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Rules and Regulations

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

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV–00–33–1 FR]

Regulations Issued Under the Export Apple Act; Removal of Pear Regulations From the Export Regulations for Apples and Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises export regulations issued under the Export Apple and Pear Act (now renamed as the Export Apple Act) to reflect an amendment to that Act. The amendment limits the applicability of the Act to apple exports and removes all references to pears. Accordingly, the provisions applicable to pears are removed from the regulations.

DATES: *Effective Date:* December 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone number (301) 734–5243, fax number (301) 734–5275, or e-mail address: *Kenneth.Johnson@usda.gov*.

Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237, telephone number (202) 720–2491, fax number (202) 720–2491, or e-mail address: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule revises export quality container, pack, and inspection regulations (7 CFR part 33) issued under authority of the Export Apple and Pear Act (Act), as amended, [7 U.S.C. 581 *et seq.*]. The Act was renamed as the Export Apple Act, and amended to limit the applicability of the Act to apple exports and removed all references to pears. The Act was enacted November 12, 1999. This rule revises the regulations to reflect the fact that pears are no longer regulated as part of the Act.

In the past, the Act provided for the issuance of quality, container, container marking, and pack requirements for exports of apples and pears. The intent of the Act was to assure the quality of exported apples and pears, and to standardize the containers, container markings, and packs used by exporters.

This rule revises the regulations to remove all of the provisions related to quality, container, container marking, and pack applicable to pears to be consistent with the amended Act. Pear exporters would no longer be required to meet these requirements under the amended Act.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Act promoted the foreign trade of U.S.-grown apples and pears by authorizing the implementation of regulations with minimum quality, container, container marking, and inspection requirements. The regulated entities are packers, exporters, and carriers of these fruits.

In the 1990's, the U.S. pear industry sought greater flexibility in selling pears to developing export markets. Pear producers, handlers, and officials representing firms packing and exporting pears from the States Washington, Oregon, and California, which account for virtually all U.S. pear exports, petitioned Congress to remove provisions concerning pears from the Act. Congress voted in support of the removal, and on November 12, 1999, Public Law 106–96 was signed into law, amending and renaming the Act as the Export Apple Act.

This action is necessary to remove the provisions relating to pears from the export regulations in 7 CFR part 33, and make them consistent with the export Apple Act.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural service firms, which include firms that pack and export apples and pears, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000. In the United States, there are approximately 450 firms that pack and export apples that are potentially subject to regulations under the authority of the Act. The majority of apple exporters regulated under the Act may be classified as small entities.

USDA's Foreign Agricultural Service reports U.S. pear exports of 154,324 tons for the 2005/06 season. This is 5 percent below the 2004/05 pear export volume of 163,784 tons. The smaller 2005/2006 pear export crop, higher prices, rising imports and weak demand from key U.S. trading partners contributed to the reduction in U.S. pear exports in 2005/2006.

There are approximately 100 pear shippers with exporting capabilities in Washington, Oregon and California. A small number of exporters also ship pears from Michigan, New York, and Pennsylvania. U.S. pears were exported to over 30 countries in 2005/06, with the largest volumes going to Mexico, Canada, Brazil, Russia, and Columbia. Other export markets include New Zealand, India, Saudi Arabia, the United Arab Emirates, and Venezuela.

The U.S. pear industry has become increasingly dependent on foreign markets. Thus, it is essential that the regulations governing the industry provide the packers and exporters with the means of effectively competing in those markets. Pear producers, handlers, and officials representing firms that pack and export pears from the States of

Washington, Oregon, and California, which account for virtually all U.S. pear exports, petitioned Congress to remove pears from the Act.

The proponents to remove pears from the Act believe that private contractual arrangements between buyers and sellers control the quality of U.S. pear exports, and that mandatory Federal grade, size, quality, pack, container, and inspection requirements are no longer needed to assure the quality and condition of exported pears, and to assure that the pears are properly packed.

The quality of pears demanded by most buyers in current export markets is higher than the minimum standards that were implemented under the enabling legislation. However, opportunities for the sale of lower quality fresh pears have arisen in recent years. Some export markets desire pears having external defects and blemishes, such as hail marks, which are of good eating quality.

The pear industry believes that pear export markets can be better maintained, and expanded, by terminating the pear provisions and providing the U.S. pear industry greater flexibility in responding to international market needs. Prior to the removal of the pear regulations, packers and exporters of U.S. fresh pears have not been able to meet the demand for lower grade pears in other countries without changes to the export regulations made by the Department through informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553).

Each of the major producing States have minimum quality and inspection requirements for outgoing pear shipments, and these requirements will continue to apply. Washington has minimum grade requirements, and both Oregon and California have minimum requirements for maturity and grade defects. In addition, one Federal marketing order for pears (7 CFR part 927) produced in Oregon and Washington offer the opportunity for pear growers and handlers in those States to implement minimum requirements for fresh pear exports.

The regulation changes are expected to provide the U.S. pear industry with more flexibility in meeting buyer needs in international markets. The U.S. pear industry expects to be able to meet those needs more promptly with the removal of the pear regulations from the Act.

In making this amendment, USDA is implementing Public Law 106–96. Thus, no alternatives were considered by USDA. The recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0143; Export Fruit Acts.

This action will not impose any additional reporting or recordkeeping requirements on either small or large apple or pear exporters. As with all Federal regulatory programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Further, given the provisions of the Export Apple Act, it is found and determined upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the **Federal Register**. The export pear regulations have not been applied since November 12, 1999.

List of Subjects in 7 CFR Part 33

Administrative practice and procedure, Exports, Apples, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 33 is revised as follows:

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE ACT

■ 1. 7 CFR part 33 is revised to read as follows:

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE ACT

Definitions

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33.1 Act.
33.2 Person.
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33.4 Carrier.
33.5 Apples.
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33.50 Apples for processing.
33.60 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 587.

Definitions

§ 33.1 Act.

Act and *Export Apple Act* are synonymous and mean ''An act to promote the foreign trade of the United States in apples to protect the reputation of American-grown apples in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving to foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes,'' approved June 10, 1933 (48 Stat. 123; 7 U.S.C. 581 *et seq.*), and amended November 12, 1999 (113 Stat. 1321; 7 U.S.C. 581 *et seq.*).

§ 33.2 Person.

Person means an individual, partnership, association, corporation, or any other business unit.

§ 33.3 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

§ 33.4 Carrier.

Carrier means any common or private carrier, including, but not limited to trucks, railroads, airplanes, vessels, tramp or chartered steamers whether carrying for hire or otherwise.

§ 33.5 Apples.

Apples mean fresh whole apples in packages whether or not they have been in storage.

§ 33.6 Package.

Package means any container of apples.

§ 33.7 Less than carload lot.

Less than carload lot means a quantity of apples in packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent.

Regulations

§ 33.10 Minimum requirements.

No person shall ship, or offer for shipment, and no carrier shall transport, or receive for transportation, any shipment of apples to any foreign destination unless:

(a) Apples grade at least U.S. No. 1 or U.S. No. 1 Early: *Provided,* That apples for export to Pacific ports of Russia shall grade at least U.S. Utility or U.S. No. 1 Hail for hail-damaged apples, as specified in the United States Standards for Apples (Sections 51.300–51.323 of this chapter): *Provided further,* That apples for export to any foreign destination do not contain apple maggot, and do not have more than 2 percent, by count, of apples with apple maggot injury, nor more than 2 percent, by count, of apples infested with San Jose scale or scale of similar appearance;

(b) Decay, scald or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

(c) Each package of apples is packed so that the apples in the top layer shall be reasonably representative in size, color, and quality of the contents of the package; and

(d) Each package of apples is marked plainly and conspicuously with:

(1) The name and address of the grower, packer, or domestic distributor: *Provided,* That the name of the foreign distributor may be placed on consumer unit packages shipped in a master container if such master container is marked with the name and address of the grower, packer, or domestic distributor;

(2) The variety of the apples;

(3) The name of the U.S. grade or the name of a state grade if the fruit meets each minimum requirement of a U.S. grade specified in this section.

§ 33.11 Inspection and certification.

(a) Each person shipping, or offering for shipment, apples to any foreign destination shall cause them to be inspected by the Federal or Federal-State Inspection Service in accordance with regulations governing the inspection and certification of fresh fruits, and vegetables and other products (Part 51 of this chapter) and certified as meeting the requirements of the Act and this part. No carrier shall transport, or receive for transportation, apples to any foreign destination unless they have been so inspected and certified. Inspection and certification may be obtained at any time prior to exportation of the apples. Such a Federal or Federal-State certificate shall be designated as an ''Export Form Certificate'' and shall include the following statement: ''Meets requirements of Export Apple Act.'' The shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the export carrier. Whenever apples are inspected and certified at any other point other than the port of exportation, the shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the agent of the first carrier that thereafter transports such apples and such agent shall deliver such copy to the proper official of the carrier on which the apples, covered by such certificate or memorandum, are to be exported. A copy of the Export Form Certificate or Memorandum of Inspection shall be filed by the export carrier for a period of not less than three (3) years after date of export.

(b) If the inspector has reason to believe that samples of a lot of apples have been obtained for a determination as to compliance with tolerance for spray residue, established under the Federal Food, Drug and Cosmetic Act, as amended (52 Stat. 1040; U.S.C. 301 *et seq.*), he shall not issue a certificate on the lot unless it complies with such tolerances.

Exemptions

§ 33.12 Apples not subject to regulation.

Except as otherwise provided in this section, any person may, without regard to the provisions of this part, ship or offer for shipment, and any carrier may, without regard to the provisions of this part, transport or receive for transportation to any foreign destination:

(a) A quantity of apples to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples packed in standard boxes on a single conveyance:

(b) Apples to Pacific ports west of the International Date Line which do not meet maturity standards of the grade specified in § 33.10, if the packages are conspicuously marked or printed with the words ''Immature Fruit;'' (in letters at least two inches high) if inspected and certified as meeting all other requirements of §§ 33.10 and 33.11.

(c) Apples for processing which do not meet the grade standards specified in § 33.10, if such apples grade at least U.S. No. 1 as specified in U.S. Standards for Apples for Processing (§§ 51.340 to 51.344 of this chapter), and if the containers are conspicuously marked ''Cannery'' (in letters at least two inches high) if inspected and certified as meeting all other requirements of §§ 33.10 and 33.11.

Withholding Certificates

§ 33.13 Notice.

If the Secretary is considering withholding the issuance of certificates under the Act for a period of not exceeding 90 days to any person who ships, or offers for shipment, apples to any foreign destination in violation of any provisions of the Act or this part, he or she shall cause notice to be given to the person accused of the nature of the charges against him or her and of the specific instances in which violation of the Act or the regulations in this part is charged.

§ 33.14 Opportunity for hearing.

The person accused shall be entitled to a hearing, provided he or she makes written requests therefore and files a written responsive answer to the charges made not later than 10 days after service of such notice on him or her. The right to hearing shall be restricted to matters in issue. At such hearing, he or she shall have the right to be present in person or by counsel and to submit evidence and argument in his or her behalf. Failure to request a hearing within the specified time or failure to appear at the hearing when scheduled shall be deemed a waiver of the right to hearing. Such person may, in lieu of requesting an oral hearing, file a sworn written statement with the Secretary not later than 10 days after service of such notice upon him or her.

§ 33.15 Suspension of inspection.

Any order to withhold the issuance of a certificate, as provided in section 6 of the Act, will be effective from the date specified in the order but no earlier than the date of its service upon the person found to have been guilty. Such order will state the inclusive dates during which it is to remain in effect, and during this period no inspector employed or licensed by the Secretary shall issue any Export Form Certificate or Memorandum of Inspection to such person.

§ 33.16 Service of notice or order.

Service of any notice or order required by the Act or prescribed by the regulations in this part shall be deemed sufficient if made personally upon the person served, by registered mail, or by leaving a copy of such notice or order with an employee or agent at such person's usual place of business or abode or with any member of his immediate family at his or her place of abode. If the person named is a

partnership, association, or corporation, service may similarly be made by service on any member of the partnership or any officer, employee, or agent of the association or corporation.

Interpretive Rules

§ 33.50 Apples for processing.

The terms ''apples for processing'' as used in § 33.12 of this part apply only and is restricted to packages of apples which were originally packaged for processing and marked ''Cannery'' as required by § 33.12(c) of this part. Packages of apples not so originally packaged and marked are not eligible for certification as ''apples for processing'' for purposes of this part.

§ 33.60 OMB control number assigned pursuant to the Paperwork Reduction Act.

The OMB control number assigned pursuant to the Paperwork Reduction Act for this part is OMB No. 0581–0143.

Dated: December 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–20659 Filed 12–5–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06–981–2 C]

Almonds Grown in California; Changes to Incoming Quality Control Requirements; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service (AMS) published in the **Federal Register** on November 8, 2006, a document concerning quality control requirements under the California almond marketing order. Language was inadvertently omitted in the regulatory text to specify that the changes apply to all almonds received by handlers beginning August 1, 2006.

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

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Maureen.Pello@usda.gov*, or *Kurt.Kimmel@usda.gov.*

SUPPLEMENTARY INFORMATION: The AMS published a document in the **Federal Register** on November 8, 2006 (71 FR 65373) that inadvertently omitted language in the regulatory text to indicate that the changes apply to all almonds received by handlers beginning August 1, 2006. This document corrects the regulatory text.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 981 is corrected by making the following correcting amendments:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674

■ 2. In § 981.442 revise the first sentence of paragraph (a)(4)(i) and the 11th sentence in paragraph (a)(5) to read as follows:

§ 981.442 Quality Control.

(a) * * *

(4) *Disposition obligation.* (i) Beginning August 1, 2006, the weight of inedible kernels in excess of 0.50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

(5) * * * Beginning August 1, 2006, at least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. * * *

Dated: December 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9545 Filed 12–1–06; 2:50 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM360; Special Conditions No. 25–337–SC]

Special Conditions: Learjet 25, 25A, 25B, 25C, 25D, and 25F Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA issues these special conditions for Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC. These modified airplanes will have novel or unusual design features when compared with the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification consists of installing Universal Avionics EFI–890 Electronic Flight Displays and Rockwell Collins AHS–1000A Attitude Heading Reference Systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for protecting these systems from effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date for these special conditions is November 13, 2006. We must receive your comments on or before January 5, 2007.

ADDRESSES: You may mail or deliver comments on these special conditions in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM360, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You must mark your comments Docket No. NM360.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment for these special conditions is impracticable, because these procedures would significantly delay certification and delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. We therefore find that good cause exists for making these special conditions effective upon issuance. However, we invite interested persons to take part in this rulemaking by submitting written comments. The most helpful comments reference a specific portion of the special conditions,

explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 3, 2006, Envoy Aerospace, LLC of Naperville, Illinois, applied to the FAA Chicago Aircraft Certification Office for a supplemental type certificate to modify Learjet Model 25, 25A, 25B, 25C, 25D, and 25F airplanes approved under Type Certificate No. A10CE. These are transport category airplanes powered by two turbofan engines with maximum takeoff weights of up to 15,000 pounds. The airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification incorporates the installation of Universal Avionics EFI–890 Electronic Flight Displays and Rockwell Collins AHS–1000A Attitude Heading Reference Systems. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under provisions of 14 CFR 21.101, Envoy Aerospace, LLC must show that the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The original type certification basis for the modified Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes includes 14 CFR Part 25, as amended by 25–2 and 25–4, and FAA Special Conditions as set forth in a letter to Learjet dated March 1, 1967. For further details refer to Type Certificate No. A10CE.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC will incorporate digital flight display and attitude reference systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. Current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for protecting this equipment from adverse effects of HIRF. So these system are considered to be novel or unusual design features.

Discussion

As previously stated, there is no specific regulation that addresses protection for electrical and electronic systems from HIRF. Increased power levels from radio frequency transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function because of HIRF.

High-Intensity Radiated Fields (HIRF)

High-power radio frequency transmitters for radio, radar, television, and satellite communications can adversely affect operation of airplane electric and electronic systems. Therefore, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

Based on surveys and an analysis of existing HIRF emitters, an adequate level of protection exists when airplane system immunity is demonstrated when exposed to the HIRF environments in either paragraph 1 or 2 below:

1. A minimum environment of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. System elements and their associated wiring harnesses must be exposed to the environment without benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An environment external to the airframe of the field strengths shown in the table below for the frequency ranges indicated. Immunity to both peak and average field strength components from the table must be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The environment levels identified above are the result of an FAA review of existing studies on the subject of HIRF and of the work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

These special conditions are applicable to Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC. Should Envoy Aerospace, LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these design features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Therefore, under the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 13, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20276 Filed 12–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24696; Directorate Identifier 2006–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes; and Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The original NPRM would have required replacing the electrical bonding clamps inside the fuel tanks and adjacent areas. The original NPRM resulted from a report of the failure of a fitting clamp of an electrical bonding cable for the fuel tubing. This action revises the original NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas, and a consequent potential source of ignition in a fuel tank and possible fire or explosion.

DATES: We must receive comments on this supplemental NPRM by January 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24696; Directorate Identifier 2006–NM–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking

(NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The original NPRM was published in the **Federal Register** on May 9, 2006 (71 FR 26880). The original NPRM proposed to require replacing the electrical bonding clamps inside the fuel tanks and adjacent areas.

Since we issued the original NPRM, the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, notified us that the unsafe condition identified in the original NPRM might exist on EMBRAER Model EMB–135 airplanes, in addition to the airplanes identified in the original NPRM. The ANAC issued Brazilian airworthiness directive 2006–02–03R2, effective October 8, 2006, to address the subject unsafe condition on these airplanes. Brazilian airworthiness directive 2006–02–03R2, which was issued to remove airplanes from the applicability, supersedes Brazilian airworthiness directive 2006–02–03R1, effective June 28, 2006. Brazilian airworthiness directive 2006–02–03R1, which was issued to add new airplanes to the applicability and new requirements, supersedes Brazilian airworthiness directive 2006–02–03, effective February 24, 2006. Brazilian airworthiness directive 2006–02–03 was referenced as the parallel Brazilian airworthiness directive in the original NPRM.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–28–0030, dated April 19, 2006, for Model EMB–135 airplanes. The service bulletin describes procedures for replacing the electrical bonding clamps, having part numbers AN735D4 and AN735D6, and their associated attaching parts, inside the forward fuel tank. The replacement includes measuring the electrical resistance between the tubes joined by the electrical bonding jumper. If the resistance is greater than 200 milliohms, the service bulletin describes repeating the clamp replacement and measuring/adjusting the resistance until the resistance value is 200 milliohms or less. When the resistance is 200 milliohms or less, the service bulletin describes procedures for making the bonding protection inside the forward fuel tank. These procedures are the same as those described in EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005, for Model EMB–145 airplanes, as described in the original NPRM. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The ANAC mandated the service information and issued Brazilian airworthiness directive 2006–02–03R2, effective October 8, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of bonding clamp (all airplane groups).	2	$80	Between $33 and $87, per kit (depending on kit/airplane group).	Between $193 and $247 (depending on kit/airplane group).	20	Between $3,860 and $4,940 (depending on kit/airplane group).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24696; Directorate Identifier 2006–NM–038–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

EMBRAER model—	As identified in—
EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes.	EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005.
EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes	EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006.

Unsafe Condition

(d) This AD results from a report of the failure of a fitting clamp of an electrical bonding cable for the fuel tubing. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas, and a consequent potential source of ignition in a fuel tank and possible fire or explosion.

Compliance

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

Electrical Bonding Clamp Replacement

(f) At the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable: Replace the electrical bonding clamps having part numbers AN735D6 and AN735D4 inside the forward fuel tank or the ventral, wing stub, and wing fuel tanks, and adjacent areas, as applicable; by accomplishing all actions specified in the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

TABLE 2.—APPLICABLE SERVICE INFORMATION

For EMBRAER model—	Use—
EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes.	EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005.
EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes	EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006.

(1) *For Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; and Model EMB–135ER, –135KE, –135KL, and –135LR airplanes:* Within 5,000 flight hours after the effective date of this AD.

(2) *For Model EMB–135BJ airplanes:* Within 4,000 flight hours or 48 calendar months after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–02–03R2, effective October 8, 2006, also addresses the subject of this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20629 Filed 12–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24448; Airspace Docket No. 06–AGL–02]

Establishment of Class E Airspace; Mineral Point, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; withdrawal.

SUMMARY: This action withdraws the direct final rule, request for comment, published in the **Federal Register** Thursday, October 5, 2006 (71 FR 58738). In that action, the FAA will establish Class E Airspace in Mineral Point, WI. The FAA has determined that withdrawal of the direct final rule is warranted as a result of objections raised during the comment period.

DATES: *Effective Date:* 0901 UTC, January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7131.

SUPPLEMENTARY INFORMATION: On October 5, 2006, a direct final rule, request for comment, was published in the **Federal Register** to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E Airspace in Mineral Point, WI (71 FR 58738). As a result of objections raised during the comment period, the direct final rule is being withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the direct final rule for **Federal Register** Docket No. FAA–2006–24448, Airspace Docket No. 06–AGL–02, as published in the **Federal Register** on October 5, 2006 (71 FR 58738), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Fort Worth, Texas, on November 21, 2006.

Walter L. Tweedy,

Acting Manager, System Support Group, ATO Central Service Area.

[FR Doc. 06–9531 Filed 12–5–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0058; FRL–8252–2]

RIN 2060–AN32

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration of Emissions Averaging Provision and Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters. After promulgation of this final rule, the Administrator received petitions for reconsideration of certain provisions in the final rule. Subsequently, EPA published a notice of the reconsideration and requested public comment on proposed amendments to the NESHAP. After evaluating public comments, we are adopting each of the amendments that we proposed.

DATES: This final rule is effective on February 5, 2007. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of **Federal Register** as of February 5, 2007.

ADDRESSES: EPA has established a docket for this action under docket ID No. EPA–HQ–OAR–2002–0058. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, 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.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426, fax number: (919) 541–5450, e-mail address: *eddinger.jim@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by the final rule:

Category	NAICS code	Examples of potentially regulated entities
Any industry using a boiler or process heater in the final rule ...	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational Services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility would be regulated by this final rule, you should carefully examine the applicability criteria in 40 CFR 63.7485 of this final rule. If you have any questions regarding the applicability of this final rule to a particular entity, contact 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 rule will be available on the WWW through the Technology Transfer Network Web site (TTN). EPA has posted a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

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 February 5, 2007. Under CAA section 307(d)(7)(B), 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 CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Background Information Document. EPA proposed and provided notice of the reconsideration of the NESHAP for industrial, commercial, and institutional boilers and process heaters on October 31, 2005 (70 FR 62264) and received 17 comment letters on the proposal. A memorandum ''National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to GE Petition and Reconsideration of the Final Rule,'' containing EPA's responses to each public comment is available in Docket No. EPA–HQ–OAR–2002–0058.

Organization of this document: The information presented in this preamble is organized as follows:

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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 and Advancement Act
J. Congressional Review Act

I. Statutory Authority for the Final Rule

Section 112 of the Clean Air Act (CAA) requires us to list categories and subcategories of major sources and area sources of hazardous air pollutant (HAP) and to establish NESHAP for the listed source categories and subcategories. Industrial boilers, commercial and institutional boilers, and process heaters were listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for industrial, commercial, and institutional (ICI) boilers and process heaters (Boilers NESHAP) as subpart DDDDD of 40 CFR part 63 under section 112(d) of the CAA. The NESHAP contain technology-based emissions standards reflecting the maximum achievable control technology and a health-based compliance alternative for certain threshold pollutants. We proposed these standards for ICI boilers and process heaters on January 13, 2003 (68 FR 1660).

In the preamble for the January 2003 proposed rule, we discussed our consideration of a bubbling compliance alternative and requested comment on incorporating a bubbling compliance alternative (*i.e.*, emission averaging) into this final rule as part of EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced. (See 68 FR 1686.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the emissions averaging approach. We received a total of 40 public comment letters regarding the emissions averaging approach in the proposed rule during the comment period. We summarized major public comments on the proposed emissions averaging approach, along with our responses to those comments, in the preamble to the final rule (69 FR 55238) and in the memorandum ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised)'' (RTC Memorandum) which was placed in the docket for the final rule.

In the September 2004 final rule, we adopted an emissions averaging provision for existing large solid fuel boilers. The procedures that affected sources must use to demonstrate compliance through emissions averaging were promulgated at 40 CFR 63.7522. (See 69 FR 55257.) For each existing large solid fuel boiler in the averaging group, the emissions are capped at the emission level being achieved on the effective date of the final rule (November 12, 2004). Under emissions averaging provision in the 2004 final rule, compliance must be demonstrated on a 12-month rolling average basis, determined at the end of every calendar month. If a facility uses this option, it must also develop and submit an implementation plan to the applicable regulatory authority for review and approval no later than 180 days before the date that the facility intends to demonstrate compliance.

Following promulgation of the emissions averaging provision in the final rule, the Administrator received a petition for reconsideration pursuant to section 307(d)(7)(B) of the CAA from General Electric (GE). Under this section, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

GE requested that EPA reconsider portions of the emissions averaging provision that it believes could not have been practicably addressed during the public comment period. In the alternative, GE requested clarification that the final rule already allows for consolidated testing of commonly vented boilers. By a letter dated April 27, 2005, we informed GE that we intended to grant their petition for reconsideration. On October 31, 2005, we published a notice of reconsideration and proposed amendments to the final rule (70 FR 62264).

In the notice of reconsideration of the emissions averaging provision, we proposed amendments to 40 CFR 63.7522 and solicited comment in the following areas: (1) Allowing testing of a common stack in situations where each of the units vented to the common stack are in the existing solid fuel subcategory; (2) treating a group of boilers that vent through a common emissions control system to a common stack as a single existing solid fuel boiler for the purpose of subpart DDDDD of 40 CFR part 63; (3) treating a group of boilers that vent through more than one common emissions control system as distinct units and requiring individual compliance testing according to the methods specified in Table 8 to subpart DDDDD; (4) demonstrating compliance with opacity limits using a single continuous opacity monitoring system (COMS) located in the common stack if each of the boilers venting to the common stack has an applicable opacity limit; (5) treating certain common stack situations as a single emission point for purposes of averaging emissions with other existing large solid fuel boilers located at the facility.

In addition, our October 31, 2005 notice of proposed rulemaking included several corrections to subpart DDDDD of 40 CFR part 63 that were not related to emissions averaging. Several clarifying amendments addressed: (1) The applicability of firetube boilers in the small unit subcategories and limited use subcategories; (2) the definitions of firetube and watertube boilers with respect to ''hybrid boilers''; and (3) the equivalent methods allowed in Table 6 to subpart DDDDD. The proposed corrections include language that: (1) Excludes electric utility steam

generating units that are covered by 40 CFR part 60, subpart Da or 40 CFR part 60, subpart HHHH; (2) adds Equation 4A to subpart DDDDD for calculating a 12-month rolling average emission rate when using the emissions averaging option; (3) requires an oxygen monitor to be installed when a carbon monoxide monitor is required by the rule; and (4) updates American Society of Testing and Materials (ASTM) test methods in Table 6 to subpart DDDDD.

A comprehensive response to public comments is available in a document entitled ''National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to GE Petition and Reconsideration of the Final Rule,'' which can be found in the docket (Docket No. EPA–HQ–OAR–2002–0058).

III. What Changes Are Included in This Final Rule?

In this final action, we are making a limited number of corrections and amendments to 40 CFR 63.14 and sections 63.7491, 63.7510, 63.7522, 63.7525, 63.7540, 63.7541, 63.7575, and Table 6 of subpart DDDDD consistent with our October 2005 proposal. These changes improve and clarify the procedures for implementing the emissions averaging provision and for conducting compliance testing when boilers are vented to a common stack. Among other technical corrections, we also are clarifying several definitions to help affected sources classify ''limited use'' and ''hybrid'' boilers. We have modified some of regulatory language that we proposed based on public comments, but overall, we are adopting amendments to the emission averaging provision and other provision in subpart DDDDD that are in substantially the same form as what we proposed in October 2005.

A. American Society for Testing and Materials (ASTM) Test Methods

We are adopting the proposed revisions relating to ASTM test methods without change. As suggested by the ASTM, we are amending Table 6 to subpart DDDDD to reflect updated ASTM test methods. Similar changes are also being made to 40 CFR 60.14 (Incorporation by Reference) of the General Provisions. Additionally, we are publishing in Table 1 of this preamble a list of testing methods that EPA previously reviewed and approved for use as ''alternative'' methods that are considered ''equivalent'' for the purpose of Table 6 to subpart DDDDD.

TABLE 1.—LIST OF EQUIVALENT METHODS APPROVED AS OF FEBRUARY 15, 2005

Pollutant or Analyte	EPA-approved equivalent method
Arsenic	SW–846–7060.[a]
	SW–846–7060A.
Chlorine	ASTM D2361.
Hydrogen Chloride	SW–846–5050.
	SW–846–9056.
	SW–846–9076.
	SW–846–9250.
	ASTM E776–87.
Mercury	EPA Method 1631E.
	SW–846–1631.
	ASTM D6722–01.
	EPA 821–R–01–013.
Higher Heating Value	ASTM E711–87 (1996).
	ASTM D240.
Moisture content of Coal Fuel.	ASTM D2691–95.
Moisture Analysis	EPA 160.3 Mod.
Digestion Procedure	EPA–821–R–01–03.
	ASTM D586 (Dry Ash method).
Sample Preparation for TSM.	SW–846–3050B.
Sample Preparation and Digestion for TSM.	SW–846–3050.
	TAPPI T266.
Sample Preparation and Grinding.	ASTM E829–94.
Selenium	SW–846–7740.
Total Selected Metals	EPA 200.8.
	ASTM D6357–04.
	ASTM D4606–03.
	EPA 7060A.
	SW–846–6020A.
	SW–846–6020.

[a] *http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm.*

This table is not meant to be exhaustive, because the list of equivalent methods is dynamic. This table is meant to serve as guidance for the methods that have been approved to date. We emphasize that equivalent methods may be used in lieu of the prescribed methods in Table 6 to subpart DDDDD at the discretion of the source owner or operator. Therefore, maintaining a list of ''approved methods'' in the final rule is not necessary. Similarly, approval of equivalent methods by EPA or the delegated implementation authority is not necessary.

B. Utility Steam Generating Units

We are adopting the regulatory language that we proposed to avoid overlapping coverage between subpart DDDDD of 40 CFR part 63 and other rules that apply to certain types of electric utility steam generating units. The types of boilers and process heaters that are not subject to subpart DDDDD are listed in 40 CFR 63.7491. Our intention was to exempt from subpart DDDDD any units that are already or will be subject to regulation for HAP under another standard. (See 69 FR 1663.) Because regulations relating to electric utility steam generating units were under development at the time of promulgation of subpart DDDDD, we were unable to reference a specific rule citation that applied to electric utility steam generating units. Instead, subpart DDDDD excluded electric utility steam generating units by using only the definition of electric utility steam generating units contained in section 112(a)(8) of the CAA.

