–64630 2
64631–64880 3
64881–65034 6
65035–65364 7
65365–65710 8
65711–66092 9
66093–66228 13
66229–66430 14
66431–66642 15
66643–66824 16
66825–67030 17
67031–67290 20
67291–67428 21
67429–67782 22
67783–68430 24
68431–68726 27
68727–68996 28
68997–69180 29

CFR PARTS AFFECTED DURING NOVEMBER

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.

2 CFR
180 66431
3700 67431

3 CFR
Proclamations:
8074 64613
8075 64615
8076 64617
8077 64619
8078 64621
8079 64623
8080 64627
8081 65363
8082 66429
8083 66825
8084 67291
8085 67293
Executive Orders:
12170 (See Notice of November 9, 2006) 66227
13067 (See Notice of November 1, 2006) 64629
13400 (See Notice of November 1, 2006) 64629
13402 (Amended by 13414) 65365
13412 (See Notice of November 1, 2006) 64629
13414 65365
Administrative Orders:
Memorandums:
Memorandum of November 6, 2006 66223
Memorandum of November 14, 2006 67029
Notices:
Notice of November 1, 2006 64629
Notice of November 9, 2006 66227
Orders:
Order of November 17, 2006 67429
Presidential Determinations:
No. 2006-25 64431
No. 2006-26 of September 29, 2006 65035
No. 2006-27 of September 29, 2006 65367
No. 2007-1 64435
No. 2007-2 64437
No. 2007-3 of October 16, 2006 65369

5 CFR
550 66827
890 66828
892 66827
950 67276

7 CFR
60 68431
301 ..... 66829, 66831, 67432
319 67436
354 67436
800 65371
801 65371
922 66093
930 ..... 66095, 66833
948 66835
958 65037
981 65373
983 66643
984 66645
993 66837
1210 64439
1290 64631
1400 66432
1430 65711
2902 67031
4279 67032
Proposed Rules:
7 68755
46 65426
51 64478
210 65753
220 65753
301 64767
305 66881
319 66881
457 ..... 66694, 66698
966 66702
1000 ..... 67467, 67489
1001 ..... 67467, 67489
1005 ..... 67467, 67489
1006 ..... 67467, 67489
1007 ..... 67467, 67489
1030 ..... 67467, 67489
1032 ..... 67467, 67489
1033 ..... 67467, 67489
1124 ..... 67467, 67489
1126 ..... 67467, 67489
1131 ..... 67467, 67489
1205 67072
1435 66142

8 CFR
212 68412
235 68412

9 CFR
94 67958
Proposed Rules:
55 ..... 64650, 67313
81 ..... 64650, 67313
93 65758

94.....65758
95.....65758

10 CFR

20.....65686
32.....65686
50.....66648
602.....68727
626.....65376
710.....68727
712.....68727
725.....68727
820.....68727
824.....68727
835.....68727
850.....68727
851.....68727
852.....68727
861.....68727
862.....68727
871.....68727
1004.....68727
1008.....68727
1016.....68727
1017.....68727
1021.....68727
1044.....68727
1045.....68727
1046.....68727
1049.....68727

Proposed Rules:

35.....64168
50.....66705
51.....64169, 67072
430.....67825
1304.....67495

12 CFR

308.....65711
328.....66098
611.....65383
612.....65383
613.....65383
614.....65383
615.....65383
740.....67436
745.....67439
747.....67439

Proposed Rules:

563e.....67826

13 CFR

101.....65713
121.....66434
123.....65713
124.....66434

14 CFR

39 .....64441, 64881, 64884, 65041, 65043, 65045, 65047, 65387, 65389, 65391, 65714, 65716, 65719, 66104, 66106, 66229, 66657, 66661, 66664, 66666, 67295, 67441, 67445, 68432, 68434, 68997, 68999
71 .....64887, 66444, 67297, 68437
73.....67783
91.....66840
93.....64111
95.....67783
97 .....66445, 66447, 69009
121.....66840
125.....66840
135.....66840

Proposed Rules:

25.....64478, 65759
33.....66888
39 .....64482, 64484, 64651, 64653, 64904, 65062, 65430, 66472, 66474, 66889, 66891, 67073, 67075, 67077, 67079, 67082, 67084, 67499, 67502, 67506, 68762, 68764, 68766, 69083
71 .....66144, 66893, 66894, 68769, 68771, 68772, 68773
121.....66634
125.....66634
135.....66634

15 CFR

730.....67034
738.....67034, 68438
740.....67034, 68438
742.....67034, 67786
745.....67786
746.....67034
750.....67034
752.....67034
774.....67034, 67786
902.....67210, 67447