On May 18, 2005, EPA promulgated the Clean Air Mercury Rule (70 FR 28606). In that rule, EPA established standards of performance for mercury (40 CFR part 60, subpart Da) from new electric utility steam generating units, as well as mercury emission guidelines for existing electric utility steam generating units (40 CFR part 60, subpart HHHH). After that rule was promulgated, it was brought to our attention that the scope of the exclusion in subpart DDDDD of 40 CFR part 63 for electric utility steam generating units was unclear. Confusion resulted because 40 CFR part 60, subparts Da and HHHH, employ different definitions to determine applicability. (See 70 FR at 28609.) Thus, to clarify applicability of subpart DDDDD, we are amending 40 CFR 63.7491(c) to exclude ''an electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) or a Mercury Budget unit covered by 40 CFR part 60, subpart HHHH.''

C. Fuel Analysis Requirement

We received a comment raising the question of whether we intended for units which combust only a single fuel type to be required to conduct fuel analysis when demonstrating compliance through performance (stack) testing, as required by 40 CFR 63.7510(a). Our intent, as stated in the September 2004 preamble to the final rule (69 FR 55225), was that ''Units burning only a single fuel type (not including startup fuels) do not need to determine, by fuel analysis, the fuel inlet operating limit when conducting performance tests.'' In this final action, we are adding similar language to 40 CFR 63.7510(a) to make this understanding explicit in the text of our regulations. This change was not included among the corrections we proposed in October 2005. However, since this revision is based on language in the September 2004 preamble that has not given rise to any objection, we are adopting this correction as part of this final rule.

D. Consolidated Testing and Emissions Averaging

The current language for the emissions averaging option in 40 CFR 63.7522 requires testing of each individual boiler in the averaging group. Our intent with regard to the emissions averaging option in the final rule was to provide an equivalent, more flexible, and less costly compliance alternative. Since testing emissions from a common stack for a group of boilers would be equivalent to the average emissions calculated from emissions tests on each individual boiler, we are amending subpart DDDDD of 40 CFR part 63 to allow testing of emissions at the common stack under specified situations described below.

Consolidated testing of the common stack must be conducted when each boiler is operated under representative testing conditions as specified in the National Stack Testing Guidance issued by EPA on September 30, 2005.

The amendments to 40 CFR 63.7522 adopted in this action are substantially the same as what we proposed in October 2005. However, based on public comments, we have modified some of the proposed language and added some conforming amendments to other provisions of subpart DDDDD of 40 CFR part 63 that relate to emissions averaging.

1. Compliance With Consolidating Testing

GE sought clarification on the consolidated testing procedures necessary to demonstrate compliance in two different common stack situations. In one situation, the exhaust from three existing large solid fuel boilers are combined and vented through a common emissions control system to a common stack. In the other situation, the exhaust from two existing large solid fuel boilers are each individually controlled prior to being vented to a common stack. In the revised regulatory provisions set forth below, we are amending this final rule to clarify how to demonstrate compliance under these two circumstances. The final amendments address these two circumstances in the same way that we proposed in October 2005.

In the first situation, a group of units that share a common control device before venting to a common stack is treated as a single source. In such situations, an operator can demonstrate compliance by testing at the common stack without using the emissions averaging equations in 40 CFR 63.7522 for each unit or submitting an implementation plan. We are also adding language in section 63.7522(k) of subpart DDDDD to clarify that the common stack situations described above may be treated as a separate single emission point for purpose of including these units in an emissions averaging group with other existing large solid fuel boilers located at the facility.

We are adopting a slightly different approach for averaging emissions from groups of affected units that vent to a common stack through more than one emissions control system. These distinct approaches are necessary to ensure that a source with more than one emissions control system demonstrates continuous compliance at each emissions control system. Where a group of boilers vents to a common stack through more than one emission control system, continuous compliance will be demonstrated according to the methods specified in Table 8 to subpart DDDDD.

2. Monitoring of Common Stack

In this final action, we are adding an amendment to section 63.7541 of subpart DDDDD to address the COMS requirements for facilities participating in the emissions averaging option. If each of the boilers venting to a common stack has an applicable opacity operating limit, a dry control system, and no units from other subcategories or nonaffected units vent to the common stack, then a single COMS may be located in the common stack instead of each duct to the common stack. Alternately, if any of the boilers venting to the common stack does not have an applicable opacity operating limit, but each of the existing solid fuel units is equipped with a dry control system and no nonaffected units vent to the common stack, a COMS monitor may be located at the common stack instead of each duct to the common stack. We amended 40 CFR 63.7541 to allow for a COMS monitor at the common stack in this situation.

We discussed this approach in the October 2005 proposal (70 FR at 62268), but did not include any regulatory language in that action. Commenters requested that we make explicit in our regulations that this practice is permissible when sources elect to demonstrate compliance using emissions averaging.

3. Emissions Averaging When Units in Different Subcategories Are Ducted to Common Stack

In response to the GE petition for reconsideration, we proposed amendments that would limit the emissions averaging provision to common stack scenarios that contained solely units in the existing large solid fuel subcategory. In this final action, we have decided to expand the emissions averaging provision to allow units in the existing large solid fuel subcategory to conduct performance tests at the end of a common stack configuration with affected units from other subcategories and nonaffected units under specific circumstances.

As a result of public comments submitted, we now recognize that affected units from several subcategories (*e.g.*, both gas and solid fuel fired units) and nonaffected units are sometimes ducted to a common stack. To address these situations, we are adopting a revised amendment to the emissions averaging provision in 40 CFR 63.7522 that allows consolidated testing of units in the existing large solid fuel subcategory as long as the commonly vented units from other subcategories and nonaffected units follow specific procedures during the consolidated compliance test.

The emissions averaging provision is only applicable to units in the existing large solid fuel subcategory. EPA did not find cause to promulgate emissions limitations for many of the subcategories of existing units. However, new units are subject to different emissions limitations than existing units. These differing emissions limitations make it difficult to allow consolidated testing of emissions from sources in different subcategories under an emissions averaging approach.

However, to eliminate this obstacle to consolidated testing when existing large solid fuel units may share a duct or stack with units in other subcategories or nonaffected units covered by another NESHAP category, we are requiring facilities to shut down, or vent to a different stack, affected boilers or process heaters in other subcategories or nonaffected units in other categories prior to performing a consolidated compliance test for the units in the large solid fuel subcategory. Testing of a common stack in these situations will measure the average emissions from the averaging group of existing large solid fuel units, just as if each boiler in the large solid fuel subcategory was tested individually and their emissions averaged. By requiring the affected units from other subcategories or nonaffected units to be shut off, or vented to a different stack, during testing, the consolidated testing for certain stack configurations allows the group of existing large solid fuel boilers to demonstrate initial compliance at a lower cost.

Allowing the testing of a common stack under these conditions also

satisfies the criteria discussed in the September 2004 preamble to the final rule (69 FR 55239) that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. This final rule fully satisfies each of these criteria.

The provision promulgated in this action only allows averaging of emissions from existing units in the large solid fuel subcategory. Emissions from units that are shut down or vented elsewhere during compliance testing are not included in the average or co-mingled with the emissions that are the focus of the test.

4. Continuous Compliance With the Emissions Averaging Provision

As a result of this expansion to the emissions averaging provision, we had to establish continuous compliance procedures with this provision to address common stack scenarios with units from multiple subcategories or nonaffected units. In this final rule, we are also amending 40 CFR 63.7541 to establish continuous compliance procedures under the emissions averaging provision for common stack configurations with different subcategories or nonaffected units. These amendments require affected units to maintain 3-hour average parametric limits on all the control devices for existing large solid fuel boilers venting to a common stack. The parametric limits will ensure that the control devices continue to operate under the conditions established during the initial compliance test. These amendments establish continuous compliance requirements for common stack configurations that were not previously eligible to comply with the emissions averaging provision.

5. Monthly Compliance Demonstrations and Calculations

This final rule includes several additional amendments to subsections (d), (e), and (f) of section 63.7522 that were recommended in public comments. These amendments clarify that, under the emissions averaging provision, continuous compliance must be demonstrated at the end of every month (12 times per year). In addition, we have made several corrections to the formulas used in emissions averaging calculations. Additional details on these amendments are reflected in the Response-to-Comments document that is available in Docket No. EPA-HQ-OAR–2002–0058.

E. Definitions

In the October 2005 notice, we proposed to add or amend several definitions in subpart DDDDD of 40 CFR part 63 to clarify our intent and correct inadvertent omissions. In this final action, we are adopting modified versions of several definitions based on public comments. In addition, we are promulgating three additional definitions to provide additional clarity requested by commenters.

We have added a definition for ''common stack'' similar to the definition provided in 40 CFR part 72 at the request of some of the commenters.

We have also added a definition for ''voluntary consensus standards'' since this term is used to define ''equivalent'' as this term is used in Table 6 of subpart DDDDD. We are adopting the same definition of ''equivalent'' that we proposed, but we have added language to Table 6 of subpart DDDDD to clarify that equivalent methods may be used in lieu of the prescribed methods in Table 6 at the discretion of the source owner or operator.

The definitions for both ''firetube boiler'' and ''watertube boiler'' are amended to include criteria for classifying boilers designed with both firetubes and watertubes, commonly referred to as ''hybrid boilers.'' Based on comments, we are adopting a modified definition of firetube boiler to include boilers that utilize a containment shell that encloses firetubes and allows the water to vaporize and steam to separate. We have also modified the definition of watertube boilers that we proposed to include boilers that incorporate a steam drum with tubes connected to the drum to separate steam from water.

We have amended the proposed definitions for both small gaseous and small liquid fuel subcategories to clarify that these subcategories include all firetube boilers, regardless of size, as well as other types of boilers with a rated capacity of 10 million MMBtu per hour heat input or less. We have amended the definitions to clarify our intent that firetube boilers greater than 10 MMBtu per hour heat input are still part of the small subcategory.

We have also added an amendment to the definitions for both the small and large gaseous fuel subcategories to allow for units in these two categories to periodically test using liquid fuel as long as the tests do not exceed a combined total of 48 hours during any calendar year. This allowance was adopted because of the need to test an emergency fuel in order to ensure that the unit could effectively operate using the emergency fuel during a period of gas curtailment. California regulations stipulate a 48-hour limit on this periodic testing on emergency fuels, and we have adopted their precedent.

We are also amending the definition of ''fuel type'' in response to a comment we received. Questions have been raised on whether we intended for units that may burn evidence seized in drug raids as a public service for a variety of enforcement agencies to test these materials as part of the compliance testing requirements. It is reportedly exceedingly difficult to arrange for a test of these materials given the security that surrounds them. Also, facilities have been approached about burning retired U.S. flags. Burning is the preferred mode of disposal of retired U.S. flags. Since we did not intend to include contraband materials, or U.S. flags, as a fuel when a facility is conducting performance tests or fuel analyses to demonstrate compliance, we are amending the definition of ''fuel type'' to include the statement ''Contraband, prohibited goods, or retired U.S. flags, burned at the request of a government agency, are not considered a fuel type for the purpose of this subpart.'' We do not classify facilities designed and operated for energy recovery as commercial and industrial solid waste incinerators if they combust small amounts of others materials. (See 70 FR 55568, 55575; September 22, 2005.)

A revision to the definition of ''fuel type'' was not included among the corrections that we proposed. However, since this amendment addresses a *de minimis* situation that supports law enforcement efforts and respect for a national symbol, we are adopting this correction in this final action.

IV. Responses to Significant Comments

We received 17 public comment letters on the proposed rule and notice of reconsideration. Complete summaries of all the comments and EPA responses are found in the Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section). The most significant comments are summarized below.

A. Scope of Emissions Averaging Provision

Comment: Several commenters requested that EPA expand the common stack testing option to include common stack configurations with groups of boilers from different subcategories or units not subject to the boiler NESHAP. Two of these commenters added that in

many situations the layout of boilers and ductwork to common stacks make it impractical to perform emissions testing on each individual boiler venting to the common stack due to a lack of appropriate sampling location and duct configurations. One commenter (OAR–2002–0058–0722) added that in order to test each individual unit a source would have to build a temporary testing system of stacks and ductwork to demonstrate initial compliance, and this temporary system would still not be suitable for demonstrating continuous compliance. The commenter contended that without expanding the testing to groups of boilers from different source categories venting to a common stack, the NESHAP would require a source to reconfigure its ductwork and build new stacks.

One commenter approved of EPA's amendments to allow common stack performance testing under the circumstances provided in the proposed amendments.

Response: We agree in part with the commenters' recommendation and have modified the rule to allow performance testing to be conducted at the end of stacks that receive emissions from boilers from different subcategories and nonaffected units in other NESHAP categories, as long as the emissions from these other units are stopped or redirected as described further below. However, we do not consider it appropriate to allow averaging of emissions from units in other subcategories or nonaffected units or consolidated testing of co-mingled emissions from units in other subcategories or nonaffected units. EPA has generally imposed limits on emissions averaging programs, which includes no averaging between emission units that are not part of the same source category. Since these units are generally subject to different emissions limitations, averaging or co-mingling of emissions would not provide a reliable demonstration of compliance with the applicable emissions limitation for those sources in a particular category or subcategory.

Nevertheless, we do consider it appropriate under specified conditions described further below to allow testing at the end of the common stack for existing large solid fuel units at facilities with stack configurations that contain units from other subcategories (*e.g.*, gas-fired units) and nonaffected units. EPA has established a clear and enforceable method for demonstrating initial, annual, and continuous compliance when units of different subcategories and nonaffected units vent to a common stack. Further, extending the common stack testing option to these stack configurations will not cause adverse effects to human health or the environment. The total emissions out of the stack will not increase as a result of this extension and compliance with the emission limits of each unit feeding the common stack will be determined by parametric limits on the control device through which the units vent to the common stack.

Facilities that have common stack configurations consisting of units subject to the boiler NESHAP and units from other source categories also have the prerogative to petition for alternate testing and compliance plans on a site-specific basis.

B. Compliance Testing and Monitoring

Comment: Several commenters suggested an alternative methodology to meet the requirements of initial and annual compliance tests for units opting to use the emissions averaging provision. These commenters suggested that during the initial and subsequent annual compliance tests, all boilers venting to the common stack that are not subject to emission limits be turned off (*i.e.* gas-fired units or nonaffected units). These commenters suggested that shutting down units of different subcategories or nonaffected units would satisfy the requirements of the boiler NESHAP. One commenter added that these methods will still provide reliable test data to the regulatory authorities to demonstrate compliance. One commenter added that since many large solid fuel units share a stack with gas-fired units, the NESHAP, as proposed in the notice of reconsideration, would require individual performance testing on each large solid fuel boiler, which would greatly increase the costs of testing compliance and increase system downtime.

Response: We agree that turning off units from other subcategories (*e.g.*, gas-fired units) and nonaffected units during the testing period, satisfies the requirements of the boiler NESHAP emissions averaging provision. Allowing the testing of a common stack, when units from other subcategories and nonaffected units are turned off satisfies the criteria that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. The provision promulgated in this action only allows averaging of emissions from existing units in the large solid fuel subcategory. Emissions from units that are shut down or vented elsewhere during compliance testing are not included in the average or co-mingled with the emissions that are the focus of the test.

Facilities that have common stack configurations, with units subject to the boiler NESHAP and nonaffected units, have the prerogative to petition for alternate testing and compliance plans on a site-specific basis. The type of testing discussed here is one example of an alternate testing and compliance plan that a facility would petition for on a site-specific basis. We have adjusted the rule language in 40 CFR 63.7522(h) to allow for shutting down units from other subcategories and nonaffected units to demonstrate compliance with the emissions averaging provision when units belonging to different subcategories of the boiler NESHAP and nonaffected units vent to the same stack as large solid fuel boilers.

Comment: Two commenters suggested that parametric limits be set on all control devices used on solid fuel fired units and that these parametric limits be used to demonstrate continuous compliance with the emissions averaging provision of the boiler NESHAP. These commenters added that parametric limits on the control devices for existing large solid-fuel boilers would ensure that these control devices operated under the conditions established during the initial compliance test and provide a defensible way to demonstrate continuous compliance with the emissions averaging provision of the boiler NESHAP. One commenter suggested that parametric compliance limits be set on any control device in the group of units sharing a common stack, regardless of whether the conditions are wet or dry in the stack.

Response: We agree that setting parametric limits on all control devices for existing large solid-fuel boilers venting to a common stack is an acceptable method for demonstrating continuous compliance with the emissions averaging provision of the boiler NESHAP. These parametric limits are a clear and enforceable method of demonstrating compliance. We have adjusted the rule language in 40 CFR 63.7541 to allow for a facility to demonstrate continuous compliance under the emissions averaging provision by using parametric limits on the control devices of existing large solid fuel units venting to a common stack.

Comment: One commenter requested that EPA allow for a COMS at a common stack even when a source does not make use of the emissions averaging provision and opts to do performance testing on individual boilers. The commenter added that this regulatory flexibility will reduce compliance costs and maintain adequate levels of emissions monitoring.

Two commenters requested that EPA clarify 40 CFR 63.7525(b) to allow a COMS to be located at the common stack, regardless of whether the group of boilers sharing a common stack consists of boilers of different subcategories. One commenter suggested that it did not believe EPA intended to require a COMS on individual units sharing a common stack. The commenter added that it is impractical, due to a lack of space or adequate location, to install individual COMS monitors in the duct work for groups of boilers that share a common stack. The commenter cites 40 CFR part 60, appendix B, Performance Specification (PS)–1, to reference that in many cases this requirement has been satisfied by placing a COMS on the common stack.

One commenter suggested that language be added to 40 CFR 63.7522(j)(3) to indicate that a COMS monitor is required at a common stack, even when each individual boiler unit has a separate opacity operating limit. The commenter is concerned that without additional language, 40 CFR 63.7522(j)(3) could be misinterpreted to require a COMS in each duct leading to the common stack. The commenter noted that although there is discussion of this intent in the preamble (70 FR 62268), the commenter suggested that there be language added to this effect in the actual rule text. The commenter also suggested that language be added to 40 CFR 63.7541(a)(2) to clarify that a single COMS monitor for a group of units that each vents through a unique control system and then to a common stack. The commenter suggested this language is necessary so that this group of units is treated similarly to a group of units venting through a common control device to a common stack with respect to the requirements of a COMS.

Response: We agree with these suggestions as long as all units feeding the common stack are in the existing large solid fuel subcategory. The emissions averaging provision was intended to be an option for affected facilities to allow for increased regulatory flexibility. We reiterate here that if a source chooses to do performance testing for HAP emissions at each individual unit, the source is still eligible to locate a COMS monitor on the common stack as long as all the units feeding the common stack are in the existing large solid fuel subcategory.

We disagree with the commenter's suggestion to allow for a COMS monitor to be located at the common stack when groups of boilers from different affected subcategories or nonaffected units are feeding the stack. We also disagree with allowing a single COMS unit to be placed on the common stack if the units feeding the common stack belong to other source categories.

C. Definitions

Comment: Several commenters requested that EPA modify the definitions of firetube and watertube boilers to account for hybrid boilers. The commenters suggested that EPA make the distinction between the two units based on the location of the containment or steam separation system in the unit in order to clarify the basic difference between fire tube and water tube units. Three commenters added that water tube units incorporate a steam drum, which provides for steam separation from water, whereas a fire tube unit uses a containment shell, inside which the water vaporizes and steam separates. One commenter suggested that a water tube boiler be defined as a boiler that has a water tube type of steam drum, with no additional heat exchange surface in the form of fire tubes running through the drum. The commenter suggested that a fire tube boiler be defined as any hybrid type of boiler where steam separation takes place in a vessel that also contains fire tubes that provide the major heat input to the water. The commenter added that this approach will simplify interpretation of this definition. Two commenters requested that EPA adopt the following addition to the definition of firetube boiler to account for hybrid boilers: ''All owners or operators of hybrid boilers that have been registered/certified by the National Board of Boiler and Pressure Vessel Inspectors and/or the State as firetube boilers as indicated by ''Form P–2'' (Manufacturers Data Report For All Types of Boilers Except Watertube and Electric As Required by the Provisions of the American Society of Mechanical Engineers (ASME) Code Rules, Section I) shall be considered small units for the purpose of this subpart.''

Response: We agree with the distinction between a firetube and watertube boiler using the criteria of whether a unit has a containment shell or a steam drum. We consider the ASME Code Rules and Forms to be an acceptable and established method for classifying vessel types. We have modified the proposed definitions of watertube and firetube boilers to allow a facility to classify its hybrid vessel by one of two methods: (1) Determining whether or not the unit has a steam drum or containment system, or (2) the indication of firetube boiler on the ASME P–2 form.

Comment: Two commenters requested that the definition for large gaseous fuel units be changed to allow for units to combust oil during periods of natural gas supply emergencies or natural gas curtailment. The commenters added that if the unit combusts oil for periodic testing under these circumstances, this unit should not be automatically categorized in the large oil fuel subcategory.

Response: We agree that it is necessary for gas-fired units that are designed for combusting oil during periods of natural gas curtailment to periodically tune the unit for proper oil firing and combustion to be prepared for such periods. Based on review of current regulations in California regarding equipment testing of non-gaseous fuel, periodic testing of oil is allowed for a combined total of 48 hours during any calendar year. This periodic testing for up to 48 hours, which is in addition to periods of combusting oil during natural gas curtailment, will not cause a boiler to be categorized in the oil fuel subcategories. We have amended the definitions to clarify that gas boilers that fire liquid fuel for the purposes of periodic testing are not included in the liquid fuel subcategories.

D. Testing Methods

Comment: Several commenters requested that EPA list some specific examples of equivalent methods in Table 6 to subpart DDDDD. The commenters specifically added that since the promulgation of the NESHAP, EPA has received and approved many site-specific requests for the use ''equivalent'' methods. The commenters requested that any approved methods be added to Table 6.

Another commenter disagreed with deleting test method ASTM D3684–01 from Table 6 to subpart DDDDD. The commenter added that this test method should be retained in Table 6, and the final revised table should indicate that this test method is applicable for determining both arsenic and selenium.

Two commenters requested that the latest revisions of following test methods be listed in Table 6 to subpart DDDDD: ASTM D3684 for coal mercury analysis, ASTM D3683 for coal total selected metals, and ASTM D4208 for coal chlorine content. These

commenters added that these methods have a long history as established standard methods. By adding these methods to Table 6, sources or testing companies would not have to petition for approval of these established methods. These commenters also added that many coal chlorine levels exceed the upper bound (1136 parts per million) on the concentration range for repeatability and reproducibility on ASTM D6721, and that ASTM D4208 is a more appropriate testing method on coals with high chlorine concentrations.

Two commenters recommended that EPA provide authority to the States for approving equivalent testing methods that have already been accepted by EPA on multiple similar site-specific requests. The commenters added that providing authority to the States is an efficient way to determine approved equivalent testing methods.

Response: With this action, we have clarified the definition of equivalent method. Equivalent methods are voluntary consensus standards (VCS) or EPA methods which are applicable to the fuel type or target analyte being measured. Although we disagree with adding a complete list of equivalent methods already approved to the final rule itself, we have provided a list of these previously approved methods in the preamble to the final rule. We have also added a definition of VCS to the final rule to help clarify what equivalent methods are. Equivalent methods may be used in lieu of the prescribed methods in Table 6 to subpart DDDDD at the discretion of the source owner or operator. Therefore, publishing a list of or adding to the list of approved methods is not necessary. Similarly, State or EPA approval of equivalent methods is not necessary.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This final action imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the final rule amendments, the information collection request has not been revised. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0551 (EPA No. 2028.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (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 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, 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 that is not dominant in its field.

After considering the economic impacts of this final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the final rule imposes no additional regulatory requirements on owners or operators of affected sources.

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 by the private section, 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, for 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's regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

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. Although the original NESHAP had annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), this final rule does not add new requirements that would increase this cost. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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.''

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 requirements discussed in this action will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175 (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.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this 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.

This final rule is not subject to the Executive Order because EPA does not have reason to feel that the environmental health or safety risks associated with the emissions addressed by this action presents a disproportionate risk to children. This demonstration is based on the fact that this action does not affect the emissions limits contained in this final rule.

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

This final rule is not a ''significant energy actions'' as defined in Executive Order 13211 (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. Further, we have concluded that this action is not likely to have any adverse energy effect.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. During the development of this final rule, EPA searched for voluntary consensus standards that might be applicable. EPA adopted the following standards in this final rule: (1) ASTM D2013–04, ''Standard Practice for Preparing Coal Samples for Analysis,'' (2) ASTM D2234–D2234M–03E01, ''Standard Practice for Collection of a Gross Sample of Coal,'' (3) ASTM D6721–01, ''Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydroylsis Microcoulometry,'' (4) ASTM D3173–03, ''Standard Test Method for Moisture in the Analysis Sample of Coal and Coke,'' (5) ASTM D4606–03, ''Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method,'' (6) ASTM D6357–04, ''Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry,'' (7) ASTM D6722–01, ''Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis,'' and (8) ASTM D5865–04, ''Standard Test Method for Gross Calorific Value of Coal and Coke.''

Table 6 to subpart DDDDD of 40 CFR part 63 lists the fuel analysis methods included in this final rule. Under 40 CFR 63.7(f) in subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

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 this action 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 final rule will be effective February 5, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 30, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 of the code of Federal Regulations is amended to read 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 A—[Amended]

■ 2. Section 63.14 is amended by adding paragraphs (b)(55) through (62) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(55) ASTM D2013–04, Standard Practice for Preparing Coal Samples for Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(56) ASTM D2234–D2234M–03€¹, Standard Practice for Collection of a Gross Sample of Coal, IBR approved for Table 6 to subpart DDDDD of this part.

(57) ASTM D6721–01, Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry, IBR approved for Table 6 to subpart DDDDD of this part.

(58) ASTM D3173–03, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

(59) ASTM D4606–03, Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method, IBR approved for Table 6 to subpart DDDDD of this part.

(60) ASTM D6357–04, Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry, IBR approved for Table 6 to subpart DDDDD of this part.

(61) ASTM D6722–01, Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(62) ASTM D5865–04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

* * * * *

Subpart DDDDD—[Amended]

■ 3. Section 63.7491 is amended by revising paragraph (c) to read as follows:

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

* * * * *

(c) An electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) or a Mercury (Hg) Budget unit covered by 40 CFR part 60, subpart HHHH.

* * * * *

■ 4. Section 63.7510 is amended by revising paragraph (a) to read as follows:

§ 63.7510 What are my initial compliance requirements and by what date must I conduct them?

(a) For affected sources that elect to demonstrate compliance with any of the emission limits of this subpart through performance testing, your initial compliance requirements include conducting performance tests according to § 63.7520 and Table 5 to this subpart, conducting a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart, establishing operating limits according to § 63.7530 and Table 7 to this subpart, and conducting CMS performance evaluations according to § 63.7525. For affected sources that burn a single type of fuel, you are exempted from the initial compliance requirements of conducting a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart.

* * * * *

■ 5. Section 63.7522 is amended as follows:

■ a. By revising paragraph (b),

■ b. By revising paragraph (c),

■ c. By revising paragraph (d),

■ d. By revising paragraph (e),

■ e. By revising paragraph (f), and

■ f. By adding paragraphs (h) through (k).

§ 63.7522 Can I use emission averaging to comply with this subpart?

* * * * *

(b) Separate stack requirements. For a group of two or more existing large solid fuel boilers that each vent to a separate stack, you may average particulate matter or TSM, HCl and mercury emissions to demonstrate compliance with the limits in Table 1 to this subpart if you satisfy the requirements in paragraphs (c), (d), (e), (f), and (g) of this section.

(c) For each existing large solid fuel boiler in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on November 12, 2004 or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on November 12, 2004.

(d) The emissions rate from the existing large solid fuel boilers participating in the emissions averaging option must be in compliance with the limits in Table 1 to this subpart at all times following the compliance date specified in § 63.7495.

(e) You must demonstrate initial compliance according to paragraph (e)(1) or (2) of this section.

(1) You must use Equation 1 of this section to demonstrate that the particulate matter or TSM, HCl, and mercury emissions from all existing large solid fuel boilers participating in the emissions averaging option do not exceed the emission limits in Table 1 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n} (\text{Er} \times \text{Hm}) \div \sum_{i=1}^{n} \text{Hm} \qquad \text{(Eq. 1)}$$

Where:

Ave Weighted Emissions = Average weighted emissions for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as calculated according to Table 5 to this subpart or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Hm = Maximum rated heat input capacity of boiler, i, in units of million Btu per hour.

n = Number of large solid fuel boilers participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, you may use Equation 2 of this section as an alternative to using Equation 1 of this section to demonstrate that the particulate matter or TSM, HCl, and mercury emissions from all existing large solid fuel boilers participating in the emissions averaging option do not exceed the emission limits in Table 1 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sm} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sm} \times \text{Cf} \qquad \text{(Eq. 2)}$$

Where:

Ave Weighted Emissions = Average weighted emission level for PM or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as calculated according to Table 5 to this subpart or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Sm = Maximum steam generation by boiler, i, in units of pounds.

Cf = Conversion factor, calculated from the most recent compliance test, in units of million Btu of heat input per pounds of steam generated.

(f) You must demonstrate continuous compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraphs (f)(1) through (3) of this section. The first monthly period begins on the compliance date specified in § 63.7495.

(1) For each calendar month, you must use Equation 3 of this section to calculate the monthly average weighted emission rate using the actual heat capacity for each existing large solid fuel boiler participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hb}) \div \sum_{i=1}^{n}\text{Hb} \qquad \text{(Eq. 3)}$$

Where:

Ave Weighted Emissions = monthly average weighted emission level for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate, (as calculated during the most recent compliance test, (as calculated according to Table 5 to this subpart) or fuel analysis (as calculated by the applicable equation in § 63.7530(d)) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Hb = The average heat input for each calendar month of boiler, i, in units of million Btu.

n = Number of large solid fuel boilers participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, you may use Equation 4 of this section as an alternative to using Equation 3 of this section to calculate the monthly weighted emission rate using the actual steam generation from the large solid fuel boilers participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sa} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sa} \times \text{Cf} \qquad \text{(Eq. 4)}$$

Where:

Ave Weighted Emissions = monthly average weighted emission level for PM or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate, (as calculated during the most recent compliance test (as calculated according to Table 5 to this subpart) or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Sa = Actual steam generation for each calendar month by boiler, i, in units of pounds.

Cf = Conversion factor, as calculated during the most recent compliance test, in units of million Btu of heat input per pounds of steam generated.

(3) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the monthly average weighted emission rate determined under paragraph (f)(1) or (2) of this section. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 4A of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current month and the previous 11 months.

$$E_{avg} = \frac{\sum_{i=1}^{n}ER_i}{12} \qquad \text{(Eq. 4A)}$$

Where:

Eavg = 12-month rolling average emission rate, (pounds per million Btu heat input)

ERi = Monthly weighted average, for month ''i'', (pounds per million Btu heat input)(as calculated by (f)(1) or (2))

* * * * *

(h) Common stack requirements. For a group of two or more existing large solid fuel boilers, each of which vents through a single common stack, you may average particulate matter or TSM, HCl and mercury to demonstrate compliance with the limits in Table 1 to this subpart if you satisfy the requirements in paragraph (i) or (j) of this section.

(i) For a group of two or more existing large solid fuel boilers, each of which vents through a common emissions control system to a common stack, that

does not receive emissions from units in other subcategories or categories, you may treat such averaging group as a single existing solid fuel boiler for purposes of this subpart and comply with the requirements of this subpart as if the group were a single boiler.

(j) For all other groups of boilers subject to paragraph (h) of this section, the owner or operator may elect to:

(1) Conduct performance tests according to procedures specified in § 63.7520 in the common stack (if affected units from other subcategories (*e.g.*, gas-fired units) or nonaffected units vent to the common stack, the units from other subcategories and nonaffected units must be shut down or vented to a different stack during the performance test); and

(2) Meet the applicable operating limit specified in § 63.7540 and Table 8 to this subpart for each emissions control system (except that, if each boiler venting to the common stack has an applicable opacity operating limit, then a single continuous opacity monitoring system may be located in the common stack instead of in each duct to the common stack).

(k) *Combination requirements.* The common stack of a group of two or more boilers subject to paragraph (h) of this section may be treated as a separate stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

■ 6. Section 63.7525 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) If you have an applicable work practice standard for carbon monoxide, and your boiler or process heater is in any of the large subcategories and has a heat input capacity of 100 MMBtu per hour or greater, you must install, operate, and maintain a continuous emission monitoring system (CEMS) for carbon monoxide and oxygen according to the procedures in paragraphs (a)(1) through (6) of this section by the compliance date specified in § 63.7495. The carbon monoxide and oxygen shall be monitored at the same location at the outlet of the boiler or process heater.

(1) Each CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification (PS) 3 or 4A of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

* * * * *

■ 7. Section 63.7540 is amended by revising paragraph (a)(4) to read as follows:

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) * * *

(4) If you demonstrate compliance with an applicable HCl emission limit through performance testing and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum chlorine input using Equation 5 of § 63.7530. If the results of recalculating the maximum chlorine input using Equation 5 of § 63.7530 are higher than the maximum chlorine input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.7520 to demonstrate that the HCl emissions do not exceed the emission limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.7530(c).

* * * * *

■ 8. Section 63.7541 is amended as follows:

■ a. By revising paragraph (a) introductory text,

■ b. By revising paragraph (a)(2),

■ c. By adding paragraph (a)(5), and

■ d. By revising paragraph (b).

§ 63.7541 How do I demonstrate continuous compliance under the emission averaging provision?

(a) Following the compliance date, the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of paragraphs (a)(1) through (5) of this section.

* * * * *

(2) You must maintain the applicable opacity limit according to paragraphs (a)(2)(i) through (ii) of this section.

(i) For each existing solid fuel boiler participating in the emissions averaging option that is equipped with a dry control system and not vented to a common stack, maintain opacity at or below the applicable limit.

(ii) For each group of boilers participating in the emissions averaging option where each boiler in the group is an existing solid fuel boiler equipped with a dry control system and vented to a common stack that does not receive emissions from affected units from other subcategories or nonaffected units, maintain opacity at or below the applicable limit at the common stack;

* * * * *

(5) For each existing large solid fuel boiler participating in the emissions averaging option venting to a common stack configuration containing affected units from other subcategories and/or nonaffected units, maintain the appropriate operating limit for each unit as specified in Tables 2 through 4 to this subpart that applies.

(b) Any instance where the owner or operator fails to comply with the continuous monitoring requirements in paragraphs (a)(1) through (5) of this section, except during periods of startup, shutdown, and malfunction, is a deviation.

■ 9. Section 63.7575 is amended as follows:

■ a. By revising the definitions for ''Firetube boiler,'' ''Fuel type,'' ''Large gaseous fuel subcategory,'' ''Large liquid fuel subcategory,'' ''Large solid fuel subcategory,'' ''Small gaseous fuel subcategory,'' ''Small liquid fuel subcategory,'' ''Watertube boiler,'' and

■ b. By adding definitions for ''Common Stack,'' ''Equivalent,'' and ''Voluntary Consensus Standard'' in alphabetical order.

§ 63.7575 What definitions apply to this subpart?

* * * * *

Common Stack means the exhaust of emissions from two or more affected units through a single flue.

* * * * *

Equivalent means the following only as this term is used in Table 6 to subpart DDDDD:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix; or is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the mercury, selenium, or arsenic) using an aliquot of the dried sample, then the drying temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an ''as received'' basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (mercury, TSM, or total chlorine) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice, or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table 6 to subpart DDDDD for the same purpose.

* * * * *

Firetube boiler means a boiler that utilizes a containment shell that encloses firetubes (tubes in a boiler having water on the outside and carrying the hot gases of combustion inside), and allows the water to vaporize and steam to separate. Hybrid boilers that have been registered/certified by the National Board of Boiler and Pressure Vessel Inspectors and/or the State as firetube boilers as indicated by ''Form P–2'' (Manufacturers' Data Report for All Types of Boilers Except Watertube and Electric, As Required by the Provisions of the ASME Code Rules, Section I), are considered to be firetube boilers for the purpose of this subpart.

* * * * *

Fuel type means each category of fuels that share a common name or classification. Examples include, but are not limited to, bituminous coal, subbituminous coal, lignite, anthracite, biomass, construction/demolition material, salt water laden wood, creosote treated wood, tires, residual oil. Individual fuel types received from different suppliers are not considered new fuel types except for construction/demolition material. Contraband, prohibited goods, or retired U.S. flags, burned at the request of a government agency, are not considered a fuel type for the purpose of this subpart.

* * * * *

Large gaseous fuel subcategory includes any watertube boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment, gas supply emergencies, or for periodic testing of liquid fuel, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Periodic testing of liquid fuel is not to exceed a combined total of 48 hours during any calendar year.

Large liquid fuel subcategory includes any watertube boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Large gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment, gas supply emergencies or for periodic testing of liquid fuel not to exceed a combined total of 48 hours during any calendar year are not included in this definition.

Large solid fuel subcategory includes any watertube boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

* * * * *

Small gaseous fuel subcategory includes any size of firetube boiler and any other boiler or process heater with a rated capacity of less than or equal to 10 MMBtu per hour heat input that burn gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply emergencies, or for periodic testing of liquid fuel. Periodic testing is not to exceed a combined total of 48 hours during any calendar year.

Small liquid fuel subcategory includes any size of firetube boiler and any other boiler or process with a rated capacity of less than or equal to 10 MMBtu per hour heat input that do not burn any solid fuel and burn any liquid fuel either alone or in combination with gaseous fuels. Small gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment, gas supply emergencies or for periodic testing of liquid fuel not to exceed a combined total of 48 hours during any calendar year are not included in this definition.

* * * * *

Watertube boiler means a boiler that incorporates a steam drum with tubes connected to the drum to separate steam from water.

* * * * *

Voluntary Consensus Standards or VCS mean technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. EPA/OAQPS has by precedent only used VCS that are written in English. Examples of VCS bodies are: American Society of Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), International Standards Organization (ISO), Standards Australia (AS), British Standards (BS), Canadian Standards (CSA), European Standard (EN or CEN) and German Engineering Standards (VDI). The types of standards that are not considered VCS are standards developed by: the U.S. states, *e.g.*, California (CARB) and Texas (TCEQ); industry groups, such as American Petroleum Institute (API), Gas Processors Association (GPA), and Gas Research Institute (GRI); and other branches of the U.S. government, *e.g.* Department of Defense (DOD) and Department of Transportation (DOT). This does not preclude EPA from using standards developed by groups that are not VCS bodies within their rule. When this occurs, EPA has done searches and reviews for VCS equivalent to these non-EPA methods.

* * * * *

■ 10. Table 6 and text before table to subpart DDDDD are revised to read as follows:

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources. However, equivalent methods may be used in lieu of the prescribed methods at the discretion of the source owner or operator:

TABLE 6.—TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant * * *	You must * * *	Using * * *
1. Mercury * * *	a. Collect fuel samples * * *	Procedure in §63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see §63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, See §63.14(b)) or equivalent.
	b. Composite fuel samples * * * ..	Procedure in §63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see §63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see §63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see §63.24(b)) or ASTM E711–87 (for biomass) (IBR, see §63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see §63.14(b)) or ASTM E871–82 (1998) (IBR, see §63.14(b)) or equivalent.
	f. Measure mercury concentration in fuel sample * * *.	ASTM D6722–01 (for coal) (IBR, see §6314(b)) or SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples or equivalent.
	g. Convert concentration into units of pounds of pollutant per MMBtu of heat content.	
2. Total Selected metals * * *	a. Collect fuel samples * * *	Procedure in §63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see §63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see §63.14(b)) or equivalent.
	b. Composite fuel samples * * * ..	Procedure in §63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see §63.14(b)) or ASTM D5198–92 (2003) (for biomass (IBR, see §63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see §63.14(b)) or ASTM E711–87 (for biomass) (IBR, see §63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see §63.14(b)) or ASTM E871–82 (IBR, see §63.14(b)) or equivalent.
	f. Measure total selected metals concentration in fuel sample * * *.	SW–846–6010B or ASTM D6357–04 (for arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel for all solid fuels) and ASTM D4606–03 (for selenium in coal) (IBR, see §63.14(b)) or ASTM E885–88 (1996) for biomass) (IBR, see §63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	
3. Hydrogen Chloride * * *	a. Collect fuel samples * * *	Procedure in §63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see §63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see §63.14(b)) or equivalent.
	b. Composite fuel samples * * * ..	Procedure in §63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see §63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see §63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see §63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see §63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see §63.14(b)) or ASTM E871–82 (1998) or equivalent.
	f. Measure chlorine concentration in fuel sample * * *.	SW–846–9250 or ASTM D6721–01 (for coal) or ASTM E776–87 (1996) (for biomass) (IBR, see §63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content..	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FDMS Docket No. EPA–R03–OAR–2006–0933; FRL–8252–3]

State Operating Permit Programs; Delaware; Amendments to the Definition of a ''Major Source''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the State of Delaware's operating permit program to correct the definition of ''major source.'' Delaware's revision was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to submit to EPA program revisions in accordance with the Federal Title V regulations. The EPA granted final approval of Delaware's operating permit program on November 19, 2001. Delaware amended its operating permit program to address the Federal EPA amendment to the Federal Title V regulation, which went into effect on November 27, 2001, and this action approves this amendment. Any parties interested in commenting on this action granting approval of Delaware's amendment to the Title V operating permit program should do so at this time.

DATES: This rule is effective on February 5, 2007 without further notice, unless EPA receives adverse written comment by January 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0933 by one of the following methods:

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

B. E-mail: *campbell.dave@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0933, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. 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–R03–OAR–2006–0933. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 18, 2004, the State of Delaware submitted an amendment to its State operating permit program. This amendment is the subject of this document and this section provides additional information on the amendment by addressing the following questions:

What Is the State Operating Permit Program?
What Are the State Operating Permit Program Requirements?
What Is Being Addressed in This Document?
What Is Not Being Addressed in This Document?
What Changes to Delaware's Operating Permit Program Is EPA Approving?
What Action Is Being Taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10} and $PM_{2.5}$); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What Are the State Operating Permit Program Requirements?

The minimum program elements for an approvable operating permit program are those mandated by Title V of the Clean Air Act Amendments of 1990 and established by EPA's implementing regulations at title 40, part 70—''State Operating Permit Programs'' in the Code of Federal Regulations (40 CFR part 70). Title V required state and local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under Title V, State and local air pollution control agencies that implement operating permit programs are called ''permitting authorities''.

The State was granted final full approval effective on November 19, 2001. On May 18, 2004, Delaware submitted an amendment to its currently EPA-approved Title V operating permit program. In general, Delaware amended its operating permit program regulations to make the current definition of a ''major source'' as stringent as the corresponding provision of 40 CFR Part 70, which went into effect on November 27, 2001. This change will make this aspect of Regulation No. 30 consistent with the Federal rule.

What Is Being Addressed in This Document?

This action approves an amendment to the Delaware Title V operating permit program to correct the definition of a ''major source.'' This amendment would change the definition of ''a major source'' by removing the phrase ''but only with respect to those air pollutants that have been regulated for that category'' from the Regulation 30 (Title V) definition of a major source as it applies to Federal standards.

What Is Not Being Addressed in This Document?

EPA is not opening the entirety of Delaware's Title V operating permit program up to public comment, we are only addressing this change to the definition of ''major source''.

What Changes to Delaware's Program Is EPA Approving?

Delaware has revised Regulation 30, Section 2—Definitions, of the State of Delaware Regulations Governing the Control of Air Pollution to be consistent with the provision of 40 CFR 70.2. This action is necessary because the current definition is less stringent than the corresponding provision of 40 CFR part 70, which went into effect on November 27, 2001.

Change to Delaware's Program That Corrects a Deficiency

The EPA has reviewed Delaware's May 18, 2004 program amendment in conjunction with the portion of Delaware's program that was earlier approved. Based on this review, EPA is granting full approval of Delaware's amended operating permit program. The EPA has determined that this amendment to Delaware's operating permit program adequately addresses the deficiency. Delaware's operating permit program, including this amendment submitted on May 18, 2004, fully meets the minimum requirements of 40 CFR part 70.

What Action Is Being Taken by EPA?

The State of Delaware has satisfactorily addressed a program deficiency when EPA made a change to the Federal rule. The operating permit program amendment that is the subject of this document considered together with that portion of Delaware's operating permit program that was earlier approved fully satisfy the requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to fully approve the Delaware Title V operating permit program in accordance with 40 CFR 70.2 definition of ''a major source.''

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** EPA is publishing a separate document that will serve as the proposal to approve this amendment to Delaware's operating permit program if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on February 5, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not subject of an adverse comment.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State operating permit program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS

in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 5, 2007*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action fully approving Delaware's Title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action approves an amendment to the Delaware Title V operating permit program to correct the definition of a ''major source.''

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for Delaware to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Delaware

(c) The Delaware Department of Natural Resources and Environmental Control submitted program amendment on May 18, 2004. This rule amendment contained in the May 18, 2004 submittal is necessary to make the current definition as stringent as the corresponding provision of 40 CFR part 70, which went into effect on November 27, 2001. The State is hereby granted approval effective on February 5, 2007.

[FR Doc. E6–20645 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0175; FRL–8084–2]

Pesticides; Food Packaging Treated with a Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This rule excepts from the definitions of ''pesticide chemical'' and ''pesticide chemical residue'' under FFDCA section 201(q), food packaging (e.g. paper and paperboard, coatings, adhesives, and polymers) that is treated with a pesticide as defined in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(u). As a result, such ingredients in food packaging treated with a pesticide are exempt from regulation under FFDCA section 408 as pesticide chemical residues. Further, a food that bears or contains such ingredients are not subject to enforcement by the Food and Drug Administration (FDA) under section 402(a)(2) (B) of the FFDCA since the ingredients are not pesticide chemical residues. Instead, such ingredients are subject to regulation by the FDA as food additives under FFDCA section 409. FDA generally regulates such food additives in food packaging as food contact substances under FFDCA, section 409(h). This rule expands the scope of the provision in 40 CFR 180.4 which currently applies only to food packaging impregnated with an insect repellent - one type of pesticide. This rule, as with the rule it amends, only applies to the food packaging materials themselves; it does not otherwise limit EPA's FFDCA jurisdiction over pesticides or limit FDA's jurisdiction over substances subject to FDA regulation as food additives. EPA, in consultation with FDA, believes this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment. Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA still regulates the food packaging as an inert ingredient of the pesticide product and still regulates the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA.

DATES: This direct final rule is effective February 5, 2007 without further notice unless EPA receives adverse comments in writing. Any comments must be received on or before January 5, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0175, 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–2006–0175. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Mari L. Duggard, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0028; fax number: (703) 308–7026; e-mail address: *duggard.mari@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 a manufacturer/wholesaler of sanitary food packaging products or are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Pesticide manufacturing (NAICS 32532)
- Food packaging manufacturers (NAICS 32222)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 180.4. 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. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2006–0175. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *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 has received applications for the registration of pesticides under FIFRA that, as proposed, will be applied to food packaging materials. These pesticides are generally intended to function as alternatives to more costly and more toxic applications of insecticides in food storage and retail establishments. The regulatory framework for this use of pesticides raises a number of complex jurisdictional issues for EPA and FDA.[1] Because the treated packaging materials will be sold to food distributors for the purpose of controlling pest infestations, as well as for packaging food, the pesticide treated food packaging materials will be subject to the pesticide product registration requirements of section 3 of FIFRA. Under FIFRA, the components of pesticides are either active ingredients or inert ingredients. Active ingredients are those which, among other things, will ''prevent, destroy, repel or mitigate any pest.'' (FIFRA section 2(a)) Inert ingredients are ingredients ''which are not active.'' (FIFRA section 2(m)). Thus, the components of the food packaging (paperboards, coatings, etc.) become inert ingredients of a pesticide product

[1]This rule does not include within its scope substances which may be regulated as pesticides under FIFRA that are used to prevent, destroy, repel or mitigate microorganisms when such substances are included for such use in or are applied for such use on food packaging (without regard to whether the substances are intended to have an ongoing effect on any portion of the packaging) (see FFDCA section 201(q)(1)(B)(ii) which excludes such substances from the definition of ''pesticide chemical''). Because such substances are already excluded from the definition of pesticide chemical residue, it is unnecessary to address these substances in this rule.

under FIFRA whenever the food packaging is treated with a pesticide active ingredient and is distributed or sold with the purpose of controlling pests.[2] Such inert ingredients are not used for a pesticidal purpose in the production, storage, processing, or transportation of food. However, as inert ingredients, these components of food packaging are also subject to regulation as ''pesticide chemical residues'' under FFDCA section 408.

Under section 408 of the FFDCA, any pesticide chemical residue in or on food is deemed unsafe, unless EPA has established a tolerance or tolerance exemption that covers the pesticide chemical residue. This is true even though FDA may have previously issued regulations under section 409 of FFDCA permitting the use of these materials in food packaging that has not been treated with a pesticide. As a result, the same food packaging materials would be subject to regulation under FFDCA by both Agencies. EPA is taking today's action in order to give FDA jurisdiction under the FFDCA over the inert ingredients in food packaging treated with a pesticide as food additives. Consequently, EPA would no longer have jurisdiction over such substances as pesticide chemicals under the FFDCA since a pesticide chemical and a pesticide chemical residue are excluded from the definition of food additive in FFDCA section 201(s). Given FDA's expertise and experience in regulating the components of food packaging, EPA, in consultation with FDA, believes this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment without additional regulatory oversight by EPA.

In 1998, EPA consciously limited the exception at 40 CFR 180.4 to food packaging materials impregnated with an insect repellent, since at the time of promulgation EPA had only received an application for a pesticide product containing an insect repellent. EPA has now received applications for other treated food packaging products that contain active ingredients that are not insect repellents and will not be applied through impregnation of the materials. EPA, in consultation with FDA, believes it is appropriate to extend the 1998 rule to give FDA sole jurisdiction under the FFDCA over the inert ingredients in such food packaging products without regard to the application technique and mode of action of the active ingredients in such products. Again, this action does not affect EPA's jurisdiction under section 408 over ingredients other than the packaging materials in such products (including the pesticide active ingredient), nor does it affect EPA's jurisdiction under FIFRA to regulate such products.

B. What Is the Agency's Authority for Taking This Action?

Section 201(q)(3) of FFDCA, as amended by the Food Quality Protection Act (FQPA), allows the Administrator, under specified conditions, to except certain substances from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' if:

A. Its occurrence as a residue on or in a raw agricultural commodity or processed food is attributable primarily to natural causes or human activities not involving the use of any substance for a pesticidal purpose in the production, storage, processing, or transportation of any raw agricultural commodity or processed food, and:

B. The Administrator, after consultation with the Secretary, determines that the substance more appropriately should be regulated under one or more provisions of this Act other than sections 402(a)(2)(B) and 408.

With today's rule, EPA is excepting from the definition of ''pesticide chemical'' substances that are inert ingredients in food packaging treated with a pesticide, when such ingredients are the components of the food packaging (e.g. paper and paperboard, coatings, adhesives and polymers).

It is important to note that this rule does not affect EPA's regulation of such substances as inert ingredients under FIFRA. EPA will continue to exercise jurisdiction over these substances when they are used as inert ingredients in food packaging material that is intended to produce a pesticidal effect. The materials that make up food packaging treated with a pesticide may serve one of two purposes: 1. To control pests, or 2. to be one of the materials that make up the container for food. As a result of this rule, under FFDCA, EPA will continue to regulate the materials which control pests and FDA will regulate the materials that make up the food packaging material. Consistent with EPA's pesticide registration regulations, EPA will not issue a registration under FIFRA for pesticide products containing food packaging inert ingredients if the presence of these ingredients in or on food is not authorized or permitted by FFDCA and the implementing regulations.

EPA, in consultation with FDA, believes that section 201(q)(3) is applicable to inert ingredients in pesticide treated food packaging materials that are the components of the food packaging (paperboard, coatings, etc). When such inert ingredients are the components of the food packaging itself, EPA believes the occurrence of these substances as residues in or on food would be appropriately excepted from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' because such substances are not attributable primarily to the use of the substances for a pesticidal purpose in the production, storage, processing or transportation of food. Rather, the presence of such substances as residues in food is primarily attributable to their use for purposes of packaging food. For this reason, and because of FDA's considerable experience in regulating such substances found in food packaging, EPA, after consulting with FDA, believes it is appropriate for FDA to regulate these inert ingredients under section 409 of FFDCA.

As noted, this regulation excepts from the definition of ''pesticide chemical'' and ''pesticide chemical residue'' any inert ingredient that is a component of food packaging material treated with a pesticide. EPA, in consultation with FDA, believes the identity of the pesticide in or on the packaging material is not relevant to a determination under section 201(q)(3) regarding whether it is appropriate to except an inert ingredient from the definition of pesticide chemical or pesticide chemical residue. As noted above, that determination turns only on whether: 1. the occurrence of the residues of the substance in or on food is attributable primarily to the use of substances for a pesticidal purpose in the production, storage, processing or transportation of food; and 2. whether it is more appropriate to regulate such substances under another provision of FFDCA other than sections 402(a)(2)(B) and 408. Thus, EPA has determined that inert ingredients that are the components of the food packaging material in pesticide treated food packaging are more appropriately regulated by FDA under FFDCA. This rule therefore amends 40 CFR 180.4 to

[2]It is important to understand that this rule only applies to a very small subset of food packaging materials: pesticide-treated food packaging that is distributed or sold with the purpose of controlling pests. Food packaging that is not distributed or sold to control pests is not a pesticide and is not subject to this rule. For example, packaged products that are simply treated with pesticides by food distributors, retailers or homeowners solely to control pests on site do not themselves become pesticides simply as a result of such applications. Rather, the product itself must be distributed with the purpose of providing pest control to become a pesticide. The treated packaging materials addressed in this rule are those that are sold for the express purpose of providing ongoing protection from pests that may contaminate the products made with the treated packaging.

extend to any food packaging materials treated with a pesticide.

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and will not result in any adverse comments. EPA previously received no adverse comments when it issued the current rule at 40 CFR 180.4 to except food packaging materials impregnated with insect repellents from EPA jurisdiction under section 408. Because this amendment to § 180.4 likewise only applies to the food packaging materials, and not to the pesticide active ingredient used in such products, EPA believes this action is similarly non-controversial The Agency also believes that it is important to make this action effective as soon as possible, 1. in order to address the current, unnecessary overlap in jurisdiction between EPA and FDA under FFDCA; and 2. to allow the Agency to act expeditiously on pending applications for registration by eliminating the need for developing numerous individual tolerance exemptions for the components of the packaging material. If no relevant adverse comment is submitted within 30 days of publication, this action will become effective 60 days after publication without any further action by the Agency. If, however, a relevant adverse comment is received during the comment period, this final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule, or EPA may request additional public comments.

For the reasons set forth above, EPA believes that it is appropriate to issue this rule as direct final rule. In addition, this rule also conforms with the ''good cause'' exemption under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), which allows agencies to issue an action without additional notice and comment if further notice and comment would be unnecessary.

III. Statutory and Executive Order Reviews

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866 entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), it has been determined that this rule is not ''significant'' and is not subject to OMB review. This 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) (Pub. L. 104–4). This rule has no federalism or tribal implications, because it will not have substantial direct effects on States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, as specified in Executive Orders 13132 (entitled Federalism, 64 FR 43255, August 10, 1999) and 13175 (entitled Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 6, 2000. Nor does this rule raise issues that require 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 require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This rule is also not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect energy Supply, Distribution or Use (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Pub. *L.* 104–113).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

IV. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This 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 record-keeping requirements.

Dated: November 14, 2006.

Janet L. Andersen,

Division Director, Biopesticides and Pollution Prevention 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), 346(a), and 371

■ 2. Section 180.4 is amended by revising paragraph (a) to read as follows:

§ 180.4 Exceptions.

* * * * *

(a) *General.* Inert ingredients in food packaging treated with a pesticide, when such inert ingredients are the components of the food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers).

* * * * *

[FR Doc. E6–20270 Filed 12–05–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0664; FRL–8100–3]

Paraquat Dichloride; Pesticide Tolerance Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 6, 2006, concerning establishing tolerances for residues of paraquat dichloride in or on various food and feed commodities. This document is being issued to correct typographical errors.

DATES: This final rule is effective December 6, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0664. All documents in the docket are listed on the regulations.gov

web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: 703-305-5410; e-mail address:*johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule 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 the **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using 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*.

II. What Does this Correction Do?

In the **Federal Register** of September 6, 2006, (71 FR 52487), EPA issued a pesticide tolerance for residues of paraquate dichloride on various commodities. This document is amending 40 CFR 180.205 of the Code of Federal Regulations by changing the terminology used to refer to ''fruit, pome, group 12'' to correctly refer to ''fruit, stone, group 12.''

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because the use of notice and comment procedures are unnecessary to effectuate this correction. As such, EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

No. This action only corrects errors in the amendatory language for a previously published final rule and does not impose any new requirements. EPA's compliance with the statutes and Executive Orders for the underlying rule is discussed in Unit VII. of the September 6, 2006, final rule (71 FR 52487).

V. 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, Agriculutural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—AMENDED

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

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

§ 180.205 [Amended]

■ 2. In § 180.205, the table to paragraph (a) is amended by revising the commodity term ''fruit, pome, group 12'' to read ''fruit, stone, group 12.''

[FR Doc. E6–20640 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[WT Docket No. 01–289; FCC 06–148]

Aviation Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) addresses a number of important issues pertaining to the Aviation Radio Services, amending its frequency allocation and radio treaty matters and aviation services rules to ensure that they remain up-to-date and continue to further the Commission's goals of accommodating new technologies, facilitating the efficient and effective use of the aeronautical spectrum, avoiding unnecessary regulation, and, above all, enhancing the safety of flight. In many cases these rule amendments also promote public safety generally and improve our homeland security.

DATES: Effective February 5, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Second Report and Order* in WT Docket No. 01–289 (*Second Report and Order*), FCC 06–148, adopted on October 4, 2006, and released on October 10, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs

Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The *Second Report and Order* addresses issues raised in the *Further Notice of Proposed Rule Making (FNPRM)* in this WT Docket No. 01–289 proceeding. The Commission takes the following significant actions in the *Second Report and Order:* (i) Authorizes the use of Universal Access Transceiver (UAT) technology on the frequency 978 MHz; (ii) declines to adopt any immediate changes to the part 87 rules governing the Aeronautical Mobile Satellite (Route) Service (AMS(R)S) with respect to technical flexibility, the licensing of AMS(R)S in additional frequency bands under part 87, or priority and preemptive access for AMS(R)S communications vis-vis public correspondence communications and other non-safety-related Mobile Satellite Service (MSS) communications; (iii) removes all of the former Civil Air Patrol (CAP) channels from the table of frequencies available for assignment under part 87; (iv) removes allocations for radionavigation in the 14000–14400 MHz band; (v) streamlines the listing of high frequency (HF) channels in the table of frequencies available for assignment under part 87; (vi) provides the Federal Aviation Administration (FAA) with greater flexibility in the use of air traffic control (ATC) frequencies; (vii) declines to adopt rules that would authorize a new type of emergency locator transmitter (ELT) designed to operate on the frequency 121.5 MHz; (viii) adopts rules permitting use of an alternative station identification format by aircraft that are being moved by maintenance personnel from one airport location to another; (ix) eliminates the rule authorizing the assignment of FCC control numbers to ultralight aircraft for station identification; and (x) declines at present to make any rule changes pertaining to the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA).

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. The *Second Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Report to Congress

3. The Commission will send a copy of this *Second Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

5. The rules adopted in the *Second Report and Order* are intended to ensure that the Commission's part 87 rules governing the Aviation Radio Service remain up-to-date and continue to further the Commission's goals of accommodating new technologies, facilitating the efficient and effective use of the aeronautical spectrum, avoiding unnecessary regulation, and, above all, enhancing the safety of flight. Specifically, in the *Second Report and Order* the Commission (a) authorizes the use of UAT technology on the frequency 978 MHz; (b) removes all of the former CAP channels from the table of frequencies available for assignment under part 87; (c) removes allocations for radionavigation in the 14000–14400 MHz band; (d) streamlines the listing of HF channels in the table of frequencies available for assignment under part 87; (e) provides the FAA with greater flexibility in the use of ATC frequencies; (f) declines to adopt rules that would authorize a new type of ELT designed to operate on the frequency 121.5 MHz; (g) codifies the terms of a waiver permitting use of an alternative station identification format by aircraft that are being moved by maintenance personnel from one airport location to another; (h) eliminates the rule authorizing the assignment of FCC control numbers to ultralight aircraft for station identification; and (i) declines at present to make any rule changes pertaining to the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA).

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

6. No comments were submitted specifically in response to the IRFA. Nonetheless, we have considered the potential economic impact on small entities of the rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless service providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms

had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

9. Some of the rules adopted herein may also affect small businesses that manufacture aviation radio equipment. The Commission has not developed a definition of small entities applicable to aviation radio equipment manufacturers. Therefore, the applicable definition is that for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The *Second Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Second Report and Order* generally either relieve licensees of pre-existing technical constraints or simply streamline and update the Commission's rules in a manner that will have no impact at all on regulatory compliance costs.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.''