Proposed Rules:

801.....66706, 67086

16 CFR

Proposed Rules:

310.....65762
1630.....66145
1631.....66145

17 CFR

1.....67462
140.....64443
200.....65393
240.....65393

Proposed Rules:

170.....64171
230.....67762

18 CFR

42.....68440
292.....64342
366.....65049, 65200
367.....65200
368.....65200
369.....65200
375.....65200
385.....65049

Proposed Rules:

35.....68495
37.....68495
38.....64655
40.....64770
284.....64655
803.....68775
804.....68775
805.....68775

19 CFR

351.....64858

Proposed Rules:

101.....67313
122.....67313

20 CFR

404 .....66840, 66860, 67037
416.....66840, 66860

21 CFR

203.....66108, 66448
205.....66448
510.....69010
520 .....65052, 67298, 68738
522.....64451, 65052
558 .....65053, 66231, 67299, 67300

22 CFR

41.....68412
53.....68412
97.....64451
310.....67431

23 CFR

634.....67792
635.....66450

Proposed Rules:

630.....64173

24 CFR

291.....64422, 65322

Proposed Rules:

990.....68404, 68408

25 CFR

Proposed Rules:

15.....64181
18.....64181
150.....64181
152.....64181
179.....64181
502.....66147
546.....66147

26 CFR

1 .....64458, 65722, 66232
301.....64458

Proposed Rules:

1 .....64488, 66285, 67508
20.....64488
25.....64488
31.....64488
53.....64488
54.....64488
56.....64488
301.....64496, 54501

27 CFR

9 .....65409, 66454, 68458, 68463

Proposed Rules:

9.....65432, 65437

28 CFR

Proposed Rules:

524.....64504
545.....64505
550.....64507

29 CFR

4007.....66867
4022.....66455
4044.....66455

30 CFR

Proposed Rules:

914.....66148
943.....66150

31 CFR

Proposed Rules:

1.....65763

32 CFR

58.....64631
199.....66871
235.....66457, 68739
245.....66110
312.....64631
318.....64632
323.....64633

Proposed Rules:

199.....68496

33 CFR

110.....66668
117 .....64113, 64888, 65412, 66669, 66673, 66872, 66874, 67301, 67302
165 .....64114, 64116, 64634, 66110, 67055, 67057, 67303, 67306, 67800
401.....66112

Proposed Rules:

110.....66708
117 .....65443, 66711, 66713, 66895
151.....65445
165.....64662, 67315

34 CFR

668.....64378, 64402
673.....64378
682.....64378
685.....64378
690.....64402
691.....64402

36 CFR

Proposed Rules:

1.....65446
241.....66715
251.....66715
261.....66715

37 CFR

1.....64636
201.....64639, 68472

Proposed Rules:

201.....67508

38 CFR

3.....67059
17.....68739

Proposed Rules:

36.....68498

39 CFR

3.....64647
111.....64118, 64121
501.....65732
3001.....66675

40 CFR

9.....65574
52 .....64125, 64460, 64465, 64468, 64470, 64647, 64888, 64891, 65414, 65417, 65740, 66113, 66679, 67308, 67311, 68480, 68740, 68743
60.....66681, 67802
61.....68746
62.....67807
63.....68746, 69011
70.....67061
80.....67089
81.....67065, 69022
122.....68483
141.....65574, 67427
142.....65574
174.....64128
180.....69028

239.....66685, 66686
258.....66685, 66686
271.....66116
707.....66234, 68750
799.....66234

Proposed Rules:
52 .....64182, 64668, 64906, 65446, 65764, 66153, 67317, 68517, 68776
60 .....65302, 66720, 67832
61.....68777
62.....67833
63 .....64907, 66064, 68777
81.....64906
82.....64668
239.....66722
258.....66722
271.....65765, 66154
281.....68517

41 CFR

51.....67311
51-1.....68492
51-2.....68492
51-3.....68492
51-4.....68492
51-6.....68492

42 CFR

405.....68708
410.....67960
412.....68708
414.....65884
416.....67960
419.....67960
421.....67960
422.....68708
482.....68672
484.....65884
485.....67960
488.....67960
489.....68708