12. As explained in section C of this FRFA, above, the *Second Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. In the *Second Report and Order*, the Commission discusses the possibility of further relaxing AMS(R)S technical requirements to accommodate non-Inmarsat satellite systems, and the Commission did consider, as one alternative, immediately amending the part 87 rules for that purpose. The Commission ultimately decided, however, that it would be prudent to seek further comment on this question, especially in light of the fact that the International Civil Aviation Organization (ICAO) has not yet adopted Standards and Recommended Practices for such AMS(R)S operations. Similarly, the Commission could have adopted part 87 licensing rules for AMS(R)S in the 1.6 GHz, 2 GHz, and 5 GHz frequency bands, subject to a requirement that satellite system operators accord priority and preemptive access to AMS(R)S communications over other types of communications. The Commission deferred a final decision on this matter, primarily to acquire additional information regarding whether such a priority and preemptive access requirement is truly necessary, and regarding the burden such a requirement may impose on MSS/AMS(R)S licensees.

F. Report to Congress

13. The Commission will send a copy of this *Second Report and Order* in WT Docket No. 01–289, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 2

Communications equipment; Disaster assistance; Imports; Radio; Reporting and recordkeeping requirements; Telecommunications; Television; Wiretapping and electronic surveillance.

47 CFR Part 87

Air transportation; Civil defense; Communications equipment; Defense communications; Radio; Reporting and recordkeeping requirements; Weather.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 87 as follows:

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

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

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

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

■ a. Revise pages 29 and 46.

■ b. In the list of United States (US) Footnotes, remove footnote US292 and add footnote US400.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations		941-1435 MHz (UHF)			Page 29
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)			941-944 FIXED US268 US301 US302 G2	941-944 FIXED US268 US301 US302 NG120	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.323	942-960 FIXED MOBILE 5.317A	942-960 FIXED MOBILE 5.317A BROADCASTING 5.320	944-960	944-960 FIXED NG120	Public Mobile (22) Auxiliary Broadcasting (74) Fixed Microwave (101)
960-1164 AERONAUTICAL RADIONAVIGATION 5.328			960-1164 AERONAUTICAL RADIONAVIGATION 5.328 US224 US400		Aviation (87)
1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.328A			1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328A US224		
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) G132 SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.332 5.335 5.335A			1240-1300 AERONAUTICAL RADIONAVIGATION EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active) 5.332 5.335	1240-1300 AERONAUTICAL RADIONAVIGATION Earth exploration-satellite (active) Space research (active) Amateur 5.282	Amateur (97)
1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 5.337A			1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION		1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US311 US342 G27 G114	1350-1390 5.334 5.339 US311 US342	

BILLING CODE 6712–01–C

5.487 5.487A 5.492	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.487A 5.488 5.490 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	12.2-12.75	12.2-12.7 FIXED BROADCASTING-SATELLITE 5.487A 5.488 5.490	Satellite Communications (25) Fixed Microwave (101)
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.494 5.495 5.496	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493		12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG104 MOBILE US251 NG53	
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B			13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503			13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation Standard frequency and time signal-satellite (Earth-to-space) Space research US356 US357	Satellite Communications (25) Private Land Mobile (90)
14-14.25 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504C 5.506A Space research 5.504A 5.505			14-14.2 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) NG183 Mobile-satellite (Earth-to-space) Space research	Satellite Communications (25)

United States (US) Footnotes

* * * * *

US400 The use of the center frequency 978 MHz may be authorized to Universal Access Transceiver (UAT) stations on a primary basis for the specific purpose of transmitting datalink information in support of the Automatic Dependent Surveillance—Broadcast (ADS–B) Service, Traffic Information Services—Broadcast (TIS–B), and Flight Information—Broadcast (FIS–B).

* * * * *

PART 87—AVIATION SERVICES

■ 3. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 4. Amend § 87.5 by adding entries in alphabetical order for ''Automatic Dependent Surveillance—Broadcast (ADS–B) Service,'' ''Traffic Information Services—Broadcast (TIS–B) Service'' and ''Universal Access Transceiver (UAT)'' to read as follows:

§ 87.5 Definitions.

* * * * *

Automatic Dependent Surveillance—Broadcast (ADS–B) Service. Broadcast transmissions from aircraft, supporting aircraft-to-aircraft or aircraft-to-ground surveillance applications, including position reports, velocity vector, intent and other relevant information about the aircraft.

* * * * *

Traffic Information Services—Broadcast (TIS–B). Traffic information broadcasts derived from ground-based radar systems.

Universal Access Transceiver (UAT). A radio datalink system authorized to operate on the frequency 978 MHz to support Automatic Dependent Surveillance—Broadcast (ADS–B) Service, Traffic Information Services—Broadcast (TIS–B) and Flight Information Service—Broadcast (FIS–B).

* * * * *

■ 5. Amend § 87.107 by removing paragraph (a)(2), redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4), and revising newly designated paragraph (a)(2) to read as follows:

§ 87.107 Station identification.

(a) * * *

(2) The type of aircraft followed by the characters of the registration marking (''N'' number) of the aircraft, omitting the prefix letter ''N.'' When communication is initiated by a ground station, an aircraft station may use the type of aircraft followed by the last three characters of the registration marking. Notwithstanding any other provision of this section, an aircraft being moved by maintenance personnel from one location in an airport to another location in that airport may be identified by a station identification consisting of the name of the company owning or operating the aircraft, followed by the word ''Maintenance'' and additional alphanumeric characters of the licensee's choosing.

* * * * *

■ 6. Amend § 87.137 by amending the table in paragraph (a) to add an entry for F1D and footnote 18 to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz [16]	Frequency deviation
* *	*	* *	*	*
F1D[18]	1M30F1D		1300 kHz	312.5 kHz
* *	*	* *	*	*

* * * * *

[18] Authorized only for Universal Access Transceiver use at 978 MHz.

* * * * *

■ 7. Amend § 87.139 by adding paragraph (l) to read as follows:

§ 87.139 Emission limitations.

* * * * *

(l)(1) For Universal Access Transceiver transmitters, the average emissions measured in a 100 kHz bandwidth must be attenuated below the maximum emission level contained within the authorized bandwidth by at least:

Frequency (MHz)	Attenuation (dB)
+/−0.5	0
+/−1.0	18
+/−2.25	50
+/−3.25	60

(2) Universal Access Transceiver transmitters with an output power of 5 Watts or more must limit their emissions by at least 43 + 10 log (P) dB on any frequency removed from the assigned frequency by more than 250% of the authorized bandwidth. Those emissions shall be measured with a bandwidth of 100 kHz. P in the above equation is the average transmitter power measured within the occupied bandwidth in Watts.

(3) Universal Access Transceiver transmitters with less than 5 Watts of output power must limit their emissions by at least 40 dB relative to the carrier peak on any frequency removed from the assigned frequency by more than 250% of the authorized bandwidth. Those emissions shall be measured with a bandwidth of 100 kHz.

■ 8.Amend § 87.141 by adding paragraph (k) to read as follows:

§ 87.141 Modulation requirements.

* * * * *

(k) Universal Access Transceiver transmitters must use F1D modulation without phase discontinuities.

■ 9. Amend § 87.171 by adding in alphabetical order the symbol and class of station ''UAT—Universal Access Transceiver'' to read as follows:

§ 87.171 Class of station symbols.

* * * * *

UAT—Universal Access Transceiver

■ 10. Amend § 87.173 by revising the table in paragraph (b) to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
90–110 kHz	Q	RL	LORAN "C".
190–285 kHz	Q	RLB	Radiobeacons.
200–285 kHz	O	FAC	Air traffic control.
325–405 kHz	O	FAC	Air traffic control.
325–435 kHz	Q	RLB	Radiobeacons.
410.0 kHz	F	MA	International direction-finding for use outside of United States.
457.0 kHz	F	MA	Working frequency for aircraft on over-water flights.
500.0 kHz	F	MA	International calling and distress frequency for ships and aircraft on over-water flights.
510–535 kHz	Q	RLB	Radiobeacons.
2182.0 kHz	F	MA	International distress and calling.
2648.0 kHz	I	AX	Alaska station.
2850.0–3025.0 kHz	I	MA, FAE	International HF.
2851.0 kHz	I, J	MA, FAE, FAT	International HF; Flight Test.
2866.0 kHz	I	MA, FAE	Domestic HF; (Alaska).
2875.0 kHz	I	MA, FAE	Domestic HF.
2878.0 kHz	I	MA1, FAE	Domestic HF; International HF.
2911.0 kHz	I	MA, FAE	Domestic HF.
2956.0 kHz	I	MA, FAE	Domestic HF.
3004.0 kHz	I, J	MA, FAE, FAT	International HF; Flight Test.
3019.0 kHz	I	MA1, FAE	Domestic HF; International HF.
3023.0 kHz	F, M, O	MA1, FAR, FAC	Search and rescue communications.
3281.0 kHz	K	MA, FAS	Lighter-than-air craft and aeronautical stations serving lighter-than-air craft.
3400.0–3500.0 kHz	I	MA, FAE	International HF.
3434.0 kHz	I	MA1, FAE	Domestic HF.
3443.0 kHz	J	MA, FAT	Flight Test.
3449.0 kHz	I	MA, FAE	Domestic HF.
3470.0 kHz	I	MA, FAE	Domestic HF; International HF.
4125.0 kHz	F	MA	Distress and safety with ships and coast stations.
4550.0 kHz	I	AX	Gulf of Mexico.
4645.0 kHz	I	AX	Alaska.
4650.0–4700.0 kHz	I	MA, FAE	International HF.
4672.0 kHz	I	MA1, FAE	Domestic HF.
4947.5 kHz	I	AX	Alaska.
5036.0 kHz	I	AX	Gulf of Mexico.
5122.5 kHz	I	AX	Alaska.
5167.5 kHz	I	FA	Alaska emergency.
5310.0 kHz	I	AX	Alaska.
5450.0–5680.0 kHz	I	MA, FAE	International HF.
5451.0 kHz	J	MA, FAT	Flight Test.
5463.0 kHz	I	MA1, FAE	Domestic HF.
5469.0 kHz	J	MA, FAT	Flight Test.
5472.0 kHz	I	MA, FAE	Domestic HF.
5484.0 kHz	I	MA, FAE	Domestic HF.
5490.0 kHz	I	MA, FAE	Domestic HF.
5496.0 kHz	I	MA, FAE	Domestic HF.
5508.0 kHz	I	MA1, FAE	Domestic HF.
5571.0 kHz	J	MA, FAT	Flight Test.
5631.0 kHz	I	MA, FAE	Domestic HF.
5680.0 kHz	F, M, O	MA1, FAC, FAR	Search and rescue communications.
5887.5 kHz	I	AX	Alaska.
6525.0–6685.0 kHz	I	MA, FAE	International HF.
6550.0 kHz	J	MA, FAT	Flight Test.
6580.0 kHz	I	MA, FAE	Domestic HF.
6604.0 kHz	I	MA, FAE	Domestic HF.
8015.0 kHz	I	AX	Alaska.
8364.0 kHz	F	MA	Search and rescue communications.
8815.0–8965.0 kHz	I	MA, FAE	International HF.
8822.0 kHz	J	MA, FAT	Flight Test.
8855.0 kHz	I	MA, FAE	Domestic HF; international HF.
8876.0 kHz	I	MA, FAE	Domestic HF.
10005.0–10100.0 kHz	I	MA, FAE	International HF.
10045.0 kHz	J	MA, FAT	Flight Test.
10066.0 kHz	I	MA, FAE	Domestic HF; international HF.
11275.0–11400.0 kHz	I	MA, FAE	International HF.
11288.0 kHz	J	MA, FAT	Flight Test.
11306.0 kHz	J	MA, FAT	Flight Test.
11357.0 kHz	I	MA, FAE	Domestic HF.
11363.0 kHz	I	MA, FAE	Domestic HF.
13260.0–13360.0 kHz	I	MA, FAE	International HF.
13312.0 kHz	I, J	MA, FAE, FAT	International HF; Flight Test.
17900.0–17970.0 kHz	I	MA, FAE	International HF.

Frequency or frequency band	Subpart	Class of station	Remarks
17964.0 kHz	J	MA, FAT	Flight Test.
21924.0–22000.0 kHz	I	MA, FAE	International HF.
21931.0 kHz	J	MA, FAT	Flight Test.
72.020–75.980 MHz	P	FA, AXO	Operational fixed; 20 kHz spacing.
75.000 MHz	Q	RLA	Marker beacon.
108.000 MHz	Q	RLT	
108.000–117.950 MHz	Q	RLO	VHF omni-range.
108.000–117.975 MHz	Q	DGP	Differential GPS.
108.050 MHz	Q	RLT	
108.100–111.950 MHz	Q	RLL	ILS Localizer.
108.100 MHz	Q	RLT	
108.150 MHz	Q	RLT	
118.000–121.400 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.
121.500 MHz	G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.
121.600–121.925 MHz	O, L, Q	MA, FAC, MOU, RLT, GCO, RCO, RPC.	25 kHz channel spacing.
121.950 MHz	K	FAS	
121.975 MHz	F	MA2, FAW, FAC, MOU	Air traffic control operations.
122.000 MHz	F	MA, FAC, MOU	Air carrier and private aircraft enroute flight advisory service provided by FAA.
122.025 MHz	F	MA2, FAW, FAC, MOU	Air traffic control operations.
122.050 MHz	F	MA, FAC, MOU	Air traffic control operations.
122.075 MHz	F	MA2, FAW, FAC, MOU	Air traffic control operations.
122.100 MHz	F, O	MA, FAC, MOU	Air traffic control operations.
122.125–122.675 MHz	F	MA2, FAC, MOU	Air traffic control operations; 25 kHz spacing.
122.700 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.725 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.750 MHz	F	MA2	Private fixed wing aircraft air-to-air communications.
122.775 MHz	K	MA, FAS	
122.800 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.825 MHz	I	MA, FAE	Domestic VHF.
122.850 MHz	H, K	MA, FAM, FAS	
122.875 MHz	I	MA, FAE	Domestic VHF.
122.900 MHz	F, H, L, M	MA, FAR, FAM, MOU	
122.925 MHz	H	MA2, FAM.	
122.950 MHz	G, L	MA, FAU, MOU	Unicom at airports with control tower; Aeronautical utility stations.
122.975 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.000 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.025 MHz	F	MA2	Helicopter air-to-air communications; Air traffic control operations.
123.050 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.075 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.100 MHz	M, O	MA, FAC, FAR	
123.125 MHz	J	MA, FAT	Itinerant.
123.150 MHz	J	MA, FAT	Itinerant.
123.175 MHz	J	MA, FAT	Itinerant.
123.200 MHz	J	MA, FAT	
123.225 MHz	J	MA, FAT	
123.250 MHz	J	MA, FAT	
123.275 MHz	J	MA, FAT	
123.300 MHz	K	MA, FAS	
123.325 MHz	J	MA, FAT	
123.350 MHz	J	MA, FAT	
123.375 MHz	J	MA, FAT	
123.400 MHz	J	MA, FAT	Itinerant.
123.425 MHz	J	MA, FAT	
123.450 MHz	J	MA, FAT	
123.475 MHz	J	MA, FAT	
123.500 MHz	K	MA, FAS	
123.525 MHz	J	MA, FAT	
123.550 MHz	J	MA, FAT	
123.575 MHz	J	MA, FAT	

Frequency or frequency band	Subpart	Class of station	Remarks
123.6–128.8 MHz	O	MA, FAC, FAW, GCO, RCO, RPC	25 kHz channel spacing.
128.825–132.000 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing.
132.025–135.975 MHz	O	MA, FAC, FAW, GCO, RCO, RPC	25 kHz channel spacing.
136.000–136.400 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC	Air traffic control operations; 25 kHz channel spacing.
136.425 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC	Air traffic control operations.
136.450 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC	Air traffic control operations.
136.475 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC	Air traffic control operations.
136.500–136.875 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing.
136.900 MHz	I	MA, FAE	International and Domestic VHF.
136.925 MHz	I	MA, FAE	International and domestic VHF.
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
156.300 MHz	F	MA	For communications with ship stations under specific conditions.
156.375 MHz	F	MA	For communications with ship stations under specific conditions; Not authorized in New Orleans Vessel traffic service area.
156.400 MHz	F	MA	For communications with ship stations under specific conditions.
156.425 MHz	F	MA	For communications with ship stations under specific conditions.
156.450 MHz	F	MA	For communications with ship stations under specific conditions.
156.625 MHz	F	MA	For communications with ship stations under specific conditions.
156.800 MHz	F	MA	Distress, safety and calling frequency; For communications with ship stations under specific conditions.
156.900 MHz	F	MA	For communications with ship stations under specific conditions.
157.425 MHz	F	MA	For communications with commercial fishing vessels under specific conditions except in Great Lakes and St. Lawrence Seaway Areas.
243.000 MHz	F	MA	Emergency and distress frequency for use of survival craft and emergency locator transmitters.
328.600–335.400 MHz	Q	RLG	ILS glide path.
334.550 MHz	Q	RLT	
334.700 MHz	Q	RLT	
406.0–406.1 MHz	F, G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.
960–1215 MHz	F, Q	MA, RL, RNV	Electronic aids to air navigation.
978.000 MHz	F, L, Q UAT .	MA, MOU, UAT	Universal Access Transceivers.
	Q	RLT	
979.000 MHz	Q	RLT	
1030.000 MHz	Q	RLT	
1104.000 MHz	Q	RLT	
1300–1350 MHz	F, Q	MA, RLS	Surveillance radars and transponders.
1435–1525 MHz	F, J	MA, FAT	Aeronautical telemetry and telecommand operations.
1559–1610 MHz	Q	DGP	Differential GPS.
1559–1626.5 MHz	F, Q	MA, RL	Aeronautical radionavigation.
1646.5–1660.5 MHz	F	TJ	Aeronautical Mobile-Satellite (R).
2310–2320 MHz	J	MA, FAT	Aeronautical telemetry and telecommand operations.
2345–2395 MHz	J	MA, FAT	Aeronautical telemetry and telecommand operations.
2700–2900 MHz	Q	RLS, RLD	Airport surveillance and weather radar.
4200–4400 MHz	F	MA	Radio altimeters.
5000–5250 MHz	Q	MA, RLW	Microwave landing systems.
5031.000 MHz	Q	RLT	
5350–5470 MHz	F	MA	Airborne radars and associated airborne beacons.
8750–8850 MHz	F	MA	Airborne doppler radar.
9000–9200 MHz	Q	RLS, RLD	Land-based radar.
9300–9500 MHz	F, Q	MA	Airborne radars and associated airborne beacons.
13250–13400 MHz	F	MA	Airborne doppler radar.
15400–15700 MHz	Q	RL	Aeronautical radionavigation.
24750–25050 MHz	F, Q	MA, RL	Aeronautical radionavigation.
32300–33400 MHz	F, Q	MA, RL	Aeronautical radionavigation.

■ 11. Amend § 87.187 by revising paragraphs (p), (q), and (x) and adding paragraph (ff) to read as follows:

§ 87.187 Frequencies.

* * * * *

(p) The frequency band 1435–1525 MHz is available on a primary basis and the frequency band 1525–1535 MHz is available on a secondary basis for telemetry and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. The following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz. *See* § 87.303(d).

Note to paragraph (p): Aeronautical telemetry operations must protect mobile-satellite operations in the 1525–2535 MHz band and maritime mobile-satellite operations in the 1530–1535 MHz band.

(q) The frequencies in the band 1545.000–1559.000 MHz and 1646.500–1660.500 MHz are authorized for use by the Aeronautical Mobile-Satellite (R) Service. The use of the bands 1544.000–1545.000 MHz (space-to-Earth) and 1645.500–1646.500 MHz (Earth-to-space) by the Mobile-Satellite Service is limited to distress and safety operations. In the frequency bands 1549.500–1558.500 MHz and 1651.000–1660.000 MHz, the Aeronautical Mobile-Satellite (R) requirements that cannot be accommodated in the 1545.000–1549.500 MHz, 1558.500–1559.000 MHz, 1646.500–1651.000 MHz, and 1660.000–1660.500 MHz bands shall have priority access with real-time preemptive capability for communications in the Mobile-Satellite Service. Systems not interoperable with the Aeronautical Mobile-Satellite (R) Service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the Mobile-Satellite Service.

* * * * *

(x) The frequency bands 24450–24650 MHz, 24750–25050 MHz and 32300–33400 MHz are available for airborne radionavigation devices.

* * * * *

(ff) The frequency 978 MHz is authorized for Universal Access Transceiver data transmission.

■ 12. Amend § 87.345 by adding paragraph (f) to read as follows:

§ 87.345 Scope of service.

* * * * *

(f) Transmissions by aeronautical utility mobile stations for Universal Access Transceiver service are authorized.

■ 13. Amend § 87.349 by adding paragraph (e) to read as follows:

§ 87.349 Frequencies.

* * * * *

(e) The frequency 978.0 MHz is authorized for Universal Access Transceiver data transmission.

■ 14. Amend § 87.421 by revising paragraph (c) to read as follows:

§ 87.421 Frequencies.

* * * * *

(c) Frequencies listed in the introductory paragraph of this section are available to control towers and RCOs for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

* * * * *

■ 15. Amend § 87.475 by adding paragraph (b)(9) and revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 87.475 Frequencies.

* * * * *

(b) * * *

(9) 978.0 MHz is authorized for Universal Access Transceiver service.

(c) * * *

(1) The frequencies set forth in § 87.187(c), (e) through (j), (r), (t), and (ff) and § 87.475(b)(6) through (b)(10), and (b)(12) may be assigned to radionavigation land test stations for the testing of aircraft transmitting equipment that normally operate on these frequencies and for the testing of land-based receiving equipment that operate with airborne radionavigation equipment.

(2) The frequencies available for assignment to radionavigation land test stations for the testing of airborne receiving equipment are 108.000 and 108.050 MHz for VHF omni-range; 108.100 and 108.150 MHz for localizer; 334.550 and 334.700 MHz for glide slope; 978 and 979 MHz (X channel)/1104 MHz (Y channel) for DME; 978 MHz for Universal Access Transceiver; 1030 MHz for air traffic control radar beacon transponders; and 5031.0 MHz for microwave landing systems. Additionally, the frequencies in paragraph (b) of this section may be assigned to radionavigation land test stations after coordination with the FAA. The following conditions apply:

(i) The maximum power authorized on the frequencies 108.150 and 334.550 MHz is 1 milliwatt. The maximum power authorized on all other frequencies is one watt.

(ii) The pulse repetition rate (PRR) of the 1030 MHz ATC radar beacon test set will be 235 pulses per second (pps) ±5pps.

(iii) The assignment of 108.000 MHz is subject to the condition that no interference will be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

* * * * *

[FR Doc. 06–9541 Filed 12–5–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060425111–6315–03; I.D. 041906B]

RIN 0648–AN09

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vessel Monitoring Systems; Amendment 18A

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

ACTION: Final rule; delay of effective date.

SUMMARY: NMFS delays the December 7, 2006, effective date of two sections of a final rule, published August 9, 2006, until March 7, 2007. The amendments to those sections will require owners/operators of vessels with Gulf reef fish commercial vessel permits to install a NMFS-approved vessel monitoring system (VMS) and will make installation of VMS a prerequisite for permit renewal or transfer. This delay of the effective date will provide additional time for affected fishers to come into compliance with the VMS requirements.

DATES: The effective date of the amendments to §§ 622.9(a)(2) and 622.4(m)(1) published August 9, 2006 (71 FR 45428), is delayed until March 7, 2007.

ADDRESSES: Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements referred to in this final rule may be submitted in writing to Jason Rueter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail

Jason.Rueter@noaa.gov and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305, fax 727–824–5308, e-mail *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final rule to implement Amendment 18A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 18A) (71 FR 45428, August 9, 2006) included a provision, § 622.9(a)(2), requiring owners or operators of a vessel with a commercial vessel permit for Gulf reef fish, including charter/headboats with commercial reef fish vessel permits even when under charter, to be equipped with an operating VMS approved by NMFS for the Gulf of Mexico reef fish fishery. Additionally, § 622.4(m)(1) required proof of purchase, installation, activation, and operational status of an approved VMS for renewal or transfer of a commercial vessel permit for Gulf reef fish.

Subsequent to the publication of the final rule, NMFS published a notice listing VMS approved by NMFS for use in the Gulf reef fish fishery (71 FR 54472, September 15, 2006). On October 31, 2006, NMFS published a notice (71 FR 63753), announcing availability of grant funds to reimburse owners and operators of vessels subject to the VMS requirements of Amendment 18A for the equivalent cost of purchasing the least expensive VMS approved by NMFS for the Gulf reef fish fishery.

Delay of Effective Date

NMFS is delaying, until March 7, 2007, the effective date of § 622.9(a)(2), the VMS requirement, and § 622.4(m)(1), the provision requiring VMS as a condition of renewing or transferring a commercial vessel permit for Gulf reef fish. NMFS is concerned that some fishers may have delayed purchasing VMS because of uncertainty regarding reimbursement by NMFS. Although NMFS published the notice announcing availability of funds for reimbursement on October 31, 2006, the current December 7, 2006, effective date for VMS compliance may not provide adequate time for all affected fishers and approved VMS vendors to purchase, install, and activate a NMFS-approved VMS. NMFS also believes that some affected fishers, particularly those with minimal red snapper or reef fish landings, may be deferring a decision on purchasing a VMS until they receive information about their initial red snapper IFQ share and allocation under the Gulf red snapper IFQ program and, thus, can better evaluate their overall profitability versus the overall costs of VMS. NMFS anticipates that initial red snapper IFQ share/allocation information will be available by mid-November—less than a month prior to the current effective date for the VMS requirements. Finally, the overall VMS costs, including installation and continuing operational costs, may be a factor in some part-time or marginal reef fish fishers' decision to remain in the fishery. A delay in the effective date of the provision requiring VMS as a condition of permit renewal or transfer would provide more time for such fishers to make a reasoned business decision and to renew and/or transfer their permit prior to the VMS effective date if they so choose. For all of these reasons, NMFS is delaying the effective date of §§ 622.9(a)(2) and 622.4(m)(1) until March 7, 2007.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that delaying the effective date of VMS requirements for vessels with commercial vessel permits for Gulf reef fish is necessary for management of the fishery and to minimize adverse social and economic impacts. The RA has also determined that this rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

Pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice and opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest. This final rule merely delays the effective date of the VMS requirements and VMS-related permit renewal requirements set forth in the regulations implementing Amendment 18A. Delaying the effective date of these provisions will provide affected vessel owners and operators additional time to come into compliance with the VMS requirements. Some owners and operators may have delayed purchase and installation of required VMS units because of uncertainty regarding possible reimbursement by NMFS. NMFS has recently implemented a reimbursement program applicable to these VMS requirements. Delaying the effective date will allow affected owners and operators more time to make an informed business decision regarding which approved VMS system would be best for them given the available reimbursement. In addition, those owners and operators with relatively small landings of reef fish, including red snapper landings, may need to consider the overall costs of VMS, including installation and operating costs, relative to the owner's profitability, including their potential red snapper individual fishing quota (IFQ) share and allocation under the proposed red snapper IFQ program. Some of these fishers may choose to sell their commercial vessel permit for Gulf reef fish and exit the fishery. Delaying the effective date of the provision that requires a VMS as a condition of renewing or transferring a permit would facilitate that option. A delay in the effective date of these two provisions will provide such owners and operators more time to make well-reasoned business decisions regarding overall VMS costs and their future in the reef fish fishery. For these same reasons, there is good cause to waive the 30-day delayed effectiveness provision of the APA for these measures pursuant to 5 U.S.C. 553(d)(3). Failure to waive prior notice and opportunity for public comment or failure to waive the 30-day delayed effectiveness provision of the APA for these measures would result in these measures becoming effective on December 7, 2006, rather than providing affected fishers additional time to come into compliance with these measures as intended by this rule.

This final 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 refers to collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648–0544. Public reporting for these requirements is estimated to average 4 hours for VMS installation, 15 minutes for completion and submission of certification of VMS installation and activation, 24 seconds for transmission of position reports, 2 hours for annual maintenance of VMS, 10 minutes for submission of requests for power-down exemptions, and 15 minutes for annual renewal of all permits. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing burden hours, to NMFS (see

ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of 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.

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

Dated: December 1, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–9570 Filed 12–4–06; 1:11 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051128313–6029–02; I.D. 112006F]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for Rhode Island

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

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the Atlantic bluefish commercial quota available to Rhode Island has been harvested. Vessels issued a commercial Federal fisheries permit for the Atlantic bluefish fishery may not land bluefish in Rhode Island for the remainder of calendar year 2006, unless additional quota becomes available through a transfer. Regulations governing the Atlantic bluefish fishery require publication of this notification to advise Rhode Island that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing bluefish in Rhode Island.

DATES: Effective 0001 hours, December 6, 2006 through 2400 hours, December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

The initial total commercial quota for Atlantic bluefish for the 2006 calendar year was set equal to 4,215,802 lb (1,912 mt) (71 FR 9472, February 24, 2006). The initial commercial quota was adjusted by transferring 3,865,294 lb (1,753 mt) from the recreation allocation, resulting in a total commercial quota of 8,081,096 lb (3,666 mt). The percent allocated to vessels landing bluefish in Rhode Island is 6.8081 percent, resulting in a commercial quota of 550,169 lb (249,555 kg). The 2006 allocation was reduced to 542,101 (245,893 kg) (71 FR 13777, March 17, 2006) due to research set-aside.

Section 648.161(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing bluefish in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Rhode Island has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land bluefish in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 6, 2006, further landings of bluefish in Rhode Island by vessels holding Atlantic bluefish commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 6, 2006, federally permitted dealers are also notified that they may not purchase bluefish from federally permitted vessels that land in Rhode Island for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 30, 2006.

James P. Burgess,

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

[FR Doc. 06–9553 Filed 12–1–06; 2:50 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 234
Wednesday, December 6, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06–981–1 PR]

Almonds Grown in California; Outgoing Quality Control Requirements and Request for Approval of New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on adding outgoing quality control requirements under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This proposed rule provides for a mandatory program under the order to reduce the potential for *Salmonella* bacteria in almonds. This action would help ensure that quality almonds are available for human consumption. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval of a new information collection issued under the order.

DATES: Comments must be received by January 22, 2007. Pursuant to the Paperwork Reduction Act, comments on information collection burden that would result from this proposal must be received by February 5, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov.* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Maureen.Pello@usda.gov.* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15) (A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on adding outgoing quality control requirements under the administrative rules and regulations of the order. This rule provides for a mandatory program to reduce the potential for *Salmonella* bacteria in almonds. This action would help ensure that quality almonds are available for human consumption. This action was unanimously recommended by the Board at a meeting on August 22, 2006. This proposal also announces AMS's intention to request approval of a new information collection issued under the order.

Section 981.42(b) of the order provides authority for the Board to establish, with approval of the Secretary, such minimum quality and inspection requirements applicable to almonds to be handled or to be processed into manufactured product, as will contribute to orderly marketing or be in the public interest. In such crop year, no handler shall handle or process almonds into manufactured items or products unless they meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

Salmonella Outbreaks Linked to Almonds

In 2001, a *Salmonella* outbreak was identified in Canada, which was linked to a specific retailer, traced back to raw almonds sold in bulk bins, and ultimately traced back to the handler and the grower. The *Salmonella* strain was extremely unusual and had not previously been associated with contamination in a non-animal product. Three orchards where the almonds were produced were identified, and samples gathered from the orchards contained *Salmonella.* With oversight by the California Department of Health Services (CDHS), procedures were implemented by the grower, huller/

sheller, and handler to specify how the almonds from those orchards were to be processed using a treatment to reduce the potential for *Salmonella* before the almonds were moved into commercial channels. The Board initiated an extensive research program to help understand the occurrence of *Salmonella* in almond orchards.

The Board also initiated an education program for the industry regarding Good Agricultural Practices (GAP's), Good Manufacturing Practices (GMP's), and Sanitation Standard Operating Procedures (SSOP's). GAP's provide guidelines to growers on how to minimize potential biological hazards during the production and harvesting of almonds. GMP's define procedures to be used by handlers to allow almonds to be processed, packed, and sold under sanitary conditions. SSOP's help to ensure a clean and sanitary environment in the packing facility. Together, these practices and procedures provide a framework for a Hazard Analysis Critical Control Point (HACCP) program for the industry to proactively eliminate or minimize potential sources of *Salmonella* contamination.

In the spring of 2004, a second *Salmonella* outbreak occurred in Oregon that was linked to raw almonds purchased at a particular retailer. The *Salmonella* strain was very similar to that identified in 2001. One handler had been the supplier to the retailer, and the handler initiated a voluntary recall of 5 million pounds of almonds sold in the U.S. The Food and Drug Administration (FDA) subsequently announced that the almonds had been exported to eight countries. The handler then initiated a full recall of the 6 suspect almonds produced, packed, and shipped, increasing the recall to approximately 15 million pounds.

In the summer of 2004, the Board unanimously approved a voluntary action plan that called for treating all almonds to reduce the potential for *Salmonella.* Handlers were encouraged to treat the almonds prior to shipment, or ship the almonds to a manufacturer who agreed to treat the almonds. The Board continued to fund research on various technologies that could be used to help reduce the potential for *Salmonella* in almonds.

Board Recommendation for a Mandatory Treatment Program

To further its efforts in providing a high quality product to consumers, in August 2006, the Board recommended that a mandatory treatment program be implemented under the order, pursuant to authority provided in § 981.42(b). Specifically, handlers would have to subject their almonds to a process that achieves a minimum 4-log reduction in *Salmonella* bacteria prior to shipment. The program would provide for an exemption for handlers who ship untreated almonds under a direct verifiable (DV) program to manufacturers within the U.S., Canada, or Mexico who agree to treat the almonds accordingly. The program would also provide for an exemption for handlers who ship untreated almonds to locations outside of the U.S., Canada, or Mexico. All containers of untreated almonds shipped under the two exemptions would have to be prominently identified with the term ''unpasteurized.'' The program would become effective for the 2007–08 crop year which begins on August 1, 2007.

Specific Parameters of Proposed Mandatory Program

Under the Board's proposal, handlers would have to subject their almonds to a treatment process or processes that achieve in total a minimum 4-log reduction of *Salmonella* bacteria, or ship their almonds under one of the two exemptions cited above. The proposal would only affect those who meet the definition of ''handler'' in § 981.13 of the order (thus exempting growers selling through roadside stands). Log reduction describes how much bacterial contamination is reduced by a treatment process. A 4-log reduction decreases bacteria by a factor of 10,000 (4 zeros). One treatment process that independently achieved a minimum 4-log reduction could be used, or a combination of different treatments could be used that collectively achieve a minimum 4-log reduction (''hurdle'' technologies).

The Board initially supported a 5-log reduction, which is FDA's performance standard. However, the Board subsequently funded research with the University of California, Davis, in conjunction with Rutgers University, whereby a risk assessment model was developed using data from the two *Salmonella* outbreaks, as well as data from an industry pathogen survey.[1] The risk assessment model demonstrated that a minimum 4-log reduction could provide an appropriate level of consumer protection. Thus, the Board concluded that a 4-log reduction was an appropriate standard for almonds.

Treatment Processes

Acceptable treatment processes for handlers would have to utilize technologies that have been determined to achieve a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by the FDA, or acceptance by a scientific review panel as identified by the Board (known as the Technical Expert Review Panel, or TERP).

The FDA reviews studies utilizing specific protocols and treatment parameters, and issues a letter of determination when it determines that a process has sufficiently demonstrated its effectiveness to achieve a 5-log reduction of *Salmonella* in almonds. To date, FDA has issued letters of determination for propylene oxide (PPO), oil roasting, blanching, and for a moist heat process.

The TERP would evaluate various treatment technologies against specific criteria, based on recommendations provided by the National Advisory Committee on Microbiological Criteria in Food (NACMCF). The NACMCF was formed in 1988 under Departmental Regulation 1043–28, and provides impartial, scientific advice to Federal food safety agencies for use in the development of an integrated national food safety systems approach from farm to final consumption to assure the safety of domestic, imported, and exported foods. It is co-sponsored by USDA's Food Safety and Inspection Service, the FDA, the Center for Disease Control and Prevention, the National Marine Fisheries Service, and the Department of Defense Veterinary Service Activity.

While the TERP would not ''recommend'' or ''approve'' technologies, its review would ensure that technologies utilized by the industry have been evaluated against specific science-based criteria demonstrating the technology's ability to deliver a lethal treatment for *Salmonella* in almonds. Documentation and data would be provided to the TERP (by a company pursuing TERP acceptance for its technology) for review to ensure that the proposed technologies are consistently achieving the minimum 4-log reduction.

The TERP, initially formed by the Board in the fall of 2004 to review treatment technologies, consists of four scientists, with a representative from the FDA serving as an ex-officio member. The TERP has been evaluating various technologies and treatments for the almond industry, and to date, the TERP has accepted steam and moist heat treatments as acceptable for achieving the Board's *Salmonella* reduction goals. Membership on the TERP would be approved annually by the Board prior to the beginning of each crop year, or more frequently if needed during the crop

[1] Journal of Food Protection, Vol. 69, No. 7, 2006, Pages 1594–1599.

year, for example, to fill a vacancy on the panel.

On-Site Versus Off-Site Treatment

Under the Board's proposal, unless handlers shipped their almonds to a Board-approved DV user (described later in this document), or shipped their almonds to locations outside of the U.S., Canada, or Mexico, handlers would have to subject their almonds to a treatment process or processes prior to shipment either at their handling facility (on-site), or at an off-site treatment facility located within the production area (California). An off-site facility may or may not be affiliated with another handler. Transportation of almonds by a handler to an off-site treatment facility would not be considered a shipment.

Validation by Process Authorities

Handlers could only use, or transport their almonds to off-site treatment facilities that use treatment processes that have been ''validated'' by a Board-approved process authority. Validation means that the treatment technology and equipment utilized have been demonstrated to achieve the minimum 4-log reduction. The use of process authorities is modeled after process authorities as cited in the ''Guide to Inspections of Low Acid Canned Food Manufacturers'' (Guide) (*http://www.fda.gov*). Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated.

For purposes of this document, a process authority is a person or an organization that has expert knowledge of appropriate processes for the treatment of almonds as described above, and meets other criteria as specified by the Board. Such criteria would include, but not be limited to, the following: (1) Knowledge about the equipment used for the treatment process; (2) experience in conducting appropriate studies to determine the ability of the equipment to deliver the appropriate treatment (such as heat penetration or heat distribution studies); and (3) the ability to determine that sufficient data has been gathered to identify the critical factors needed to ensure the quality of the final product. On an annual basis, process authorities would have to submit an application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds,'' and be approved by the Board's TERP. Should the applicant disagree with the TERP's decision, it could appeal the decision in writing to the Board, and ultimately to USDA.

Compliance and Verification Program

Treatment Plans

To ensure compliance with the mandatory program, handlers would be subject to verification by the Federal or Federal-State Inspection Service (inspection agency). Handlers could use either an on-site (traditional) or an audit-based verification program. Each handler would decide which verification program would be the most cost-effective for his or her operation. All handlers would be required to submit a treatment plan to the Board for the upcoming crop year by May 31. The crop year runs from August 1 through July 31 of the subsequent year. However, for the 2007–08 crop year, which would be the first year that the mandatory program was in effect, handlers would have to submit their treatment plans by May 1, 2007. The plan would be reviewed by the Board in conjunction with the inspection agency to ensure such plans were complete and auditable. The plan would be approved by the Board and must address specific parameters for the handler to ship almonds. Such parameters would include, but not be limited to, the following: (1) The location of treatment plant; (2) the name and address of off-site treatment facility (custom processor), if appropriate; (3) a statement regarding whether treatment processes have been accepted by the TERP and/or ''determined'' by the FDA; (4) a statement regarding validation of treatment technology and equipment by a Board-approved process authority; (5) a statement whether untreated almonds would be exported; (6) a statement whether the handler would use the DV program; (7) a description or flow chart explaining how raw, untreated almonds enter and flow through the handler facility, and how the product would flow through the treatment process, including post treatment, packing, and/or storage; (8) a list of all treatments that would be used on the almonds (including, for example, number of blanching lines, etc.); (9) a description of how treated product would be differentiated and segregated from untreated product to ensure maintenance of treated product integrity; (10) a list of procedures regarding how interhandler transfers would be tracked; and (11) an explanation by handlers using a combination of processes to achieve a minimum 4-log reduction, that the processes occur in an appropriate sequence in sufficiently close proximity to ensure that the integrity of the treated product is maintained between processes.

Almonds sent by a handler for treatment to an off-site facility affiliated with another handler would be subject to the approved treatment plan utilized at that off-site facility. Handlers would have to follow their own approved treatment plans for almonds sent to an off-site facility that is not affiliated with another handler.

On-Site Verification Program

Under an on-site verification program, handlers would cause the inspection agency to verify that their almonds had been subjected to an acceptable treatment process that had been validated by a Board-approved process authority. Such handlers would have to submit, or cause to be submitted, a verification report to the Board. The inspection agency would have to physically observe the treatment process to issue such a report. It would be the handler's responsibility to arrange for inspection agency verification. An on-site program would be comparable to a traditional in-line or lot inspection program.

Audit-Based Verification Program

Under an audit-based verification program, handlers would be subject to periodic audits conducted by the inspection agency. The inspection agency would verify that handlers were following their approved treatment plans. Audit frequency would be tied to handler performance. Handlers would be provided with written audit reports specifying deficiencies. Handlers who do not comply with an audit-based verification program would be required to revert to an on-site verification program. Audit reports would be provided to the Board to facilitate program compliance.

Interhandler Transfers

Interhandler transfers of almonds may or may not be treated prior to transfer. Handlers receiving untreated almonds from another handler would be responsible for treating the product. Handlers receiving treated almonds from another handler would need to have procedures outlined in their treatment plan addressing how the integrity of the treated almonds would be maintained. In all instances involving interhandler transfers, it would be the responsibility of the receiving handler to ensure that the almonds are treated prior to shipment and to maintain documentation to that effect.

Handler Records

Handlers would be required to maintain records and documentation

that would be subject to audit by the inspection agency and the Board for the purpose of verifying compliance with the regulation. Consistent with § 981.70 of the order regarding handler records and verification, records would have to be maintained for 2 full years following the end of a crop year. Such records would identify lots from the point of treatment forward to the point of shipment by the handler. Lot identification would also provide the ability to differentiate treated from untreated product.

Exemptions

Direct Verifiable Program

Handlers could ship untreated almonds directly to Board-approved manufacturers within the U.S., Canada, or Mexico for further processing under the Direct Verifiable or DV program. The Board would issue a DV user code to an approved manufacturer. Handlers would have to reference this code on all documentation accompanying the lot. This would help the Board track DV shipments and facilitate compliance with the program. Handlers would also have to identify each container of such almonds with the term ''unpasteurized.'' Container means a box, bin, bag, carton, or any other type of receptacle used in the packaging or handling of bulk almonds. The lettering must be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV user.

Manufacturers wanting to participate in the DV program would have to submit an application annually to the Board on ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' and be approved by the Board's TERP. Should the applicant disagree with the TERP's decision, it could appeal the decision in writing to the Board, and ultimately to USDA.

Similar to handlers, manufacturers would have to subject the almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA or accepted by the TERP. Additionally, manufacturers could use treatment processes that have been ''established'' by a Board-approved process authority. ''Established'' means that that the process authority would evaluate treatment processes and protocols to ensure the technology's ability to deliver a lethal treatment for *Salmonella* in almonds and achieve a minimum 4-log reduction. The Board recommended this option to address manufacturers' concern regarding the process to seek TERP acceptance of their treatments, which could involve providing data on their proprietary processes to the TERP (i.e., specific time and temperature data for special equipment).

Manufacturers must also do the following: (1) Identify the manufacturing locations where treatment would occur; (2) have their treatment technology and equipment validated by a Board-approved process authority. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated; (3) maintain all records regarding validation and verification of treatment methods, processing, and product traceability for 2 years, and make such records available for review by the Board; and (4) ship untreated almonds (due, for example, to a manufacturer overbuying) to a handler, to another approved DV user, to locations outside the U.S., Canada, or Mexico (containers must remain identified with the term unpasteurized), or dispose of such almonds in non-edible channels.

Further, DV users would be audited by a Board-approved auditor within 1–2 months after the start of treatments, and at least once every 12 months thereafter. Such audits would determine if: (1) The DV user utilized appropriate treatment processes; (2) the DV user has a letter issued by a Board-approved process authority that validated that the treatment achieves a 4-log reduction of *Salmonella*; (3) personnel and procedures used at the facility ensure that treatment parameters were followed; and (4) records are retained for two years that document the treatment of almonds, or that any untreated almonds were properly disposed of as outlined above. A summary audit report of the DV user would be sent to the Board within 10 days of the audit. On an annual basis, DV user auditors would have to submit an application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' and be approved by the Board's TERP. Should the applicant disagree with the TERP's decision, it could appeal the decision in writing to the Board, and ultimately to USDA.

The Board recommended including Mexico and Canada as part of the DV program for compliance purposes. The Board was concerned that handlers could circumvent the regulation by shipping untreated almonds to Mexico or Canada, then, bring them back into the U.S. and sell them in normal market channels.

Shipments Outside of the U.S., Canada, or Mexico

Handlers could also ship untreated almonds directly to locations outside the U.S., Canada, or Mexico, provided that each container of such almonds is prominently identified with the term unpasteurized. The lettering must be on one outside principal display panel, at least ½ inch in height, clear and legible. Again, if a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the importer in the foreign country.

Accordingly, a new paragraph (b) regarding outgoing quality control and a mandatory program to reduce the potential for *Salmonella* bacteria contamination in almonds is proposed to be added to § 981.442 of the order's administrative rules and regulations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Additionally, the Board estimates there would be about 25 process authorities, 53 almond manufacturers, and 50 DV program auditors impacted by this rule. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Data for the most recently completed crop year indicate that about 52 percent of the handlers shipped under $6,500,000 worth of almonds. Dividing

average almond crop value for 2003–2005 reported by the National Agricultural Statistics Service (NASS) ($2.043 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about $340,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities. While data regarding the size of the process authorities is not available, it may be assumed that some process authorities, almond manufacturers, and DV program auditors may be classified as small entities.

The almond industry's 6,000 growers produce approximately 1 billion pounds annually (kernel weight basis). Industry members expect production to increase by 50 percent in the next 3–5 years, due to a significant amount of newly planted acreage that will come into production.

Although the Board currently projects that there are about 115 handlers, handler number estimates can vary over time. Recent surveys have yielded estimates ranging from 112 (see Table 1) to 117 (see Table 2). Handlers ultimately market their almonds to customers in the U.S. and abroad. As shown in Table 1, the Board estimates that about 27 of 112 handlers handle more than 10 million pounds each, and cumulatively handle 82 percent of the crop.

TABLE 1.—NUMBER OF HANDLERS CATEGORIZED BY SIZE

	Less than 1 million lbs.	Between 1 and 5 million lbs.	Between 5 and 10 million lbs.	More than 10 million lbs.
No. of handlers	41	28	16	27
Percent of crop handled	1	6	11	82

According to data provided by the Board, about 30 percent of California almonds are sold domestically (about 300 million pounds). An estimated 20 percent of the domestic shipments are in the form of manufactured product—blanched, sliced, diced, or otherwise further processed using thermal treatments. About 70 percent of California almond production is exported to more than 80 countries worldwide. Mexico and Canada account for approximately 5 percent of export shipments. The quantities shipped by companies handling almonds vary considerably. However, a limited number of handlers are responsible for the majority of domestic and export shipments as shown in Table 2 below. Table 2 shows that 16 handlers are responsible for 90 percent of domestic shipments. Many of the same handlers are among the 38 that are responsible for 90 percent of exports. About 79 of an estimated 117 handlers are responsible for the remaining 10 percent of export shipments.

TABLE 2.—HANDLER SHIPMENT SUMMARY

	Domestic (U.S.) 300,000,000 pounds	Export to Canada and Mexico 37,600,000 pounds	All export (includes Canada and Mexico) 700,000,000 pounds
No. of handlers responsible for 50 percent of shipments	3	4	9
No. of handlers responsible for 80 percent of shipments	12	16	26
No. of handlers responsible for 90 percent of shipments	16	26	38

This rule would add a new paragraph (b) for outgoing quality control under § 981.442 of the order's administrative rules and regulations, whereby a mandatory program to reduce the potential for *Salmonella* bacteria in almonds would be implemented under the order. Specifically, handlers would have to subject their almonds to a treatment process that achieves a minimum 4-log reduction in *Salmonella* bacteria prior to shipment. The program would exempt handlers who ship untreated almonds under a direct verifiable (DV) program to manufacturers within the U.S., Canada, or Mexico who agree to treat the almonds accordingly. The program would also exempt handlers who ship untreated almonds to locations outside of the U.S., Canada, or Mexico. All containers of untreated almonds shipped under the exemptions would have to be prominently identified with the term ''unpasteurized.'' The program would take effect for the 2007–08 crop year which 25 begins on August 1, 2007. Authority for the program is provided in § 981.42(b) of the order.

According to the Board, the costs to individual handlers to comply with the program would vary considerably depending on their markets and treatment method(s) chosen. Handlers could: (1) Install new equipment in their processing lines to treat the almonds prior to shipment into commercial channels; (2) outsource to another handler or an off-site facility within California for treatment; (3) transfer their untreated product to another handler who would treat the almonds prior to shipment; (4) ship their untreated almonds to Board-approved DV users or to locations outside of the U.S., Canada, or Mexico; or (5) use a combination of these approaches.

In a handler survey conducted by the Board in March 2005 (to which 116 handlers handling almonds at that time responded), 86 handlers (74 percent) have their own facilities and/or equipment to process almonds; the remainder have almonds processed on their behalf. Of those handlers with their own facilities and/or equipment, 66 (77 percent of 86) indicated they planned to install equipment to treat almonds while the remaining 20 indicated they would outsource to a third party, or custom processor. Again, the overall economic impact of the program would vary based on the approach selected. Smaller handlers may choose to defer purchasing equipment and send their almonds to an off-site facility for treatment until more cost effective technologies are available.

Costs would also vary by treatment method. Some handlers may choose to install PPO chambers at their facilities. Handler sources estimate that typical installation costs for a PPO chamber range from $500,000 to $1,250,000. As with other technologies, overall cost would depend upon how much infrastructure is in place in the processing facility as well as the desired

capacity of the chambers. Actual treatment cost for handlers treating their own product is approximately $0.03 per pound, varying with volume and efficiencies. PPO treatment is currently available in the industry on a contract basis at $0.04–$0.05 per pound (including transportation to the facility).

Regarding steam technologies, handler sources estimate the following equipment costs for in-line steam systems designed to treat almonds at varying capacities from 1,000 pounds to over 30,000 pounds of almonds per hour:

TABLE 3.—ESTIMATED EQUIPMENT COSTS FOR STEAM UNITS FOR DIFFERING LEVELS OF TREATMENT CAPACITY

Capacity (pounds per hour)	Equipment costs
1,000	$100,000–$200,000
5,000	300,000–325,000
7,500–15,000	370,000–470,000
20,000–30,000	525,000–800,000
Over 30,000	600,000–1,000,000

While treatment equipment costs would be the most significant outlay, there would also be capital expenditures associated with additional conveyance equipment, boilers, cooling systems, bins, and possible expansion or construction of new buildings. Handler sources estimate these costs to be an additional 50 percent of the treatment equipment costs cited in Table 3, depending on capacity needs, and assuming maximum throughput.

A typical system of 10 million pound annual capacity would be equivalent to 22,000 pounds per hour, which falls in the 20,000 to 30,000 pound per hour range in Table 3. The treatment equipment costs for that capacity range from $525,000 to $800,000. With an additional 50 percent for cost of other related equipment and facility expansion, the costs range from $787,500 to $1,200,000. Handler sources suggest that a figure near the upper end of that range, $1,125,000, is a good point estimate of the cost for a 10,000,000 pound per year treatment line.

An important step in assessing the financial impact of the proposed mandatory treatment on handlers is to estimate the annualized equipment cost and operating cost of treating the almonds to prevent *Salmonella* contamination. This can be illustrated by additional computations, with 10,000,000 pounds per year serving as a representative level of treatment capacity, as shown in Table 4, third line of column A. Table 4 also shows a range of costs across different levels of handler treatment capacity.

TABLE 4.—ESTIMATE OF AVERAGE ANNUAL EQUIPMENT AND OPERATING COSTS AT VARYING LEVELS OF HANDLER TREATMENT CAPACITY

A Handler annual capacity	B Total equipment cost *	C Annual use cost of equipment, 5 year life **	D Unit cost of equipment at 50% of capacity (c/50% of A)	E Unit cost of equipment at Full capacity (C/A)	F Average operating cost	G Equipment plus operating cost at 50% of capacity (D+F)	H Equipment plus operating cost at Full capacity (E+F)
(Pounds)			Cents per pound				
2,000,000	$300,000	$69,292	$0.069	$0.035	$0.0035	$0.0725	$0.0385
5,000,000	487,500	112,600	0.045	0.023	0.0035	0.0485	0.0265
10,000,000	1,125,000	259,845	0.052	0.026	0.0035	0.0555	0.0295
15,000,000	1,500,000	346,460	0.046	0.023	0.0035	0.0495	0.0265
20,000,000	1,650,000	381,106	0.038	0.019	0.0035	0.0415	0.0225

* Equipment cost estimates at varying capacity levels, including treatment chambers, plus an additional 50 percent for conveyors, other equipment and extension of facilities.

** Annualized equipment cost is computed by dividing the equipment purchase cost by 4.3295, which is the Present Value of a $1 annuity for 5 Years (estimated life of the equipment) at a 5 percent interest rate (estimated cost of capital).

Source for equipment and operating costs: Almond handlers.

To obtain the annual unit cost for installing a 10 million pound capacity treatment line (an expenditure of $1,125,000 in column B), the first step is to obtain the annualized equipment cost. The parameters recommended by the handlers were a 5 year equipment life and a 5 percent cost of capital. The annual equipment use factor (4.3295) is the present value of a $1 annuity for 5 years at 5 percent. Dividing the total equipment expenditure of $1,125,000 by 4.3295 yields an annualized equipment cost estimate of $259,845 (column C). Dividing this figure by the annual 10,000,000 pound capacity yields a cost per pound estimate of 2.6 cents (column E). If the treatment line ran at half capacity, the equipment costs per pound would double to 5.2 cents (column D).

This method of computing annualized equipment cost does not account for the tax implications of annual equipment depreciation or for the salvage value at the end of the equipment's useful life. In addition, the useful life of many pieces of equipment may well be over 5 years.

Ongoing operational costs (electricity, etc.) are estimated by handlers to range from $0.0027 to $0.0043 per pound, depending on the system. The midpoint of this range ($0.0035) appears in column F.

The key results from Table 4 are the cost estimates per pound of almonds treated, including both annualized equipment costs and operating costs. The highest cost is 7.25 cents per pound for the smallest handler (2 million pounds treated annually) operating at 50 percent capacity (column G). The lowest cost estimate is 2.25 cents per pound for a handler treating 20 million pounds per year operating at full capacity (column H). These costs can be put in context by comparing them to almond grower prices as reported each year by the NASS. For 2003 to 2005, grower prices averaged $2.07 per pound, computed by dividing the value of production for those three years by the three-year quantity of production. The treatment cost estimates per pound in Table 4

range from 3 percent to 1 percent of the 2003–2005 average grower price, and represent an even smaller proportion of the prices paid to handlers when selling to almond users further down the marketing chain.

A key aspect of handler costs is the proportion of total capacity at which a new production line would operate. Operating at higher capacity spreads the equipment cost across a wider base. For a small handler, investing in equipment with this level of capacity may only be viable economically if the costs are spread over their entire production run, rather than only applying costs to a small portion of their production run. If they do not intend to run their entire production through the treatment process, it may be more viable to outsource the treatment. Costs of contract processing (i.e., batch operations for steam processes or PPO treatment) are estimated to range from $0.04 to $0.05 per pound. This estimate includes additional costs associated with transporting almonds to a custom facility ($0.01 to $0.015 per pound). For medium-sized and larger handlers, it may be more cost effective to construct a treatment processing line, particularly if they intend to immediately put a significant portion of their production through the process.

Handler sources estimate that the cost of setting up a new oil roast line is $300,000 to $600,000, with operating costs of $0.06 to $0.10 per pound. A blanching line may cost upward of $1,500,000 to $2,500,000 with an operating cost of approximately $0.12 to $0.22 per pound. It is unlikely that handlers would select these technologies unless they are already providing custom processed, value-added products to their customers.

Regarding compliance and oversight costs, it is anticipated that handlers who do not currently have thorough recordkeeping procedures in place would likely have to invest approximately 40–80 person-hours to develop their treatment plan. However, once this document has been created, it would be updated on an annual basis, which would likely involve less time. Validation of treatment systems is estimated to cost from $1,000 to $3,000 per line, depending upon the complexity of the equipment utilized. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated.

Handler verification costs could vary, depending on whether the handler was under an on-site program or an audit-based program. The fee for an on-site program would be a minimum charge of $44.00 per hour (with 1 hour required to treat 44,000 pounds), or $0.204 per hundredweight, whichever is greater. The former is equivalent to $1.00 per thousand pounds treated. For an audit-based program, the fee would be $78.00 per hour. Travel time for both programs would be charged at $44.00 per hour and $0.34 per mile.

Examples of estimated handler verification costs are provided in Tables 5 and 6 below:

TABLE 5.—ANNUAL HANDLER VERIFICATION COSTS: ON-SITE PROGRAM

Audit cost by type	Volume of almonds treated per year				
	100,000 lbs	2 mill. lbs	40 mill. lbs	100 mill. lbs	250 mill. lbs
Hourly rate*	$100	$2,000	$40,000	$100,000	$250,000
Per Cwt = $.204	204	4,080	81,600	204,000	510,000

* Hourly rate of $44/hour, with 1 hour required per 44,000 1bs of volume treated (equivalent to $1.00 per thousand pounds treated).

TABLE 6.—ANNUAL HANDLER VERIFICATION COSTS: AUDIT-BASED PROGRAM

	Audit cost by hours required to complete audit*							
	1	2	3	4	5	6	7	8
Audit hourly cost = $78	$78	$156	$234	$312	$390	$468	$546	$624
Auditor Transportation Cost**	32	32	32	32	32	32	32	32
Cost per individual audit	110	188	266	344	422	500	578	656

* Estimated hours per audit varies by volume treated annually: (up to 2 milllon pounds: 1–3 hours); (more than 2 but less than 40 million pounds: 2–5 hours); (40 million pounds or more: 3–8 hours).

** Estimated auditor transportation cost to each facility is approximately $32: $22 for travel time (½ hour @ $44/hour) plus mileage reimbursement of $10 (30 miles @ $0.34 per mile).

The benefits associated with the proposed mandatory program are the avoided costs of a *Salmonella* outbreak. These costs may vary depending on several factors, including the quantity of product recalled, impact on consumer sales, lost customer confidence, insurance costs, and possible litigation. Using 2003–2005 average almond crop value as the basis, a loss of 5 percent would be equal to approximately $102 million.

The Board considered various alternatives and options to a mandatory treatment program. One option would be to take no action. However, the Board concluded that this was not in the best interest of the industry nor consumers. The Board believes that the industry should provide consumers with a quality product. Taking no action when there are viable alternatives could be significant in terms of the financial well being of the industry should another outbreak occur that was linked to almonds.

The Board also considered continuing its voluntary action plan alone, without proposing a mandatory program. However, surveys conducted by the Board indicate that not all handlers are implementing the action plan. Thus, the Board concluded that a mandatory program is in the best interest of the industry and consumers.

The Board also considered the effectiveness of testing for *Salmonella* prior to shipment. During the 2001 and 2004 outbreaks, significant amounts of testing occurred at the orchard level, in hulling and shelling facilities, and at retail. However, it was determined by the CDHS, University of California, Davis, and other pathogen experts that testing cannot be relied upon as the only

measure to ensure that almonds are *Salmonella* free. Thus, the Board concluded that testing alone was not a viable alternative.

The Board also explored the merits of requiring alternative log reductions. As previously mentioned, the Board initially supported a 5-log reduction, which was FDA's performance standard. However, a risk assessment model demonstrated that a minimum 4-log reduction could provide an appropriate level of consumer protection compared to a 5-log reduction. Thus, the Board concluded that a minimum 4-log reduction was an appropriate standard for almonds.

The Board also explored the merits of whether the DV program should be temporary, whereby all almonds would be treated at the handler level prior to shipment. The Board submitted an initial proposal to USDA in February 2006 that would have ultimately required handlers to treat all almonds prior to shipment, with the DV program being temporary. However, concerns were raised by various parties, including manufacturers, handlers, and foreign countries, regarding the temporary nature of the DV program, and the requirement that all exported almonds be treated prior to shipment. The Board ultimately revised its proposal to remove the proviso regarding discontinuance of the DV program, to allow untreated almonds to be shipped to locations outside the U.S., Canada, or Mexico, and to require that all containers of untreated almonds be prominently identified with the term ''unpasteurized.''