Proposed Rules:
401.....68519

43 CFR

2091.....67066
2710.....67066

Proposed Rules:
4.....64181
30.....64181

44 CFR

64.....66245
67 .....64132, 64141, 64148, 66248, 66250, 66270, 67068

Proposed Rules:
67 .....64183, 64208, 64211, 64674, 66285, 67834, 67836

45 CFR

1624.....65053

Proposed Rules:
1621.....65064

47 CFR

0.....69034
1.....66460, 69039
2.....66460, 69039
4.....69034
11.....69034
15.....66876, 69052
22.....69034
36.....65743
51.....65424, 65743
52.....65743
53.....65743
54.....65743
63.....65743
64.....65743, 69034
69.....65743
73 .....64150, 64152, 64153, 64154, 65425, 66466, 67465
74.....69039
76.....64154
78.....69039
90.....69034
97.....66460, 69034
101.....69039

Proposed Rules:
Ch. I.....67509, 69085
1.....67510
17.....67510
15.....66897
27.....64917
64.....69094
73.....65447, 66592
80.....65447

48 CFR

Ch. 1.....67770, 67780
2.....67771
4.....67771
7.....67771
15.....67779
22.....67779
25 .....67775, 67776, 67778
28.....67779
52 .....67771, 67775, 67776, 67778, 67779
225.....65752
252.....65752
1834.....66120
1842.....66120
1852.....66120

Proposed Rules:
Ch. 2.....65769
235.....65769
252.....65768
719.....67518

49 CFR

571.....64473

Proposed Rules:
71.....68777
383.....66723
384.....66723
390.....66723
391.....66723
571.....66480, 67843
604.....67523
801.....67523

50 CFR

17 .....65662, 66008, 66374
216.....67810
223.....66466
226.....69054
229 .....66469, 66688, 66690
622 .....65061, 66878, 67447, 68752
635.....64165, 68752
648 .....64903, 66692, 69070, 69073
660 .....66122, 66693, 69076
665.....64474
679.....67210

Proposed Rules:
17 .....65064, 66292, 67089, 67318, 67530, 67712, 68914
224.....66298
229.....66482
635 .....64123, 66154, 68784
648 .....64214, 66748, 68524
660.....64216, 68793
679.....64218, 66905

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 NOVEMBER 29, 2006

COMMERCE DEPARTMENT

International Trade Administration

Antidumping and countervailing duties:

Emergency relief work supplies; importation procedures; published 10-30-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; correction; published 10-30-06

Atlantic sea scallop; published 11-29-06

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Site remediation; published 11-29-06

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Diflubenzuron; published 11-29-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Sponsor name and address changes—

Mylan Bertek Pharmaceuticals, Inc.; published 11-29-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Louisiana; published 10-30-06

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Service of official correspondence; control information procedures; published 8-31-06

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:

Hexavalent chromium; occupational exposure; published 10-30-06

TRANSPORTATION DEPARTMENT

Americans with Disabilities Act; implementation:

Accessibility guidelines; conforming amendments; published 10-30-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

McDonnell Douglas; published 10-25-06

Standard instrument approach procedures; published 11-29-06

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Belted frontal barrier crash test; maximum test speed and phase-in schedule; published 8-31-06

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Federal Acquisition Regulation (FAR):

Mentor-Protege Program; comments due by 12-8-06; published 11-22-06 [FR E6-19707]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit grown in California; comments due by 12-4-06; published 10-3-06 [FR E6-16279]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Tuberculosis in cattle and bison—

State and zone designations; comments due by 12-4-06; published 10-3-06 [FR E6-16299]

Plant-related quarantine, domestic:

Pine shoot beetle; comments due by 12-4-06; published 10-3-06 [FR E6-16278]

AGRICULTURE DEPARTMENT

Rural Housing Service

Guaranteed Rural Rental Housing Program:

Annual guarantee fee; due date change; comments due by 12-4-06; published 10-4-06 [FR E6-16399]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

Kentucky

NACCO Materials Handling Group, Inc.; forklift truck manufacturing facility; comments due by 12-4-06; published 9-18-06 [FR E6-15479]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

China; export and reexport controls revisions and clarification; new authorization validated end-user; comments due by 12-4-06; published 7-6-06 [FR E6-10504]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:

Acquisition of major weapon systems as commercial items; comments due by 12-4-06; published 10-4-06 [FR E6-16398]

Architect-engineer services/ military family housing contracts; congressional notification; comments due by 12-4-06; published 10-4-06 [FR E6-16419]

Free trade agreements—

Guatemala and Bahrain; comments due by 12-4-06; published 10-4-06 [FR E6-16418]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; comments due by 12-4-06; published 10-3-06 [FR 06-08413]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Semiconductor manufacturing; comments due by 12-4-06; published 10-19-06 [FR E6-17224]

Air programs:

Stratospheric ozone protection—

Class I ozone depleting substances; essential use allowances allocation (CY 2007); comments due by 12-4-06; published 11-3-06 [FR E6-18581]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