This action would impose additional reporting and recordkeeping burden on California almonds handlers, process authorities, almond manufacturers, and DV program auditors. Process authorities, manufacturers, and DV auditors would be required to submit respective applications to the Board annually. Almond handlers would be required to submit treatment plans to the Board annually. These new forms and a sample ''Handler Treatment Plan'' are being submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–NEW. Specific burdens for the three applications and handler treatment plan are detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Between the summer of 2004 and the Board's August 2006, meeting, this issue was addressed at an estimated 12 Board meetings, 18 Food Quality and Safety Committee meetings, and well over 20 task force meetings. All of these meetings were public meetings and all entities, both large and small, were able to express views on this issue. Additionally, the Board issued about 35 updates to handlers regarding its voluntary action plan and progress towards its recommended mandatory program. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 45-day comment period is provided for interested persons to comment on this proposal.The comment period is deemed appropriate because the Board recommended that the mandatory program be in effect for the 2007–08 crop year, which begins August 1, 2007. For that year, handlers would have to submit their treatment plans to the Board by May 1, 2006. All written comments received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request approval of a new information collection under the marketing order for California almonds.

Title: Almonds Grown in California, Marketing Order No. 981.

OMB No.: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California almond marketing order program, which has been operating since 1950.

On August 22, 2006, the Board unanimously recommended adding a new section to the order's administrative rules and regulations to implement a mandatory program to help reduce the potential for *Salmonella* in almonds. This document concerns the additional reporting and recordkeeping requirements regarding this mandatory program, in addition to the accompanying regulation previously discussed. Almond handlers would be required to submit annual treatment plans to the Board and inspection agency regarding how they plan to treat their almonds to reduce the potential for *Salmonella*. Entities interested in being almond process authorities that would validate technologies would have to submit an application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds.'' Manufacturers in the U.S., Canada, and Mexico interested in being approved to accept untreated almonds, provided they agree to treat the almonds themselves under the Board's DV program, would have to submit an application to the Board on ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for FurtherProcessing of Untreated Almonds.'' Entities interested in being approved DV user auditors would have to submit an application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors.'' This information would be needed by the Board to properly administer the mandatory *Salmonella* treatment program for the California almond industry.

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees and agents of the Board. Authorized Board employees, agents, and the industry are the primary users of the information and AMS is the secondary user.

Handler Treatment Plan

Estimate of Burden: Public reporting burden for this collection of information is estimated to be no more than 27.3 hours per response (80 hours per response for the first year of regulation, and 1 hour per response each year thereafter) .

Respondents: Almond handlers.

Estimated Number of Respondents: 115.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,143 hours per year (9,200 hours for the first year of

regulation, and 115 hours for each year thereafter).

Application for Process Authority for Almonds—ABC Form No. 51

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Persons or organizations that would like to qualify to be Board-approved process authorities that validate treatments and technologies.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Application for Direct Verifiable (DV) Program for FurtherProcessing of Untreated Almonds—ABC Form No. 52

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Manufacturers who would like to qualify to participate in the Board's direct verifiable program.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 53 hours.

Application for Direct Verifiable (DV) Program Auditors—ABC Form No. 53

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Entities that would like to qualify as auditors under the DV program.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Comments: Comments are invited on: (1) 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) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the California almond marketing order, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

It is estimated that handlers and manufacturers may spend between 20–100 hours annually maintaining records pertaining to this rule. Using a figure of $10 per hour (a sum deemed reasonable, should handlers and manufacturers be compensated for this time), it is estimated that the recordkeeping burden would cost handlers and manufacturers between $200–$1,000 per year. Additionally, handler and manufacturers would have to maintain related records and documentation for two full years following the end of the crop year.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.442 is amended by adding paragraph (b) to read as follows:

§ 981. 442 Quality control.

* * * * *

(b) *Outgoing.* Pursuant to § 981.42(b), beginning with the 2007–08 crop year, which begins on August 1, 2007, and except as provided in § 981.13 and in paragraph (6) of this section, handlers shall subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination in accordance with the provisions of this section.

(1) *Treatment process.* Acceptable treatment processes shall utilize technologies that have been determined to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by the Food and Drug Administration(FDA), or acceptance by a scientific review panel as identified by the Board (Technical Expert Review Panel or ''TERP''). Such panel shall be approved at least annually by the Board prior to the beginning of each crop year, or as needed during the crop year.

(2) *On-site versus off-site treatment.* Handlers shall subject almonds to a treatment process or processes prior to shipment either at their handling facility (on-site), or at an off-site treatment facility located within the production area. Transportation of almonds by a handler to an off-site treatment facility shall not be deemed a shipment.

(3) *Validation by process authorities.* Handlers shall only use, or transport their almonds to off-site treatment facilities that use treatment processes that have been validated by a Board-approved process authority. Validation means that the treatment technology and equipment have been demonstrated to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds.

A process authority is an entity that has expert knowledge of appropriate processes for the treatment of almonds as defined in paragraph (b)(1) of this section, and meets other criteria as specified by the Board. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change shall be revalidated. On an annual basis, process authorities must submit an application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds,'' and be approved by the Board's TERP. Should the applicant disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA.

(4) *Compliance and verification.* In accordance with the requirements of this paragraph, handlers shall utilize either an on-site verification program (traditional), or an audit-based verification program to ensure that their almonds have been subjected to an acceptable treatment process to reduce *Salmonella* bacteria prior to shipment. Each handler may decide which verification program would be the most cost-effective for his or her operation.

(i) By May 31, each handler shall submit to the Board a Treatment Plan for the upcoming crop year: *Provided,* That, for the 2007–08 crop year, which begins on August 1, 2007, each handler shall submit to the Board its Treatment Plan by May 1, 2007. A Treatment Plan shall describe how a handler plans to treat his or her almonds, and must address specific parameters as outlined by the Board for the handler to ship almonds. Such plan shall be reviewed by the Board, in conjunction with the inspection agency, to ensure it is complete and can be verified, and be approved by the Board. Almonds sent by a handler for treatment to an off-site facility affiliated with another handler shall be subject to the approved Treatment Plan utilized at that facility. Handlers shall follow their own approved Treatment Plans for almonds sent to an off-site facility that is not affiliated with another handler.

(ii) Handlers utilizing an on-site verification program shall cause the inspection agency to verify that their Treatment Plans have been followed, and that their almonds have been subjected to an acceptable treatment process that has been validated by a Board-approved process authority. Such handlers shall submit, or cause to be submitted, a verification report to the Board. The inspection agency must physically observe the treatment process to issue such report.

(iii) Handlers utilizing an audit-based verification program shall be subject to periodic audits conducted by the inspection agency. The inspection agency shall provide copies of the audit report to the Board. Handlers who do not comply with an audit-based verification program shall be required to revert to an on-site verification program.

(iv) Interhandler transfers of almonds may or may not be treated prior to transfer. Handlers receiving untreated almonds from another handler shall be responsible for treating the product. Handlers receiving treated almonds from another handler must have procedures outlined in theirTreatment Plan addressing how the integrity of the treated almonds will be maintained. In all instances involving interhandler transfers, the receiving handler shall be responsible for ensuring that the almonds are treated prior to shipment and maintaining documentation to that effect.

(5) *Records.* Handlers shall maintain records and documentation that will be subject to audit by the Board for the purpose of verifying compliance with this section. Records must be maintained for two full years following the end of the crop year, and must identify lots from the point of treatment forward to the point of shipment by the handler. Lot identification shall also provide the ability to differentiate treated from untreated product.

(6) *Exemptions.* Handlers may ship untreated almonds under the following conditions. For purposes of this section, container means a box, bin, bag, carton, or any other type of receptacle used in the packaging of bulk almonds.

(i) Handlers may ship untreated almonds for further processing directly to manufacturers located within the U.S., Canada or Mexico. This program shall be termed the Direct Verifiable (DV) program. Handlers may only ship untreated almonds to manufacturers who have submitted ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' and have been approved by the Board' TERP. Such manufacturers must apply to the Board and be approved annually by the TERP. Should the applicant disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. The Board shall issue a DV User code to an approved manufacturer. Handlers must reference such code in all documentation accompanying the lot and identify each container of such almonds with the term ''unpasteurized.'' Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV user. Approved DV Users shall:

(A) Subject such almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA, accepted by the Board's scientific review panel, or established by a Board-approved process authority;

(B) Identify the manufacturing locations where treatment will occur;

(C) Have their treatment technology and equipment validated by a Board-approved process authority. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change shall be revalidated;

(D) Have their technology and procedures verified by a Board-approved DV auditor to ensure they are being applied appropriately. On an annual basis, DV auditors must submit an application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' and be approved by the Board's TERP. Should the applicant disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA;

(E) Maintain all records regarding validation and verification of treatment methods, processing, and product traceability. Such records shall be retained for two years and shall be made available for review by the Board; and,

(F) Ship any almonds which will not be treated to a handler, to another approved DV User, to locations outside the U.S., Canada, and Mexico (containers must remain identified with the term ''unpasteurized''), as specified in § 981. 442(b)(6)(i), or dispose of such almonds in non-edible channels.

(ii) Handlers may ship untreated almonds directly or through a third party to locations outside the U.S., Canada, and Mexico, provided that each container of such almonds is identified with the term ''unpasteurized.'' Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the importer in the foreign country.

(7) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions regarding almonds grown in California under the FederalFood, Drug and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State or Federal agencies.

Dated: December 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9543 Filed 12–1–06; 12:43 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 33, 365 and 366

[Docket No. AD07–2–000]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005; Transaction Subject to FPA Section 203; Supplemental Notice of Technical Conference

November 27, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Supplemental notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is holding a technical conference in Commission Docket No. AD07–2–000 on December 7, 2006, to discuss certain issues raised in rulemakings issued in Commission Docket Nos. RM05–32–000 and RM05–34–000. The Commission is providing the agenda for the conference, a list of participants and providing interested parties an opportunity to file written comments following the conference.

DATES: Comments may be filed on issues raised at the conference, on or before January 26, 2007.

FOR FURTHER INFORMATION CONTACT:

Roshini Thayaparan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6857.

Andrew P. Mosier, Jr. (Legal Information), Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–6274.

SUPPLEMENTARY INFORMATION: This conference addresses certain issues raised in rulemakings issued in Docket No. RM05–32–000 (70 FR 75592, December 20, 2005) and Docket No. RM05–34–000. (71 FR 1348, January 6, 2006).

As announced in the Notice of Technical Conference issued on October 6, 2006, the Federal Energy Regulatory Commission (Commission) will hold a technical conference on December 7, 2006, to discuss certain issues raised in rulemakings issued in Docket Nos. RM05–32 and RM05–34.[1] The technical conference will be held from 9:30 am to 4:30 pm (EST) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend, and registration is not required.

The agenda for this conference, with a list of participating panelists, is attached. In order to allot sufficient time for questions and responses, each speaker will be provided with five (5) minutes for prepared remarks. Due to the limitation of time, slides and graphic displays (e.g., PowerPoint® presentations) will not be permitted during the conference. Presenters who wish to distribute copies of their prepared remarks or handouts should bring 100 double-sided copies to the technical conference. Presenters who wish to include comments, presentations, or handouts in the record for this proceeding should file their comments with the Secretary of the Commission. Comments may either be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Following the conference, any interested person will be permitted to file written comments in the above docket on or before January 26, 2007.

A free webcast of this event will be available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100 for more information about this service.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact:

Andrew P. Mosier, Jr., Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6274, *Andrew.Mosier@ferc.gov.*

Roshini Thayaparan, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6857, *Roshini.Thayaparan@ferc.gov.*

Magalie R. Salas,

Secretary.

Agenda for Technical Conference on Public Utility Holding CompanyAct of 2005 and Federal Power Act Section 203 Issues [2]

December 7, 2006

Welcome Remarks:
9:30 a.m.–9:45 a.m.

Panel 1: Panel on Cross-Subsidization
9:45 a.m.–11:45 a.m.

The Commission invites panelists to discuss whether there are additional actions, under the Federal Power Act (FPA) or Natural Gas Act (NGA), that the Commission should take to supplement the protections against cross-subsidization that were implemented in Order No. 667, et al. and Order No. 669, et al. Specifically, the Commission seeks panelist input on any or all of the following issues:

FPA Section 203 Authorities

○ In discussing the safeguards necessary to protect consumers under FPA section 203, Order No. 669 states that applicants ''must adopt sufficient safeguards, including any necessary cash management controls (such as restrictions on upstream transfers of funds, ring fencing, etc.) to prevent any cross-subsidization between holding companies and their new subsidiaries before receiving section 203 approval.'' As a general matter, the Commission and most states have authority to review proposed mergers/corporate dispositions involving public utilities and to impose cross-subsidization safeguards as a condition of approval; they also have rate related authorities to protect customers against inappropriate cross-subsidization. Should the Commission adopt specific generic cross-subsidization safeguards in its section 203 regulations or is it preferable, particularly in light of state authorities, for the Commission to permit applicants to implement safeguards on a case-by-case basis subject to audit oversight?

○ With respect to FPA section 203 merger/corporate applications, should the Commission require more specific cross-subsidy protections in addition to

[1] Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), order on reh'g, Order No. 667–A, FERC Stats. & Regs. ¶ 31,213, order on reh'g, Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 (2006), reh'g pending; Transactions Subject to FPA Section 203, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2006), order on reh'g, Order No. 669–A, FERC Stats. Regs. ¶ 31,214 (2006), order on reh'g, Order No. 669–B, FERC Stats. & Regs. ¶ 31,225 (2006).

[2] The lists of panelists for this technical conference may change. The Commission will issue a further notice of changes if time permits. Additionally, issues raised in the Order No. 667, et al. and Order No. 669, et al. rulemakings with respect to whether the Commission should change its merger policy, including its competition analysis, will be discussed at a subsequent technical conference.

the general requirement that there shall be no cross-subsidization resulting from or reasonably foreseeable as a result of a FPA section 203 transaction?

○ Should the Commission adopt, by regulation, generic ''ring fencing'' or other conditions of merger approvals (other than codifying a version of its current code of conduct/merger restrictions) or should the Commission continue to consider such conditions on a case-by-case basis? In light of the fact that most states have authority to adopt such protections, is further generic action by the Commission inappropriate or unnecessary at this time?

○ Is the Commission getting sufficient information in FPA section 203 applications to make a determination that a merger or other corporate transaction will not result in cross-subsidization or the encumbrance of utility assets? If not, what additional information should the Commission require FPA section 203 applicants to file?

FPA and NGA Rate and Accounting Authorities

○ Are there additional generic actions the Commission should take under its FPA or NGA authorities (other than FPA section 203, which is discussed in other questions above) to protect customers against inappropriate cross-subsidization or encumbrances of utility assets? Are reporting requirements, rather than restrictions, a better way in which to protect against cross-subsidization and the encumbrance of utility assets?

○ Should the Commission adopt regulations under FPA sections 205 and 206 to codify existing restrictions regarding power and non-power goods and services transactions between traditional public utilities and their ''unregulated'' affiliates? Should these existing restrictions apply to all traditional public utilities and their affiliates irrespective of whether they are seeking merger approval under FPA section 203 or market-based rate approval under FPA section 205? Should the scope of the existing power and non-power goods and services restrictions be expanded and, if so, how?

○ In light of the submissions to date of the FERC Form No. 60 (Service Company Report), which applies to centralized service companies, is the Commission getting sufficient information to protect against inappropriate cross-subsidization and the encumbrance of utility assets? Is there other information the Commission should routinely collect, or is case-by-case access to books and records in audit and rate proceedings sufficient to ensure that customers are protected against inappropriate cross-subsidization?

Panelists

○ The Honorable Ray Baum, Commissioner, Oregon Public Utility Commission

○ The Honorable Robert Garvin, Commissioner, Wisconsin Public Service Commission

○ John Antonuk, President, The Liberty Consulting Group

○ Randolph Elliot, Principal, Miller, Balis & O'Neil, P.C., on behalf of the American Public Power Association and the National Rural Electric Cooperative Association

○ Brian Little, Assistant Controller, AGL Resources Inc.

○ Electric Utility Company Representative—TBA

○ Electric Utility Company Representative—TBA

○ Financial Representative—TBA

Lunch:
12 p.m.–1 p.m.

Panel 2: Panel on Cash Management Programs and Money Pools
1 p.m.–2:30 p.m.

The Commission adopted its Cash Management Rule, Order No. 634, et al., prior to the Public Utility Holding Company Act of 2005 (PUHCA 2005), when the Commission had no direct authority over holding companies. The Commission invites panelists to discuss whether, and if so how, the Commission should modify its Cash Management Rule in light of PUHCA 2005. Should the Commission codify specific safeguards that must be adopted for cash management programs and money pool agreements and transactions? If so, what should those safeguards be?

Panelists

○ Denise Parrish, Deputy Administrator, Wyoming Office of Consumer Advocate

○ Denise M. Furey, Senior Director, Fitch Ratings

○ Gas Industry Representative—TBA

○ Electric Utility Company Representative—TBA

○ Electric Utility Company Representative—TBA

○ State/Customer Representative—TBA

Break:
2:30 p.m.–2:45 p.m.

Panel 3: Panel on Exemptions, Waivers and Blanket Authorizations Set Forth in OrderNos. 667, et al. and 669, et al.
2:45 p.m.–4:15 p.m.

In Order No. 667, et al. and Order No. 669, et al., the Commission set forth specific exemptions, waivers and blanket authorizations from the regulatory requirements set forth in those orders. The Commission invites panelists to discuss whether modifications to the specific exemptions, waivers and blanket authorizations set forth in Order No. 667, et al. and Order No. 669, et al. are warranted. Specifically, the Commission seeks input as to the following issues:

—Exemptions and waivers set forth in Order No. 667, et al.:

○ Does the Commission need to consider additional or different exemptions and waivers than those set forth in Order No. 667, et al. or should it wait until it has had more experience under the current rules?

—Blanket authorizations set forth in Order No. 669, et al.:

○ Does the Commission need to consider additional or different blanket FPA section 203 authorizations than those set forth in Order No. 669, et al. or should it wait until it has had more experience under the current rules?

○ In Order No. 669, et al., the Commission granted a blanket authorization under FPA section 203(a)(2) for holding companies to acquire up to 10 percent of voting securities of a securities in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company. Under what circumstances would it be appropriate for the Commission to grant a parallel blanket authorization under FPA section 203(a)(1) for transactions that (a) involve or permit transfers (dispositions) of up to 10 percent of a public utility's voting stock; (b) involve a transfer of up to 10 percent of the voting stock of a holding company that directly or indirectly owns or controls a public utility?

Panelists

○ State/Customer Representative—TBA

○ Customer/Financial Representative—TBA

○ Walter R. Burkley, Vice President and Counsel, Capital Research and Management Company

○ Steven Bunkin, Managing Director and Associate General Counsel, Goldman, Sachs & Co./J. Aron & Company

○ Debra Bolton, Vice President and Assistant General Counsel, Mirant

○ Ike Gibbs, Vice President, Compliance Director and Assistant General Counsel, JPMorgan Chase & Co.

○ Electric Utility Company Representative—TBA

Closing Remarks:

4:15 p.m.–4:30 p.m.

The Commissioners and staff may ask questions at the conclusion of presentations. All interested persons may file written comments following the technical conference on or before January 26, 2007.

[FR Doc. E6–20609 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM06–16–000]

Mandatory Reliability Standards for the Bulk-Power System

November 27, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice granting in part motions for extension of time to file comments and announcing rulemaking proceeding.

SUMMARY: On October 20, 2006, the Commission issued a Notice of Proposed Rulemaking on mandatory reliability standards for the Bulk-Power System. 71 FR 64770 (November 3, 2006). The Commission is extending the date to file comments on the proposed rule at the request of Edison Electric Institute and the ISO/RTO Council and is establishing a comment period for twenty revised proposed Reliability Standards that were filed in this docket on behalf of the North American Electric Reliability Council (NERC). The Commission is also opening a new rulemaking proceeding for three new proposed Reliability Standards that were filed by NERC.

DATES: Comments on the NOPR are due January 3, 2007. Comments on NERC's twenty revised proposed Reliability Standards are due January 3, 2007.

ADDRESSES: You may submit comments, identified by Docket No. RM06–16–000, by one of the following methods:

• *Agency Web site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the Preamble.

• *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Jonathan First (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8529.

SUPPLEMENTARY INFORMATION:

Mandatory Reliability Standards for the Bulk-Power System, Docket No. RM06–16–000.

Facilities Design, Connections and Maintenance Reliability Standards, Docket No. RM07–3–000.

On October 20, 2006, in Docket No. RM06–16–000, the Commission issued a Notice of Proposed Rulemaking (NOPR) on Mandatory Reliability Standards for the Bulk-Power System.[1] Comments on the NOPR are due 60 days after publication in the **Federal Register**, or January 2, 2007. On November 17, 2006 and November 22, 2006, Edison Electric Institute (EEI) and the ISO/RTO Council, respectively, requested a seven day extension to file comments.

On November 15, 2006, the North American Electric Reliability Council, on behalf of its affiliate, the North American Electric Reliability Corporation (NERC Corporation, and collectively NERC), filed 20 revised proposed Reliability Standards and three new proposed Reliability Standards for Commission approval. The Commission certified NERC Corporation as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act in an order issued July 20, 2006 in Docket No. RR06–1–000.

NERC requested that the 20 revised proposed Reliability Standards be included as part of the NOPR issued by the Commission in Docket No. RM06–16–000. Because of their close relationship with Reliability Standards dealt with in the October 20, 2006 NOPR, the Commission will address these 20 Reliability Standards as part of that proceeding. The 20 revised proposed Reliability Standards are:

CIP–001–1—Sabotage Reporting
COM–001–1—Telecommunications
COM–002–2—Communications and Coordination
EOP–002–2—Capacity and Energy Emergencies
EOP–003–1—Load Shedding Plans
EOP–004–1—Disturbance Reporting
EOP–006–1—Reliability Coordination—System Restoration
INT–001–2—Interchange Information
INT–003–2—Interchange Transaction Information
IRO–001–1—Reliability Coordination—Responsibilities and Authorities
IRO–002–1—Reliability Coordination—Facilities
IRO–003–2—Reliability Coordination—Wide-Area View
IRO–005–2—Reliability Coordination—Current-Day Operations
PER–004–1—Reliability Coordination—Staffing
PRC–001–1—System Protection Coordination
TOP–001–1—Reliability Responsibilities and Authorities
TOP–002–2—Normal Operations Planning
TOP–004–1—Transmission Operations
TOP–006–1—Monitoring System Conditions
TOP–008–1—Response to Transmission Limit Violations

Comments on these 20 revised proposed Reliability Standards should be submitted by January 3, 2007, in Docket No. RM06–16–000. In addition, the deadline for filing comments on the NOPR is extended to January 3, 2007. Accordingly, the requests for extension of time filed by EEI and the ISO/RTO Council are granted to the limited extent set forth here.

The Commission is also opening a new Docket No. RM07–3–000 for processing the three new proposed Reliability Standards. No preliminary comments are being sought at this time. A proposed rulemaking will be issued later, and we will allow comments then. The three proposed new Reliability Standards included in this docket are:

FAC–010–1—System Operating Limits Methodology for the Planning
FAC–011–1—System Operating Limits Methodology for the Operations Horizon
FAC–014–1—Establish and Communicate System Operating Limits

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. E6–20608 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Mandatory Reliability Standards for the Bulk-Power System, 117 FERC ¶ 61,084 (2006), 71 FR 64770 (November 3, 2006).

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No.1144–P]

RIN 1120–AB44

Inmate Furloughs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its Federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs.

DATES: Comments are due by February 5, 2007.

ADDRESSES: Our e-mail address is *BOPRULES@BOP.GOV.* Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its Federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs. In the proposed rules, we also seek to reorganize and clarify the rules, while eliminating language that constitutes agency guidance to staff. Any such guidance language will be retained in the relevant Bureau policy. Below is an analysis of each new proposed section.

Proposed § 570.30 Purpose

This section states that these rules describe the procedures governing the Bureau's furlough program, authorized by 18 U.S.C. 3622. The current rule contains language indicating that the Bureau has a furlough program to help inmates attain correctional goals, and that a furlough is a privilege, but not a right, reward, or means to shorten a sentence. We remove this language because the specific reasons for furlough, eligibility requirements, and conditions for furlough are described in more detail in the other regulations in this subpart.

Proposed § 570.31 Inmate Eligibility for Furloughs

In this section we state that sentenced inmates housed in Bureau facilities and some pretrial inmates may be eligible for furloughs. Sentenced inmates in Bureau facilities who are classified as central inmate monitoring cases may only participate after complying with other central inmate monitoring rules found in Part 524, Subpart F.

We also state that sentenced inmates in contract facilities are not eligible for furloughs, but may apply for furloughs as specified in that facility's written agreement with the Bureau. Also, inmates who are U.S. Marshals prisoners housed in contract facilities are not eligible to participate, but must direct any furlough requests to the U.S. Marshals.

Proposed § 570.32 Types of Furloughs

This section defines a furlough as a Warden-authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or State or Federal agents. The two types of furloughs described by this rule are transfer furloughs and non-transfer furloughs. Non-transfer furloughs are further classified depending on the purpose of the furlough (emergency or routine), and length (day or overnight). This section more accurately defines furloughs than current 570.31 (Definitions).

Proposed § 570.33 Justification for Furlough

This section describes the reasons that the Warden or designee may authorize a furlough. This section is derived from current 570.32 (Justification for furlough). Provisions in current 570.32 relating solely to staff guidance have been removed.

Proposed § 570.34 Expenses of Furlough

This section states that all expenses of a furlough are the responsibility of the inmate, the inmate's family, or other appropriate source approved by the Warden, except that the government may bear the expense of a furlough if it is for the government's primary benefit. This section derives from current 570.33. Language in current 570.33 relating to transfer to community confinement has been removed from the proposed rule because transfer furloughs will be described in proposed 570.35.

Proposed § 570.35 Transfer Furlough Eligibility Requirements

This section states that inmates transferring to administrative, low, medium, or high security facilities are generally not eligible for participation in the Bureau's transfer furlough program. This section also describes eligibility requirements for a transfer furlough, and derives from current 570.34 (a)–(d) (Eligibility requirements). Language relating solely to staff guidance in current 570.34 is removed from this proposed rule.

This section also more clearly describes specific eligibility requirements for specific types of transfer furloughs. Inmates transferring to minimum security facilities must be transferring from a low or minimum security facility and must be appropriate for placement in a minimum security facility based on the inmate's security designation and custody classification at the time of transfer. Inmates transferring to community confinement must also be appropriate for placement in community confinement based on the security designation and custody classification at the time of transfer.

Proposed § 570.36 Non-Transfer Furlough Eligibility Requirements

This section contains a chart which clarifies the eligibility requirements for non-transfer furloughs. The chart in this section derives from current 570.34 (d)–(e), which describes the types of non-transfer furloughs an inmate may be eligible for, based on the inmate's length of confinement or time remaining on the inmate's sentence.

This section also describes circumstances under which Wardens will ordinarily deny non-transfer furloughs. This section derives from current § 570.35. Language in current § 570.35 relating solely to staff guidance and processing instructions has been removed from the proposed rule.

Proposed § 570.37 Procedures for Applying for a Furlough

This section describes how an inmate may apply for a furlough, how the inmate will be notified of the Warden's decision on the furlough application, and how to appeal the decision. This section derives from current 570.36(a)–(c)(Procedures).

Proposed § 570.38 Conditions of Furlough

This section derives from a form contained in current 570.36(d) and from language in 570.37 (Violation of furlough). The form will be retained in relevant policy documents and will continue to be used by staff and

inmates. This proposed rule lists the conditions of furlough described in the current rule, and states that an inmate must agree to comply with these conditions before a furlough can be approved.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will provide a more accurate description of the inmate furlough program. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 570

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Accordingly, under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we are proposing to amend 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

1. The authority citation for 28 CFR part 570 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise part 570, subpart C, to read as follows:

Subpart C—Furloughs

Sec.

570.30 Purpose.
570.31 Inmate eligibility for furloughs.
570.32 Types of furloughs.
570.33 Justification for furlough.
570.34 Expenses of furlough.
570.35 Transfer furlough eligibility requirements.
570.36 Non-transfer furlough eligibility requirements.
570.37 Procedures to apply for a furlough.
570.38 Conditions of Furlough.

§ 570.30 Purpose.

The purpose of this subpart is to describe the procedures governing the furlough program of the Federal Bureau of Prisons (Bureau), which is authorized by 18 U.S.C. 3622. Under the furlough program, the Bureau allows inmates who meet certain requirements to be temporarily released from custody under carefully prescribed conditions.

§ 570.31 Inmate eligibility for furloughs.

(a) *Eligible inmates.* The following types of inmates may be eligible for furloughs:

(1) Sentenced inmates housed in Bureau facilities.

(2) Pretrial inmates housed in Bureau facilities (provided that they comply with the requirements of 28 CFR part 551, Subpart J).

(3) Sentenced inmates housed in Bureau facilities and classified as central inmate monitoring cases (provided that they comply with the requirements of 28 CFR part 524, Subpart F).

(b) *Ineligible inmates.* The following types of inmates are not eligible for furloughs:

(1) Sentenced inmates housed in contract facilities are not eligible to participate in the Bureau's furlough program under these rules, but may apply for furloughs as specified in that facility's written agreement with the Bureau.

(2) Inmates who are U.S. Marshals prisoners housed in contract facilities are not eligible to participate, but must direct any furlough requests to the U.S. Marshals.

§ 570.32 Types of furloughs.

A furlough is an authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or State or Federal agents. The two types of furloughs are:

(a) *Transfer furlough*—A furlough for the purpose of transferring an inmate from one Bureau facility to another, a non-federal facility, or community confinement (including home confinement) as noted below at § 570.33(a).

(b) *Non-transfer furlough*—A furlough for any purpose other than a transfer furlough, and which may be defined based on its nature, as either emergency or routine, as follows:

(1) *Emergency furlough*—A furlough allowing an inmate to address a family crisis or other urgent situation as noted below at § 570.33(b).

(2) *Routine furlough*—A furlough for any of the reasons noted below at § 570.33(a) and (c)–(j).

(c) *Duration and distance of non-transfer furlough:*

(1) *Day furlough*—A furlough within the geographic limits of the commuting area of the institution, which lasts 16 hours or less and ends before midnight.

(2) *Overnight furlough*—A furlough which falls outside the criteria of a day furlough.

§ 570.33 Justification for furlough.