North Carolina; comments due by 12-6-06; published 11-6-06 [FR E6-18582]

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 12-8-06; published 11-8-06 [FR E6-18845]

Maryland; comments due by 12-4-06; published 11-3-06 [FR E6-18501]

Missouri; comments due by 12-6-06; published 11-6-06 [FR E6-18567]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone; comments due by 12-4-06; published 10-4-06 [FR E6-16184]

Flumetsulam; comments due by 12-4-06; published 10-4-06 [FR E6-16271]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Missoula Intercarrier Compensation Reform Plan; phantom traffic solution and call detail records creation and exchange; comments due by 12-7-06; published 11-22-06 [FR E6-19657]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Cost accounting standards administration; comments due by 12-4-06; published 10-3-06 [FR 06-08413]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Texas; comments due by 12-4-06; published 10-3-06 [FR E6-16315]
Drawbridge operations:
Florida; comments due by 12-8-06; published 11-8-06 [FR E6-18799]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Fifth Coast Guard District; comments due by 12-4-06; published 11-3-06 [FR E6-18516]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Freedom of Information Act:
Public access to HUD records; revisions; comments due by 12-4-06; published 10-5-06 [FR E6-16441]
INTERIOR DEPARTMENT
Indian Affairs Bureau
Economic enterprises:
Gaming on trust lands acquired after October 1988; determination procedures; comments due by 12-4-06; published 10-5-06 [FR E6-16490]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Guajon; comments due by 12-4-06; published 10-5-06 [FR 06-08482]
Vail Lake ceanothus and Mexican flannelbush; comments due by 12-4-06; published 10-3-06 [FR 06-08189]
Findings on petitions, etc.—
Plymouth redbelly turtle; comments due by 12-4-06; published 10-3-06 [FR E6-16057]
JUSTICE DEPARTMENT
Drug Enforcement Administration
Controlled substances; importation and exportation:
Narcotic raw materials; authorized sources; comments due by 12-4-06; published 10-4-06 [FR E6-16325]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Cost accounting standards administration; comments due by 12-4-06; published 10-3-06 [FR 06-08413]
NUCLEAR REGULATORY COMMISSION
Radiation protection standards:
Occupational dose records, labeling containers, and total effective dose equivalent; comments due by 12-6-06; published 9-22-06 [FR E6-15502]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-6-06; published 11-6-06 [FR E6-18685]
Bombardier; comments due by 12-4-06; published 11-2-06 [FR E6-18461]
Diamond Aircraft Industries GmbH; comments due by 12-8-06; published 11-8-06 [FR E6-18732]
McDonnell Douglas; comments due by 12-4-06; published 10-19-06 [FR E6-17421]
Mooney Airplane Co., Inc.; comments due by 12-7-06; published 11-7-06 [FR E6-18724]
Pilatus Aircraft Ltd.; comments due by 12-4-06; published 11-3-06 [FR E6-18574]
Airworthiness standards:
Special conditions—
Boeing 737 airplanes; digital flight data recorder regulation revisions; comments due by 12-4-06; published 9-5-06 [FR 06-07406]
Dassault Aviation Model Falcon 7X airplane; comments due by 12-4-06; published 10-18-06 [FR 06-08762]
General Electric Co. GEnx turbofan engine models; Open for comments until further notice; published 11-17-06 [FR 06-09230]
Class E airspace; comments due by 12-4-06; published 10-20-06 [FR E6-17579]
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Small business entities; economic impact; comments due by 12-4-06; published 10-4-06 [FR E6-16422]
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Qualified business unit branches; transfers using profit and loss method of accounting, currency gain or loss calculation; comments due by 12-6-06; published 9-7-06 [FR 06-07250]
Railroad track maintenance credit; cross-reference; hearing; comments due by 12-7-06; published 9-8-06 [FR E6-14856]

LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 435/P.L. 109–370

Lower Farmington River and Salmon Brook Wild and Scenic River Study Act of 2005 (Nov. 27, 2006; 120 Stat. 2643)

S. 819/P.L. 109–371

Pactola Reservoir Reallocation Authorization Act of 2005 (Nov. 27, 2006; 120 Stat. 2644)

S. 1131/P.L. 109–372

Idaho Land Enhancement Act (Nov. 27, 2006; 120 Stat. 2645)

S. 2464/P.L. 109–373

Fort McDowell Indian Community Water Rights Settlement Revision Act of 2006 (Nov. 27, 2006; 120 Stat. 2650)

S. 3880/P.L. 109–374

Animal Enterprise Terrorism Act (Nov. 27, 2006; 120 Stat. 2652)

Last List November 22, 2006

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