The Warden or designee may authorize a furlough, for 30 calendar days or less, for an inmate to:

(a) Transfer directly to another Bureau institution, a non-federal facility, or community confinement;

(b) Be present during a crisis in the immediate family, or in other urgent situations;

(c) Participate in the development of release plans;

(d) Establish or reestablish family and community ties;

(e) Participate in selected educational, social, civic, and religious activities which will facilitate release transition;

(f) Appear in court in connection with a civil action;

(g) Comply with an official request to appear before a grand jury, or to comply with a request from a legislative body, or regulatory or licensing agency;

(h) Appear in or prepare for a criminal court proceeding, but only when the use of a furlough is requested or recommended by the applicable court or prosecuting attorney;

(i) Participate in special training courses or in institution work assignments, including Federal Prison Industries (FPI) work assignments, when daily commuting from the institution is not feasible; or

(j) Receive necessary medical, surgical, psychiatric, or dental treatment not otherwise available.

§ 570.34 Expenses of furlough.

All expenses of a furlough, including transportation, food, lodging, and incidentals, are the responsibility of the inmate, the inmate's family, or other appropriate source approved by the Warden, except that the government may bear the expense of a furlough if it is for the government's primary benefit.

§ 570.35 Transfer furlough eligibility requirements.

(a) *Inmates transferring to administrative, low, medium, or high security facilities* are generally not eligible for participation in the Bureau's transfer furlough program.

(b) For a transfer furlough, inmates other than those described in (a) must:

(1) Be physically and mentally capable of completing the furlough; and

(2) Demonstrate sufficient responsibility to provide reasonable assurance that furlough requirements will be met.

(c) *Inmates transferring to minimum security facilities* must meet the requirements described in (b), and must also be:

(1) Transferring from a low or minimum security facility; and

(2) Appropriate for placement in a minimum security facility based on the inmate's security designation and custody classification at the time of transfer.

(d) *Inmates transferring to community confinement* must meet the requirements described in (b), and must also be appropriate for placement in community confinement based on the inmate's security designation and custody classification at the time of transfer.

§ 570.36 Non-transfer furlough eligibility requirements.

(a) *An inmate may be eligible for a non-transfer furlough if* the inmate meets the criteria described in 570.35(b) and the following additional criteria:

If an inmate has . . .	Then the inmate may only be considered for . . .
Been confined at the initially designated institution for less than 90 days.	An emergency non-transfer furlough.
More than two years remaining until the projected release date	An emergency non-transfer furlough.
2 years or less remaining until the projected release date	A routine day furlough.
18 months or less remaining until the projected release date	A routine overnight furlough within the institution's commuting area.
1 year or less remaining until the projected release date	A routine overnight furlough outside the institution's commuting area.

(b) *Ordinarily, Wardens will not grant a furlough to an inmate if:*

(1) The inmate is convicted of a serious crime against a person;

(2) The inmate's presence in the community could attract undue public attention, create unusual concern, or diminish the seriousness of the offense; or

(3) The inmate has been granted a furlough in the past 90 days.

§ 570.37 Procedures to apply for a furlough.

(a) *Application.* Inmates may submit a furlough application to staff, who will review it for compliance with these regulations and Bureau policy.

(b) *Notification of decision.* An inmate will be notified of the Warden's decision on the furlough application. Where a furlough application is denied, the inmate will be notified of the reasons for the denial.

(c) *Appeal.* An inmate may appeal any aspect of the furlough program through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

§ 570.38 Conditions of furlough.

(a) An inmate who violates the conditions of a furlough may be considered an escapee under 18 U.S.C. 4082 or 18 U.S.C. 751, and may be subject to criminal prosecution and institution disciplinary action.

(b) A furlough will only be approved if an inmate agrees to the following conditions and understands that, while on furlough, he/she:

(1) Remains in the legal custody of the U.S. Attorney General, in service of a term of imprisonment;

(2) Is subject to prosecution for escape if he/she fails to return to the institution at the designated time;

(3) Is subject to institution disciplinary action, arrest, and criminal prosecution for violating any conditions(s) of the furlough;

(4) May be thoroughly searched and given a urinalysis, breathalyzer, and other comparable test, during the furlough or upon return to the institution, and must prepay the cost of such test(s) if the inmate or family members are paying the other costs of the furlough. The inmate must pre-authorize all testing fee(s) to be withdrawn directly from his/her inmate deposit fund account; and

(5) Must contact the institution (or United States Probation Officer) in the event of arrest, or any other serious difficulty or illness.

(c) While on furlough, the inmate must not:

(1) Violate the laws of any jurisdiction (Federal, State, or local);

(2) Leave the area of his/her furlough without permission, except for traveling to the furlough destination, and returning to the institution;

(3) Purchase, sell, possess, use, consume, or administer any narcotic drugs, marijuana, alcohol, or intoxicants in any form, or frequent any place where such articles are unlawfully sold, dispensed, used, or given away;

(4) Use medication that is not prescribed and given to the inmate by the institution medical department or a licensed physician;

(5) Have any medical/dental/surgical/psychiatric treatment without staff's

written permission, unless there is an emergency. Upon return to the institution, the inmate must notify institution staff if he/she received any prescribed medication or treatment in the community for an emergency;

(6) Possess any firearm or other dangerous weapon;

(7) Get married, sign any legal papers, contracts, loan applications, or conduct any business without staff's written permission;

(8) Associate with persons having a criminal record or with persons who the inmate knows to be engaged in illegal activities without staff's written permission;

(9) Drive a motor vehicle without staff's written permission, which can only be obtained if the inmate has proof of a currently valid drivers license and proof of appropriate insurance;

(10) Return from furlough with anything the inmate did not take out with him/her (for example, clothing, jewelry, or books); or

(11) Comply with any other special instructions given by the institution.

[FR Doc. E6–20612 Filed 12–5–06; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0545; FRL–8251–6]

Approval and Promulgation of Implementation Plans; Ohio; Volatile Organic Compound Emission Control Measures for Cincinnati and Dayton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 9, 2006, the Ohio Environmental Protection Agency (Ohio EPA) submitted several volatile organic compound (VOC) rules for approval into the State Implementation Plan (SIP). The primary purpose of the rules is to partially replace the VOC reductions from Ohio's vehicle inspection and maintenance (E-Check) program (which ended on December 31, 2005) in the Cincinnati and Dayton areas. These replacement rules include a provision requiring the use of lower emitting solvents in cold cleaner degreasers, the use of more efficient auto refinishing painting application techniques and a rule requiring the use of lower emitting portable fuel containers. These rules are approvable because they contain more stringent requirements than Ohio's existing rules and they are enforceable. Ohio has correctly calculated their VOC emission reduction impact. EPA is also approving several other rule revisions, all of which meet EPA requirements, including an exemption for its printing rules, a site-specific rule for an aerosol can filling facility, elimination of the fluid catalytic cracking unit limitations for a Marathon Petroleum LLC facility, and an alternative leak detection and repair program for the Premcor Lima Refinery.

DATES: Comments must be received on or before January 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0545, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- E-mail: mooney.john@epa.gov.
- Fax: (312) 886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0545. 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 Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?
III. What Is the Purpose of This Action?
IV. What Is EPA's Analysis of Ohio's Submitted VOC Rules?
V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve several VOC rules into the OhioSIP. These include more stringent solvent degreasing rules, an exemption for its printing rules, a site-specific rule for an aerosol can filling facility, elimination of the fluid catalytic cracking unit limitations for a Marathon Petroleum Company LLC facility, an alternative leak detection and repair program for the Premcor Lima Refinery, a rule requiring the marketing and sale of only low-emitting portable fuel containers, and a rule including the use of high efficiency paint application equipment at auto body refinishing operations.

III. What Is the Purpose of This Action?

The primary purpose of the rules that Ohio submitted is to obtain VOC emission reductions to partially offset the increase in VOC emissions resulting from elimination of its E-Check program in the Cincinnati and Dayton areas. Ohio EPA has submitted additional VOC and nitrogen oxide emission reduction measures to fully compensate for this increase in emissions. These additional emission reduction measures, as well as other demonstrations needed to remove the E-Check program from the Ohio SIP, will be the subject of future rulemaking actions. Ohio has also submitted several site-specific rule revisions that have been requested by emission sources in Ohio. These rule revisions are also addressed in this notice.

IV. What Is EPA's Analysis of Ohio's Submitted VOC Rules?

A. New VOC Rules and Rule Revisions

(1) 3745–21–09(O)—Solvent Metal Cleaning

A new paragraph (3745–21–09(O)(2)(e)(i)) restricts owners and operators of cold cleaners located in the Cincinnati and Dayton ozone nonattainment areas to the use of solvents with a maximum vapor pressure of 1.0 mmHg, which results in a 67 percent emission reduction, after a compliance date of May 1, 2006 (as specified in 3745–21–04(C)(16)(c). This vapor pressure limitation was chosen to further reduce VOC emissions from cold cleaners. An exemption was added for the cleaning of paint gun parts. This exemption, in 3745–21–09(O)(2)(e)(iv), is approvable because the requirement to use less volatile paint cleaners would probably require the use of higher emitting processes and because the removal of paint and coatings from paint gun parts is not generally considered, and regulated, by cold cleaning regulations. In addition, 3745–21–(6)(b) clarifies that regardless of whether or not a solvent metal cleaning operation is exempt from the requirements in 3745–21–09(O)(2)–(O)(5), because it is subject to the halogenated solvent cleaning rule in subpart T of 40 CFR Part 63, the solvent in a cold cleaner cannot exceed 1.0 mmHg. These revisions to the Ohio's solvent metal cleaning rule are approvable because they make the rule more stringent and are enforceable.

(2) 3745–21–09(T)—Leaks From Petroleum Refinery Equipment

OAC 3745–21–09(T)(4) allows the director of Ohio EPA to accept an alternative petroleum refinery monitoring, recordkeeping and reporting program to that required by (T)(1) of this rule if the alternative program is at least as effective in identifying, documenting and reporting leaks as the program in (T)(1). A new paragraph (T)(4)(a) approves the November 19,2002 alternative monitoring, recordkeeping and reporting program entitled ''Premcor Lima Refinery, LDAR Plan'' by the director of Ohio EPA. The alternative monitoring, recordkeeping and reporting program is approved in the SIP. EPA is hereby approving OAC 3745–21–09(T)(4), and the November 19, 2002, alternative monitoring, recordkeeping and reporting program entitled ''Premcor Lima Refinery, LDAR Plan,'' because EPA agrees that this alternative program is at least as effective as the existing program in (T)(1) in detecting and reducing emissions from leaks.

(3) 3745–21–09(Y)—Flexographic, Packaging Rotogravure and Publication Rotogravure Printing Lines

A new paragraph, 3745–21–09(Y)(2)(d), was added to exempt any printing line at a facility in which the total maximum usage of VOC in all coatings and inks employed in all lines is less than or equal to one hundred tons per year. This exemption is consistent with EPA reasonably available control technology (RACT) guidance. New paragraph 3745–21–09(Y)(3) adds a ''once in, always in'' provision which clarifies that a facility is not eligible for a facility exemption once the control requirements of this rule apply to a facility. This ''once in, always in'' provision is also consistent with EPA RACT policy. These new paragraphs are approvable.

(4) 3745–21–09(RR)—Sherwin Williams Diversified Brands

This new paragraph contains site-specific RACT requirements for the Sherwin Williams facility in Bedford Heights that fills aerosol cans. The primary source of emissions from this facility is filling aerosol cans with VOC propellant. The numerical emission limit is 0.75 pounds of VOC per 1,000 aerosol cans produced, which also includes, for each rolling 12-month period, the emissions from Sherwin Williams' liquid mixing tanks, can liquid filling operations, gashouse operations, can brushing operations and can piercing operations. The RACT requirements specify a minimum 90% control efficiency for the required thermal incinerator, and specify that VOC emissions from non-emergency safety diversions of a thermal incinerator are to be included in determining compliance with the VOC emission rate limitation. This rule is approvable because (1) it requires that, when operating, a gashouse (the largest emission source where the propellant is added) thermal incinerator meets a minimum 90% destruction efficiency and (2) clarifies safety diversions, the emissions which are included in the 0.75 lbs VOC/1000 cans limit, as well as emergency events (during which the line is shut down), which are not included. The safety diversion and emergency event provisions are necessary because of the potential for an explosion in using an incinerator to control gashouse emissions.

(5) 3745–21–09(VV)—Marathon Petroleum Company

The control requirements for the Marathon facility's fluid catalytic cracking unit, previously contained in 3745–21–09(VV)(1), have been deleted in order to reduce overlapping and conflicting requirements with the National Emission Standard for Hazardous Air Pollutants from PetroleumRefineries (Refinery MACT). Deletion of 3745–21–09(VV)(1) is approvable because the control requirements in 40 CFR Part 63,Subpart UUU of the Refinery MACT are at least as stringent as the control requirements in 3745–21–09(VV)(1), and will achieve equivalent or greater emission reductions from the Marathon facility's fluid catalytic cracking unit.

(6) 3745–21–17—Portable Fuel Container and Spouts

This new rule, containing the standards for portable fuel containers (PFCs), was added as an additional control strategy to lower future VOC emissions throughout Ohio. PFCs are used to transport and store fuel(gasoline, kerosene and diesel fuel) from a retail distribution point to a point of use and eventually dispense fuel into equipment (*e.g.*, a lawnmower). These containers come in a variety of shapes and sizes with nominal capacities ranging from 1 to over 6 gallons. This rule is based upon the rule by the California Air Resources Board (CARB), which is the leader in PFC technology. This rule is enforceable, and, based upon CARB test data, PFCs meeting these limits will achieve a 75 percent emission reduction. This rule is therefore approvable.

(7) 3745–21–18—Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

This new rule was added to lower VOC emissions from auto body refinishing operations, most of which are at small body shops that repair and refinish automobiles. This rule eliminates the use of air spray, which has a low transfer efficiency resulting in higher emissions, requires proper training in the use of paint application equipment, specifies proper spray gun cleaning techniques and requires that VOC containing materials be stored in nonabsorbent, non-leaking containers and that the containers be closed when not in use. This rule also requires that auto body refinishing facilities provide documentation of the above cited control measures. This rule is approvable because it eliminates air spray and adds additional control measures that must be properly documented.

B. Revisions That Correct Errors in Previously Adopted and Effective (On May 27, 2005) VOC RACT Rules

(1) 3745–21–01(V)(9)—Control Device Definition

This definition of a control device for SOCMI Reactors andDistillation Units was amended to eliminate a reference to a rule section that had been removed. This revised definition is approvable because it properly defines a control device and clarifies that a recovery device is not considered a control device.

(2) 3745–21–12(H)(4)—Bakeries

This section requires any uncontrolled bakery oven exempted under paragraph (D)(2), and not (D)(2)(a) which does not exist, to keep records to determine whether the applicability cutoffs in (D)(2) have been exceeded. This section also requires that Ohio EPA or its delegated local air agency be notified if the applicability cutoff in (D)(2) has been exceeded. This section is therefore approvable.

(3) 3745–21–01(AA)—Incorporation by Reference

The revisions to the incorporation by reference section include both minor changes to properly format citations and new references to materials referenced in Ohio's VOC regulations. These revisions include the addition of the ''Standard Specification for Portable Kerosene Containers for Consumer Use,'' ''Standard Specification for Portable Gasoline Containers for Consumer Use,'' ''Code for the Manufacture and Storage of Aerosol Products,'' and ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' and are approvable.

C. Analysis of VOC Emission Reductions From Individual Control Measures Analyses (Please note that these rules have been previously described in section IV. (A))

(1) 3745–21–09(O)—Solvent Metal Cleaning

Reducing the vapor pressure in cold cleaners to no greater than 1.0 mmHg has been documented to result in a 67 percent reduction in VOC emissions. Such reduction is based upon a survey of existing solvent vapor pressures. This regulation is based on similar regulations previously promulgated in the Chicago/Metro East areas of Illinois, which was also used as a basis for the Ozone Transport Commission (OTC) model rule as discussed in ''Industrial Cleaning'', Midwest RPO (LADCO) white paper dated March 14, 2005. EPA's default 80 percent rule effectiveness was also applied. Using 2002 baseline emissions for VOC (tons/day), a growth factor of 1.199, a 67 percent reduction and an 80 percent rule effectiveness resulted in Cincinnati area estimated reductions of 2.57 tons per day (TPD) for 2006. Dayton area estimated reductions were determined to be 1.75 TPD for 2006.

(2) 3745–21–18—Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

This rule requires the use of higher transfer efficiency paint application equipment, which has been documented to achieve a 35 percent reduction, according to the OTC Pechan Report, dated March 2001, and in the LADCO white paper ''Auto Body Refinishing,'' dated March 28, 2005. EPA's default 80 percent rule effectiveness was also applied. Using 2002 baseline emissions for VOC (tons/day), a 1.175 growth factor, a 35 percent reduction and an 80 percent rule effectiveness resulted in Cincinnati area estimated reductions of 0.44 TPD for 2006. Dayton area estimated reductions were determined to be 0.30 TPD for 2006.

(3) 3745–21–17—Portable Fuel Container and Spouts

A February 9, 2005 LADCO white paper estimates that 12,694 tons of VOCs are emitted yearly in Ohio from PFCs. Ohio has adopted this rule based on CARB's PFC rule, which has been documented by CARB to achieve a 75 percent VOC reduction. Emission reductions are estimated by considering a 75 percent control efficiency, a 10 percent annual turnover rate, and an 80 percent rule effectiveness. These reductions will begin to occur in 2007, when this rule goes into effect.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 21, 2006.

Mary A. Gade,

Regional Administrator, Region 5.

[FR Doc. E6–20638 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FDMS Docket No. EPA–R03–OAR–2006–0933; FRL–8252–4]

State Operating Permit Programs; Delaware; Amendments to the Definition of ''a major source''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the State of Delaware's operating permit program to correct the definition of ''a major source.'' This amendment would change the definition of ''a major source'' by removing the phrase ''but only with respect to those air pollutants that have been regulated for that category'' from the Regulation No. 30 (Title V) definition of a major source, as it applies to these Federal standards. This would require all fugitive emissions to be included in major source determination for sources subject to Federal New Source Performance Standards (NSPS) or the National Emissions Standards for Hazardous Air Pollutants standards (NESHAPs), not just the pollutants regulated by the particular NSPS or NESHAP. This amendment is necessary to make the current definition as stringent as the corresponding provision of the Title V regulations, which went into effect on November 27, 2001. This change will make this aspect of Regulation No. 30 consistent with Federal rule. In the Final Rules section of this **Federal Register**, EPA is approving the State's amendment to its operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0933 by one of the following methods:

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

B. E-mail: campbell.dave@epa.gov.

C. *Mail:* EPA–R03–OAR–2006–0933, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2006–0933. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. This action approves an amendment to the Delaware Title V operating permit program to correct the definition of a ''major source.''

Dated: November 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E6–20642 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0731; FRL–8104–1]

Diphenylamine; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of diphenylamine in or on pear under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments must be received on or before February 5, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0731, 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–2006–0731. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to establish a tolerance for residues of the fungicide, diphenylamine in or on pear at 5.0 parts per million (ppm). The Interregional Research Project Number 4 (IR-4) submitted a petition (PP 0E6107) for this use. However, neither IR-4 nor Atomchem North American Incorporated, the registrant, submitted all required elements of a petition in support of establishing a tolerance. Because the petition was incomplete, EPA did not publish a Notice of Filing for the petition.

Section 408(b)(2)(A)(i) of the 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 the FFDCA defines ''safe'' to mean that '' there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the 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 the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of diphenylamine on pear at 5.0 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. The nature of the toxic effects caused by diphenylamine is discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 75 mg/kg/day LOAEL = 375 mg/kg/day based on decreased body weight and body weight gain, dark urine, increased absolute spleen and liver weights, congestion in spleen, kidney, and liver, discoloration and alterations in hematological and clinical chemistry parameters.
870.3100	90–Day oral toxicity rodents	NOAEL = 2 mg/kg/day M/F LOAEL = 94/107 mg/kg/day based on liver/spleen alterations (extramedullary hematopoiesis in the liver, discoloration and hemosiderosis of the liver, congestion and extramedullary hematopoiesis in the spleen).
870.3150	90–Day oral toxicity nonrodents	M/F NOAEL = 50 mg/kg/day LOAEL (mg/kg/day) not determined
870.3200	21/28–Day dermal toxicity	NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on effects in the stomach (dark foci-red foci in both sexes-6/10). Dermal: NOAEL = 1,000 mg/kg/day; LOAEL (mg/kg/day): Not determined.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 50 mg/kg/day Maternal LOAEL = 100 mg/kg/daybased on decreased spleen weights and discoloration of the spleen Developmental NOAEL = 100 mg/kg/day Developmental LOAEL (mg/kg/day): Not determined
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = 300 mg/kg/daybased on deceased body weight gains andfood consumption Developmental NOAEL = 300 mg/kg/day Developmental LOAEL (mg/kg/day): Not determined
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL (mg/kg/day): Not determined. Parental/Systemic M/F LOAEL = 40/46 mg/kg/day based on gross pathological findings in the spleen and microscopic findings in the kidney, liver, and spleen. Reproductive M/F NOAEL = 115/131 mg/kg/day. Reproductive M/F LOAEL = 399/448 mg/kg/day based on decreased litter size in both generations. Offspring M/F NOAEL = 40/46 mg/kg/day. Offspring M/F LOAEL = 115/131 mg/kg/day based on decreased body weight of F2 pups in late lactation.
870.4100	Chronic toxicity dogs	NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on alterations in clinical chemistry parameters (increased BUN, cholesterol, total bilirubin) and increased absolute/relative kidney, liver and spleen weights.
870.4200	Carcinogenicity rats	NOAEL (mg/kg/day): Not determined. M/F LOAEL = 73/91 mg/kg/day based on histopathological lesions in the spleen. No evidence of carcinogenicity.
870.4300	Carcinogenicity mice	M/F NOAEL = 29/25 mg/kg/day. M/F LOAEL = 147/138 mg/kg/day based on reduced body weight and body weight gains, changes in hematological parameters, spleen and kidney lesions and increased clinical signs of toxicity. No evidence of carcinogenicity
870.5100	Gene mutation	Negative
870.5300	Cytogenetics	Weakly mutagenic in the presence of metabolic activation
870.5395	Other effects	Negative

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Terminal distribution data showed no significant residual activity in tissues 168 hours post-dose for both the low and high oral dose groups: Urine was the major route for excretion. Recovery after 168 hours: Single/repeated low dose = urine 68-81% (both sexes) single high dose = 73-74% Male rats excreted a greater percentage of diphenylamine derived activity at the low dose, while female rats showed greater excretion in feces at this dose. At the high dose, the percentage eliminated in urine was equivalent in both males and females. Metabolites-urine: Dihydroxylated conjugates of diphenylamine, mono-hydroxylated sulfate conjugates of diphenylamine, monohydroxylated glucuronide conjugates of diphenylamine. Metabolites-feces: Parent chemical and 4-hydroxydiphenylamine, which comprised 0.5-3% administered dose in both sexes.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological 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. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for diphenylamine used for human risk assessment is shown in Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	N/A	N/A	An acute reference dose for females aged 13-50 has not been established. Developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats did not demonstrate evidence of toxicity attributable to a single dose.
Acute Dietary (General population including infants and children)	N/A	N/A	An endpoint attributable to a single dose was not identified from the available database.
Chronic Dietary (All populations)	NOAEL = 10 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.1 mg/kg/day	Chronic Toxicity - Dog LOAEL = 50 mg/kg/day based on alterations in clinical chemistry parameters (increased BUN, cholesterol, total bilirubin) and increased absolute/relative kidney, liver, and spleen weights.

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-Term Dermal (1 to 30 days) (Residential)	Dermal (or oral) study NOAEL= 500 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day Dermal - Rabbit LOAEL = 1,000 mg/kg/day based on effects in the stomach (dark red foci in both sexes).
Intermediate-Term Dermal (1 week to several months) (Residential)	Dermal (or oral) study NOAEL = 500 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day Dermal- Rabbit LOAEL = 1,000 mg/kg/day based on effects in the stomach (dark red foci in both sexes).
Short-Term Inhalation (1 to 30 days) (Residential)	Inhalation (or oral) study NOAEL = 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity - Rat LOAEL = 100 mg/kg/day based on increased spleen weights and discoloration of the spleen.
Intermediate-Term Inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity - Rat LOAEL = 100 mg/kg/day based on increased spleen weights and discoloration of the spleen.
Cancer (oral, dermal, inhalation)	N/A	N/A	Classification: This chemical is ''not likely'' to be a human carcinogen.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* The residue of concern in plants and livestock for the tolerance enforcement and risk assessment is parent diphenylamine. Tolerances are established in 40 CFR 180.190(a) for diphenylamine residues in/on apple at 10 ppm and apple, wet pomace at 30 ppm. Diphenylamine (EC or SC/L) is applied to apples (pre- or post-harvest) as a spray, dip or drench application. Additionally, tolerances are established at 0.01 ppm in milk, meat, fat, and meat byproducts (except liver) of cattle, goat, horse, and sheep, and at 0.1 ppm in liver of these animals. Risk assessments were conducted by EPA to assess dietary exposures from diphenylamine in food as follows:

i. *Acute exposure*. There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate an acute-dietary risk to the U.S. general population or to the subpopulation females 13-50 years old. Therefore, an acute aggregate exposure assessment was not performed.

ii. *Chronic exposure*.In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) 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: The chronic dietary exposure analysis was based on tolerance level residues, DEEM (Version 7.81) default processing factors, an empirical processing factor for apple juice, and 100% crop treated assumptions.

iii. *Cancer*. Diphenylamine was classified as ''not likely to be a human carcinogen;'' therefore, a cancer dietary exposure analysis was not performed.

2. *Dietary exposure from drinking water*. Diphenylamine uses are post-harvest; therefore, residues in drinking water are not relevant to this risk assessment.

3. *Dietary exposure from non-dietary exposure*. Diphenylamine is not registered for use on any sites that would result in residential exposure. Therefore a residential exposure risk assessment was not performed.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to diphenylamine and any other substances and diphenylamine 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 diphenylamine 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 the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to diphenylamine. In prenatal

developmental toxicity studies in rats and rabbits, no evidence of developmental toxicity was observed. In a 2–generation reproduction study, offspring toxicity (decreased body weight) was seen only in the presence of maternal toxicity.

3. *Conclusion*. EPA recommended the FQPA safety factor be reduced to 1X for the following reasons:

i. There is a complete toxicity data base for diphenylamine;

ii. The toxicity database showed no increase in susceptibility in fetuses and pups with in *utero* and postnatal exposure, and

iii. The dietary food exposure assessment is based on recommended tolerance-level residues (except those processed commodities for which processing factors were used) and assumes 100% crop treated for all commodities, which resulted in very high-end estimates of dietary exposure.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate an acute-dietary risk to the U.S. general population or to the subpopulation females 13-50 years old. Therefore, diphenylamine 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 diphenylamine from food will utilize 12% of the cPAD for the U.S. population, 69% of the cPAD for all infants <1 year old, and 90% of the cPAD for children 1-2 years old. There are no residential uses for diphenylamine that result in chronic residential exposure. In addition, there is no potential for chronic dietary exposure in drinking water as diphenylamine is applied only as a post-harvest use. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short and intermediate-term risk*. There are no residential uses for diphenylamine, and residues are not expected to occur in drinking water. Therefore, short and intermediate-term aggregate risk assessments were not performed.

4. *Aggregate cancer risk for U.S. population*. Diphenylamine is not likely to be carcinogenic to humans. Therefore, a cancer aggregate risk assessment was not performed.

5. *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 diphenylamine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography/mass-selective detector (GC/MSD) method is available for enforcing tolerances on apple commodities, and this method was used for data collection in the current post-harvest study. The method was adequately validated in conjunction with the sample analyses. A modification of this method was used in the pear analyses. Therefore, the Agency requires the registrant to submit an analytical reference standard of diphenylamine to the EPA National Pesticide Standards Repository. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Codex MRLs have been established for the post harvest use of diphenylamine on pears. The MRL for pear is 5 ppm, and is the same as the recommended pear tolerance.

V. Conclusion

A tolerance is proposed for residues of diphenylamine in pear at 5.0 ppm.

VI. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. Establishment of a tolerance legalizes the presence of a pesticide residue in a food. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 3175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the

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

List of Subjects in 40 CFR Part 180

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

Dated: November 22, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—AMENDED

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

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

2. Section 180.190 is amended by alphabetically adding a commodity to the table in paragraph (a) to read as follows:

§ 180.190 Diphenylamine; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Pear (post harvest)	5.0
* * * *	*

[FR Doc. E6–20648 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 06–2339]

Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of reply comment period.

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

DATES: Submit reply comments on or before January 11, 2007.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *victoria.goldberg@fcc.gov.* Include CC Docket 01–92 in the subject line of the message.
- *Fax:* To the attention of Victoria Goldberg at 202–418–1567. Include CC Docket 01–92 on the cover page.
- *Mail:* Parties should send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery / Courier:* The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.
—All hand deliveries must be held together with rubber bands or fasteners.
—Any envelopes must be disposed of before entering the building.
—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

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

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order released November 20, 2006. The complete text of the Order is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The complete text may also be downloaded at: *http://www.fcc.gov.* By the Order, the Wireline Competition Bureau (WCB) grants a motion requesting an extension of the date for filing reply comments on an intercarrier compensation plan called the ''Missoula Plan.'' The Missoula Plan was filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation. On July 25, 2006, the WCB released a Public Notice requesting that comments on the Missoula Plan be filed by September 25, 2006, and reply comments by November 9, 2006. 71 FR 45510, Aug. 9, 2006. On August 29, 2006, WCB released an order granting extensions of the comment and reply comment filing dates to October 25, 2006 and December 11, 2006. 71 FR 54008, Sep. 13, 2006. Over 110 parties filed initial comments on or before October 25, 2006. On November 17, 2006, the National Association of Regulatory Utility Commissioners filed a motion requesting an extension of the reply comment date to January 11, 2007.

The WCB determined that providing additional time to file reply comments will facilitate the development of a more substantive and complete record in this proceeding. Although it is the policy of the Commission that extensions of time shall not be routinely granted, the WCB determined that given the number, length, and variety of initial comments, good cause exists to provide parties an extension of time, from December 11,

2006 to January 11, 2007 for filing reply comments in this proceeding.

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

Reply Comments Due: January 11, 2007.

All other filing procedures remain unchanged from those previously established in this proceeding.

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

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–20676 Filed 12–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[WT Docket No. 01–289; FCC 06–148]

Aviation Communications

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) invites comment on issues regarding aviation radio, in keeping with the Commission's ongoing commitment to periodically review and, as needed, revise its aviation services rules in light of relevant developments.

DATES: Submit comments on or before March 6, 2007, and reply comments are due on or before April 5, 2007.

ADDRESSES: You may submit comments, identified by WT Docket No. 01–289; FCC 06–148, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 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: Jeffrey Tobias, at *Jeff.Tobias@FCC.gov*, Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rule Making* (''*Second FNPRM*'') in WT Docket No. 01–289, FCC 06–148, adopted on October 4, 2006, and released on October 10, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The WT Docket No. 01–289 rulemaking proceeding was established to ensure that part 87 of the Commission's rules remains up-to-date and continues to further the Commission's goals of accommodating new technologies, facilitating the efficient and effective use of the aeronautical spectrum, avoiding unnecessary regulation, and, above all, enhancing the safety of flight. The Commission takes the following significant actions in the *Second FNPRM* in WT Docket No. 01–289: (i) Invites further comment on technical standards and regulatory provisions for Aeronautical Mobile Satellite (Route) Service (AMS(R)S) in the 1.6 GHz, 2 GHz, and 5 GHz frequency bands, including whether to revise the AMS(R)S technical standards to accommodate additional satellite systems and whether to accord priority and preemptive access to AMS(R)S communications in these bands; (ii) proposes to delete a regulatory provision which permits limited use of the VHF band for AMS(R)S communications; (iii) invites comment on whether the Commission should consider proposing rules that would require a transition to 8.33 kHz channelization in the aeronautical enroute service; (iv) invites comment on whether the Commission should reduce the number of frequencies designated for Flight Information Services—Broadcast (FIS–B); (v) proposes to codify the terms of special temporary authorizations (STAs) permitting the use of specified frequencies for air-to-air communications in Hawaii and in the Los Angeles area; (vi) proposes to clarify the circumstances under which an airport is limited to a single aeronautical advisory station (unicom); (vii) invites comment on whether the Commission should permit the assignment and transfer of control of aircraft radio licenses; and (viii) invites comment on whether the Commission should phase out its authorization of emergency locator transmitters (ELTs) designed to operate on 121.5 MHz.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 6, 2007 and reply comments on or before April 5, 2007. All filings related to this *Second Report and Order* should refer to WT Docket No. 01–289.

4. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

5. 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.

6. 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.

7. 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.

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

9. 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.

10. 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.

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

12. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

13. *Availability of documents*. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, may be reached by e-mail at *fcc@bcpiweb.com* or via BCPI's Web site at *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

14. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Second FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM* as provided in paragraph 49 of the item. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *Second FNPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules:

16. The proposed rules in the *Second FNPRM* are intended to further streamline, consolidate and clarify the Commission's part 87 rules; remove unnecessary or duplicative requirements; address new international requirements; and promote flexibility and efficiency in the use of aviation radio equipment in a manner that will further aviation safety. In the *Second FNPRM*, the Commission requests comment specifically on whether the Commission should: (a) Broaden the AMS(R)S rules to accommodate the provision of AMS(R)S by additional satellite systems; (b) mandate that AMS(R)S communications in the 1.6 GHz, 2 GHz, and 5 GHz frequency bands be given priority and preemptive access; (c) delete a regulatory provision which permits limited use of the VHF band for AMS(R)S communications; (d) consider proposing rules that would require a transition to 8.33 kHz channelization in the aeronautical enroute service; (e) reduce the number of frequencies designated for FIS–B; (f) codify the terms of an STA permitting the use of specified frequencies for air-to-air communications in Hawaii; (g) codify the terms of an STA permitting the use of specified frequencies for air-to-air communications in the Los Angeles area; (h) clarify the circumstances under which an airport is limited to a single aeronautical advisory station (unicom); (i) permit the assignment and transfer of control of aircraft radio licenses; and (j) phase out the authorization of ELTs designed to operate on 121.5 MHz.

Legal Basis for Proposed Rules:

17. Authority for issuance of this item is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

18. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA, and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

19. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this IRFA, therefore, the applicable definition of small entity is the definition under the SBA rules

applicable to wireless service providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

20. Some of the rules proposed herein may also affect small businesses that manufacture aviation radio equipment. The Commission has not developed a definition of small entities applicable to aviation radio equipment manufacturers. Therefore, the applicable definition is that for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

21. Some of the rules proposed herein may also affect providers of satellite telecommunications services. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

22. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

23. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

24. Most of the possible rule changes under consideration in the *Second FNPRM* generally would not impose any new compliance requirements on any entity. The proposals to codify existing STAs would, if adopted, relieve aircraft operators in Hawaii and the Los Angeles area of the regulatory restrictions that impelled them to seek those STAs. With two exceptions, the Commission believes the other proposed rules would have no significant effect on the compliance burdens of regulatees. The Commission invites comment on its tentative conclusion that the following possible rule changes will not have a negative impact on small entities, or for that matter any entities, and do not impose new compliance costs on any entity: (1) Reducing the number of frequencies designated for FIS-B; (2) codifying the terms of the STA permitting the use of specified frequencies for air-to-air communications in Hawaii; (3) codifying the terms of the STA permitting the use of specified frequencies for air-to-air communications in the Los Angeles area; (4) clarifying the circumstances under which an airport is limited to a single unicom; (5) permitting the assignment and transfer of control of aircraft radio licenses; (6) phasing out the authorization of ELTs designed to operate on 121.5 MHz; and (7) deleting a regulatory provision which permits limited use of the VHF band for AMS(R)S communications. To the extent that commenters believe that any of the above possible rule changes would impose a new reporting, recordkeeping, or compliance burden on small entities, the Commission asks that they describe the nature of that burden in some detail and, if possible, quantify the costs to small entities.

25. The Commission is considering in the *Second FNPRM* whether to mandate that mobile satellite systems providing AMS(R)S accord priority and preemptive access to AMS(R)S communications vis-a-vis public correspondence and other non-safety-related communications in the 1.6 MHz, 2 MHz, and 5 MHz bands, as they already are required to do in the 1545–1559 MHz and 1646.5–1660.5 MHz bands. To the extent that such a requirement would impose a new compliance burden, however, the burden would fall only on mobile satellite service (MSS) licensees. MSS licensees are not small entities. Accordingly, we do not believe this requirement will have a direct and significant economic impact on any small entities.

26. In addition, the Commission believes that mandating a transition to 8.33 kHz channel spacing in the aeronautical enroute service might impose a new compliance burden on

aircraft station licensees because of the need to replace existing avionics equipment designed to operate with 25 kHz channel spacing. This burden might be incurred not only by the major air carriers, but also by smaller carriers and others that may qualify as small entities. In the *Second FNPRM*, the Commission seeks comment on whether the public interest benefits of a mandatory narrowbanding of the aeronautical enroute spectrum would outweigh the costs and difficulties that such an effort would engender. The Commission seeks estimates of projected compliance costs, with an explanation of all assumptions on which the estimates are based. The Commission here reiterates that request, and specifically asks interested parties to address potential compliance costs for small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

27. 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: (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.

28. In the *Second FNPRM*, the Commission requests further comment on, among other things, the nature of any burden that might be incurred by MSS licensees if required to provide priority and preemptive access to AMS(R)S communications in the 1.6 GHz, 2 GHz, and 5 GHz frequency bands. For reasons stated above, the Commission believes MSS licensees are not small entities. Commenters who believe otherwise are invited to explain why MSS licensees should be deemed small entities, and to propose steps, such as those described in the immediately preceding paragraph, that might eliminate or minimize the burden of a priority and preemptive access requirement on MSS licensees.

29. In the *Second FNPRM*, the Commission also seeks comment on various means of limiting the impact of a transition to 8.33 kHz channel spacing in the aeronautical enroute service in the event such a transition is mandated. It asks commenters to suggest the appropriate duration of any period(s) of transition and to consider whether grandfathering provisions of some sort should be adopted to mitigate the costs of retrofitting aircraft. It also asks whether transition schedules should be staggered based on criteria relating to the size of the carrier or the class of aircraft. The Commission reiterates those requests here, and ask interested parties to consider any other means to lessen potential compliance burdens on small entities if the Commission ultimately mandates a transition to 8.33 kHz channel spacing in the aeronautical enroute service. In addition, to the extent commenters believe any of the other possible rule changes discussed in the *Second FNPRM* might impose any significant economic impact on small entities, the Commission invites them to address any or all of the aforementioned regulatory alternatives and to suggest additional alternatives to minimize that impact. Any significant alternative presented in the comments will be considered.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules:

30. None.

III. Ordering Clauses

31. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 403, this *Second FNPRM* is adopted.

32. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on this *Second FNPRM* on or before 90 days after publication in the **Federal Register** and reply comments on or before 120 days after publication in the **Federal Register**.

33. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second FNPRM* and also the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Communications equipment; Disaster assistance; Imports; Radio; Reporting and recordkeeping requirements; Telecommunications; Television; Wiretapping and electronic surveillance.

47 CFR Part 87

Air transportation; Civil defense; Communications equipment; Defense communications; Radio; Reporting and recordkeeping requirements; Weather.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 87 as follows:

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

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

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

2. Amend Section 2.106, the Table of Frequency Allocations, as follows:

a. Revise page 18.

b. In the list of United States footnotes, add footnote USxxx.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–C

74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)
	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	5.182 5.183 5.188 87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG115 NG128 NG142 NG149	Broadcast Radio (TV)(73) Auxiliary Broadcasting (74)
5.175 5.179 5.184 5.187 87.5-100 BROADCASTING 5.190	5.185 88-100 BROADCASTING		88-108	88-108 BROADCASTING NG2	Broadcast Radio (FM)(73) Auxiliary Broadcasting (74)
100-108 BROADCASTING 5.192 5.194			US93	US93 NG128	
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.199 5.200 US26 US28 USxxx		
			121.9375-123.0875 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.200 US32 US33 US112		
			123.5875-128.8125 AERONAUTICAL MOBILE (R) US26 USxxx		
			128.8125-132.0125	128.8125-132.0125 AERONAUTICAL MOBILE (R)	
			132.0125-136 AERONAUTICAL MOBILE (R) US26		
			136-137	136-137 AERONAUTICAL MOBILE (R)	
5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B			US244	US244	

United States (US) Footnotes

* * * * *

USxxx In Hawaii, the frequencies 120.65 MHz and 127.05 MHz may be authorized to non-Federal aircraft stations for air-to-air communications as specified in 47 CFR 87.187.

* * * * *

PART 87—AVIATION SERVICES

3. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

4. Amend § 87.187 by adding new paragraphs (gg) and (hh) to read as follows:

§ 87.187 Frequencies.

* * * * *

(gg)(1) The frequency 120.650 MHz is authorized for air-to-air communications for aircraft over and within five nautical miles of the shoreline of the Hawaiian Island of Maui.

(2) The frequency 121.950 MHz is authorized for air-to-air use for aircraft over and within five nautical miles of the shoreline of the Hawaiian Island of Molokai.

(3) The frequency 122.850 MHz is authorized for air-to-air use for aircraft over and within five nautical miles of the shoreline of the Hawaiian Island of Oahu.

(4) The frequency 122.850 MHz is authorized for aircraft over and within five nautical miles of the shoreline of the Hawaiian Island of Hawaii when aircraft are south and east of the 215 degree radial of very high frequency omni-directional radio range of Hilo International Airport.

(5) The frequency 127.050 MHz is authorized for air-to-air use for aircraft over and within five nautical miles of the shoreline of the Hawaiian Island of Hawaii when aircraft are north and west of the 215 degree radial of very high frequency omni-directional radio range of Hilo International Airport.

(6) The frequency 127.050 MHz is authorized for air-to-air use for aircraft over and within five nautical miles of the Hawaiian Island of Kauai.

(hh)(1) The frequency 121.95 MHz is authorized for air-to-air communications for aircraft within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

33–46–00 N. Lat.; 118–27–00 W. Long.
33–47–00 N. Lat.; 118–12–00 W. Long.
33–40–00 N. Lat.; 118–00–00 W. Long.
33–35–00 N. Lat.; 118–08–00 W. Long.
34–00–00 N. Lat.; 118–26–00 W. Long.

(2) The frequency 122.775 MHz is authorized for air-to-air communications for aircraft within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

34–22–00 N. Lat.; 118–30–00 W. Long.
34–35–00 N. Lat.; 118–15–00 W. Long.
34–27–00 N. Lat.; 118–15–00 W. Long.
34–16–00 N. Lat.; 118–35–00 W. Long.
34–06–00 N. Lat.; 118–35–00 W. Long.
34–05–00 N. Lat.; 118–50–00 W. Long.

(3) The frequency 123.30 MHz is authorized for air-to-air communications for aircraft within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

34–08–00 N. Lat.; 118–00–00 W. Long.
34–10–00 N. Lat.; 117–08–00 W. Long.
34–00–00 N. Lat.; 117–08–00 W. Long.
33–53–00 N. Lat.; 117–42–00 W. Long.
33–58–00 N. Lat.; 118–00–00 W. Long.

(4) The frequency 123.50 MHz is authorized for air-to-air communications for aircraft within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

33–53–00 N. Lat.; 117–37–00 W. Long.
34–00–00 N. Lat.; 117–15–00 W. Long.
34–00–00 N. Lat.; 117–07–00 W. Long.
33–28–00 N. Lat.; 116–55–00 W. Long.
33–27–00 N. Lat.; 117–12–00 W. Long.

(5) The frequency 123.50 MHz is authorized for air-to-air communications for aircraft within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

33–50–00 N. Lat.; 117–48–00 W. Long.
33–51–00 N. Lat.; 117–41–00 W. Long.
33–38–00 N. Lat.; 117–30–00 W. Long.
33–30–00 N. Lat.; 117–30–00 W. Long.
33–30–00 N. Lat.; 117–49–00 W. Long.

5. Amend § 87.215 by revising paragraph (b) to read as follows:

§ 87.215 Supplemental Eligibility.

* * * * *

(b) Only one unicom will be authorized to operate at an airport which does not have a control tower, RCO or FAA flight service station that effectively controls traffic at the airport (*i.e.*, where the unicom frequency is not the published common traffic advisory frequency). At an airport which has a part-time or full-time control tower, RCO or FAA flight service station that effectively controls traffic at the airport, the one unicom limitation does not apply and the airport operator and all aviation services organizations may be licensed to operate a unicom on the assigned frequency.

* * * * *

[FR Doc. E6–20451 Filed 12–5–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (Nerodia sipedon) as an Endangered Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the distinct vertebrate population segment (DPS) of the northern water snake (*Nerodia sipedon*) in the upper tidal Potomac River as endangered under the Endangered Species Act of 1973, as amended (Act). We find the petition does not provide substantial scientific or commercial information indicating that the petitioned action is warranted. Therefore, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of this population of the northern water snake or threats to it.

DATES: The finding announced in this document was made on December 6, 2006.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours, at the Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401. Submit new information, materials, comments, or questions to us at the above address.

FOR FURTHER INFORMATION CONTACT: John Wolflin, Field Supervisor, Chesapeake Bay Field Office (see **ADDRESSES**) (telephone 410–573–4574; facsimile 410–269–0832).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition and information available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information is presented, we are required to promptly commence a status review of the species.

In making this finding, we relied on information provided by the petitioner and evaluated this information in accordance with 50 CFR 424.14(b). Our process of making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On November 7, 2000, we received a formal petition dated November 1, 2000, from Dr. Richard M. Mitchell requesting that we emergency list the northern water snake population found in the upper tidal Potomac River as a distinct population segment (DPS) under the Act. The petition included a report from a study performed by Dr. James M. Beers and Dr. Mitchell from July to September, 2000, entitled ''A Herpetofaunal Survey of the Upper Tidal Potomac River and its Associated Estuaries.''

Action on the petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2001. However, the Service did evaluate the need for emergency listing based on the information provided in the initial petition and its attached report and determined that the threats described did not appear to constitute immediate threats of a magnitude that would justify emergency listing. A letter was sent to the petitioner on January 23, 2001, explaining this determination.

Species Information

The northern water snake was first described by Linnaeus in 1758. The species is widely distributed in eastern North America, from southern Canada south through the Carolina and Georgia Piedmont, to the Gulf of Mexico, and west to eastern Colorado (Conant 1975, p. 145). This species occurs in most freshwater habitats within its range, inhabiting natural water bodies, wetlands, and even manmade impoundments (Dorcas and Gibbons 2004, p. 183). Northern water snakes tend to exhibit high site fidelity, although snakes in linear habitats such as rivers tend to wander more than snakes in discrete habitats such as ponds (Fraker 1990, pp. 666–669). The northern water snake is found in a diversity of habitats, and likewise consumes a diversity of prey. In fact, Gibbons and Dorcas (2004, p. 186) state, ''the documented diversity of prey species consumed by *N. sipedon* is greater than for any other water snake * * * [this] clearly indicates that *N. sipedon* is primarily an aquatic-feeding generalist that in most instances probably eats whatever is readily available.''

The northern water snake is a moderately sized, nonvenomous water snake, and is highly variable in both dorsal and ventral color patterns (Dorcas and Gibbons 2004, p. 178). Selective pressure, namely predation, determines which banding patterns are exhibited in specific populations (Camin and Ehrlich 1958 in Beatson 1975, p. 241). This natural selection results in individuals with cryptic coloration that is highly specialized for their habitat. Coloration, when broken down into the most basic classes, ranges from the regularly banded morph, to a reduced pattern morph, to a uniformly unbanded morph (King and Lawson 1995, p. 885). Most northern water snakes meet the standard description (*i.e.*, the regularly banded morph); however, ''the range of variability cannot be overstated'' (Dorcas and Gibbons 2004, p. 179).

Focusing on the geographic area of the petitioned action, the northern water snake is found throughout Maryland and Virginia, and its distribution in the Washington DC Metropolitan area of the Potomac River appears concentrated from just north of Great Falls National Park southward to just north of Indianhead, Maryland (Mitchell 1994, p. 237).

Distinct Vertebrate Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. ''Species'' is defined by the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722; February 7, 1996), to help us in determining what constitutes a DPS. The policy identifies three elements that are to be considered regarding the status of a possible DPS. These elements include: (1) The discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. The following is our evaluation of these elements in relation to the petitioned entity, the upper tidal Potomac River population of the northern water snake.

Discreteness: The DPS policy states that a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it must be delimited by international governmental boundaries within which difference in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The petitioner claims that the color pattern of the upper tidal Potomac River population of the northern water snake is different from dorsal patterns of other water snakes in Virginia. However, as referenced earlier, the northern water snake is highly variable in both dorsal and ventral color patterns (Dorcas and Gibbons 2004, p. 178). Therefore, color pattern alone does not provide sufficient information to support marked separation from other populations of the same taxon as a consequence of physical factors.

In summary, the petitioner does not present any evidence to indicate that the species is markedly separated from other populations of the same taxon by physical, physiological, ecological, or behavioral factors, nor is it delimited by an international governmental boundary. The northern water snake within the upper tidal Potomac River

therefore does not meet the ''discreteness'' criterion.

Significance: Pursuant to our DPS policy, in addition to our consideration that a population segment is discrete, we further consider its biological and ecological significance to the taxon to which it belongs, within the context that the DPS policy be used ''sparingly'' while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The petition does not address these factors. Therefore, based on the lack of information in the petition and the information readily available in our files, the upper tidal Potomac River population of the northern water snake is not significant in relation to the remainder of the taxon.

Finding

We reviewed the information presented in the petition, and evaluated that information in relation to information readily available in our files. On the basis of our review, we find that the petition does not provide substantial scientific or commercial information to indicate that the upper tidal Potomac River population of the northern water snake constitutes a valid DPS. This finding is based on the lack of substantial evidence indicating this population meets the discreteness element of the DPS policy and the lack of substantial scientific information that the upper tidal Potomac River population is significant in relation to the remainder of the taxon. Therefore, we conclude that the upper tidal Potomac River population of the northern water snake is not a listable entity pursuant to section 3(15) of the Act. We will not be commencing a status review in response to this petition. However, we encourage interested parties to continue to gather data that will assist with the conservation of the species. Information regarding this species may be submitted at any time to the Field Supervisor, Chesapeake Bay Field Office (see **ADDRESSES** section).

References Cited

A complete list of all references cited herein is available, upon request, from the Chesapeake Bay Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Charisa Morris, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 28, 2006.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–20542 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Cerulean Warbler (Dendroica cerulea) as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the cerulean warbler (*Dendroica cerulea*) as threatened under the Endangered Species Act of 1973, as amended (Act). The petition also asked that critical habitat be designated for the species. After reviewing the best available scientific and commercial information, we find that the petitioned action is not warranted. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on November 28, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the development of this 12-month finding, will be available for inspection, by appointment, during normal business hours at the Columbia Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, Missouri 65203. Submit new information, materials, comments, or questions concerning this species to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Scott, Supervisor (see **ADDRESSES**), by telephone at 573–234–2132, by facsimile at 573–234–2181, or by electronic mail at *charlie_scott@fws.gov.* Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding, requiring a subsequent finding to be made within 12 months.

Previous Federal Actions

We added the cerulean warbler to our former Category 2 list of candidate species on November 21, 1991 (56 FR 58804). Category 2 candidate species were those species for which we possessed data indicating that proposing to list them as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat were not available at that time to support proposed rules. Category 1 candidate species were those for which we

possessed sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The cerulean warbler was also in the November 15, 1994, Candidate Notice of Review (59 FR 58982) as a Category 2 candidate species. The list of Category 2 species was eliminated by the Service in 1996. Since then the Service has applied the term ''candidate species'' only to those species previously considered to be ''Category 1'' candidates, and we apply the same definition to these species (61 FR 7596; February 28, 1996). The cerulean warbler has never been a Category 1 candidate species or a candidate species, as defined, since 1996.

Due to concerns regarding the population trend of the species, in 1995, the Service contracted to Dr. Paul Hamel, of the U.S. Forest Service's Southern Forest Research Station in Stoneville, Mississippi, to develop a cerulean warbler rangewide status assessment report. Dr. Hamel completed his report in April of 2000 (Hamel 2000a), and we distributed it and posted it on our Web site at that time.

On November 6, 2000, the Service received an October 30, 2000, letter from Douglas A. Ruley of the Southern Environmental Law Center in Asheville, North Carolina. Mr. Ruley's letter conveyed a petition to list the cerulean warbler as a threatened species and to designate critical habitat for the species (Ruley 2000). The following organizations were listed as the petitioners: National Audubon Society, Defenders of Wildlife, Sierra Club, The Wilderness Society, American Lands Alliance, Western North Carolina Alliance, Southern Appalachian Biodiversity Project, Appalachian Voices, Cherokee Forest Voices, Southern Environmental Law Center, Southern Appalachian Forest Coalition, Heartwood, Dogwood Alliance, West Virginia Highlands Conservancy, Inc., Virginia Forest Watch, Buckeye Forest Council, Allegheny Defense Project, Vernon Civic Association, Conservation Action Project, Superior Wilderness Action Network, Indiana Forest Alliance, Regional Association of Concerned Environmentalists, Ouachita Watch League, Newton County Wildlife Association, Chattooga Conservancy, Wild Alabama, Georgia Forest Watch, and South Carolina Forest Watch.

On September 24, 2002, the Service made its initial 90-day finding on the petition, and a notice of that finding was published in the **Federal Register** on October 23, 2002 (67 FR 65083). Our finding was that the petition presented substantial information indicating that the petitioned action of listing the species may be warranted. At that time, we initiated a status review, which included a 90-day comment period.

We received 290 responses to our request for additional information in our 90-day finding for the cerulean warbler (67 FR 65083; October 23, 2002). A large number of these responses were identical or similar comments. Comments and information were received from 12 State fish and wildlife agencies within the range of the warbler, 4 academic researchers, 2 county government agencies, the U.S. Forest Service (4 units), National Park Service (2 units), Department of Defense, U.S. Army Corps of Engineers, a U.S. Congressman, 7 corporations, 40 nongovernmental organizations, numerous private citizens, and several other entities. Additionally, we directly contacted, and received information from, wildlife agencies and biologists within the cerulean warbler's range in Canada and South America. We reviewed all responses received, and those that contained new, updated, or additional scientific or commercial data were thoroughly considered in this 12-month finding.

Due to budget shortfalls during subsequent fiscal years, the Service was unable to fund additional work on the petition until late in fiscal year 2005. Since that time, we have analyzed the comments received after the 2002 finding, reviewed new published and unpublished reports and data on the species and factors affecting its habitat, and brought together a panel of experts on the species to provide additional insight into the current status and trends of the cerulean warbler.

After our resumption of work on the petition in late 2005, a lawsuit was filed by five of the petitioners (National Audubon Society, Defenders of Wildlife, Southern Appalachian Biodiversity Project, Western North Carolina Alliance, and Heartwood) in the U.S. District Court for the District of Columbia on February 28, 2006. The suit asked the Court, among other things, to compel the Service to make and publish in the **Federal Register** a 12-month finding regarding the plaintiffs' petition to list the cerulean warbler as a threatened species. Although we had already resumed work on the petition, due to the lawsuit, we entered into a settlement agreement with plaintiffs in which we agreed to provide our 12-month finding to the **Federal Register** no later than November 30, 2006.

Cerulean Warbler Natural History

The cerulean warbler is a small insectivorous neotropical migrant songbird (11.5 centimeters (4.5 inches) long and weighing 8 to 10 grams (0.3 to 0.4 ounces)). It breeds in mature deciduous forests primarily within the central hardwood region of eastern North America, primarily in the Ohio and Mississippi River Valleys and adjacent areas east of the Appalachians, in New England and southern Canada, and in the Great Lakes region. (Hamel 2000a, pp. 2–4). The breeding range generally extends from the eastern Great Plains, north to Minnesota, east to Massachusetts, and south to North Carolina and Louisiana (Hamel 2000a, p. 2), encompassing 33 States and 2 Canadian Provinces. The core area of the breeding range is currently within the Cumberland Plateau and Ohio Hills physiographic regions in eastern Tennessee, eastern Kentucky, southern and western West Virginia, southeastern Ohio, and southwestern Pennsylvania (Villard and Mauer 1996, p. 7 and Figure 7; Sauer et al. 2005a). This species undertakes a long migration compared to many other warblers and passerines of similar size (Hamel 2000b, p. 1), covering a distance of approximately 4,000 kilometers (km) (2,500 miles (mi)) between the central latitudes of North America and northern latitudes of South America. The migratory pathway between the breeding and wintering grounds is not well known, but for most individuals, it likely includes a flight across the Gulf of Mexico and stops at a limited number of locations in Central America and northern Colombia or Venezuela (Hamel 2000b, p. 4). The fall migration to South America might be along a more easterly path than that of the northward migration in the spring (Dunn and Garrett 1997, p. 405). Cerulean warblers winter in broad-leaved evergreen forests within a relatively narrow band of middle elevations (500 to 1,800 meters (m); 1,650 to 5,900 feet (ft)) in the northern Andes Mountains in Venezuela, Colombia, Ecuador, Peru, and Bolivia and possibly in the Guayana Highlands of southeastern Venezuela, especially the tabletop mountains (tepuis) of this ecoregion (Robbins et al. 1992, p. 559; Moreno et al. 2006 unpublished report, p. 3).

On the breeding grounds, cerulean warblers prefer mature hardwood forests with tall, large-diameter trees and a structurally diverse canopy (multiple vegetation layers, often associated with uneven-aged forest stands). They occupy forests with these structural characteristics in both upland and

bottomland locations (Hamel 2000b, p. 4). In the Appalachian Mountains, they tend to occur more frequently and in higher abundance on ridge tops than in valley bottoms (Weakland and Wood 2005, pp. 503–504; Wood et al. 2006, pp. 160–161; Buehler et al. *in press*, p. 9). Throughout much of their breeding range, they prefer to breed in large forest patches, and so are considered ''area-sensitive'' (Robbins et al. 1989a, p. 25; Mueller et al. 2000, p. 15), although they might not be as sensitive to forest patch size in well-forested and less fragmented landscapes where avian nest predation and parasitism rates tend to be lower (Hamel 2000b, p. 4). In parts of their range, cerulean warblers exhibit positive associations with canopy gaps and relatively small internal forest openings (Perkins 2006, p. 26), but they avoid abrupt edges between forest and large areas of open land (Wood et al. 2006, p. 160). Post-fledging habitat for this species has not been studied, but assuming cerulean warblers are similar to other mature forest-associated birds, they might seek out areas where shrubby vegetation provides good cover from predators as well as an abundance of good foraging substrate. Such areas might include small forest openings or early successional habitats, but habitat use during this period of the year has not been described and the relative importance of different habitat types during the post-fledging period is not known.

Insects are the primary food source of cerulean warblers throughout the year. During the breeding season, their diet has been observed to consist primarily of Homoptera and Lepidoptera but also may include small amounts of Coleoptera, Hymenoptera, Diptera, Hemiptera, Araneae, and other arthropods (Hamel 2000b, p. 6). While no detailed studies of diet have been completed during the non-breeding period, cerulean warblers appear to use nectar resources, as well as insects, during at least some period of their residency on their non-breeding grounds in South America (Jones et al. 2000, p. 961; USFWS 2006, Appendix 5—M.I. Moreno's PowerPoint presentation, slide 15) and have also been observed eating small amounts of plant material during migration (Hamel 2000b, p. 5). Their primary foraging mode for capturing insects is gleaning prey from the upper and lower surfaces of leaves. They also use sallying and hover-gleaning to a lesser extent (Hamel 2000b, p. 5).

Cerulean warblers build their nests high above ground (mean height of 11.4 m (37 ft); Hamel 2000b, p. 9) in the mid-story or canopy of trees. Clutch size is normally 3 or 4 eggs with an incubation period of 11 to 12 days and a nestling period of 10 to 11 days. Their nests are known to be parasitized by brown-headed cowbirds, particularly in the western portion of the cerulean warbler breeding range where cowbirds are more abundant (Hamel 2000b, pp. 9–11). Nest success varies annually and regionally, with observed average annual nest success rates at specific study sites ranging from approximately 20 percent in southern Indiana and the lower Mississippi River valley to approximately 58 percent in Ontario and eastern Tennessee. The average number of young fledged per successful nest also varies, although somewhat less dramatically, with reports of annual values between 1.7 and 3.0 for most study sites (USFWS 2006, Appendix 5—D. Buehler's PowerPoint presentation, slides 25–28). Cerulean warblers typically arrive on their breeding grounds between mid-April and mid-May, depending on latitude, and remain there until sometime between late July and mid-September (Dunn and Garrett 1997, pp. 405–406). Cerulean warblers usually raise a single brood during this period; multiple nesting attempts are commonly undertaken if initial nest attempts fail. It is rare for this species to raise two broods in the same breeding season.

Cerulean warblers are predominantly socially monogamous (one male mated with one female), but social bigamy (one male mated with two females) has been observed in the Ontario population (USFWS 2006, Appendix 4, Day 2–p. 2). This behavior has not been studied at other locations. Some researchers have also observed a clumped distribution of cerulean warbler territories within study sites, apparently independent of habitat features. However, these patterns have not been studied rigorously nor confirmed as being different from a random distribution or a result of habitat selection (Hamel 2000b, p. 8).

Analysis of genetic variability at the population level has revealed no significant variation in neutral genetic markers across the breeding range, suggesting a single genetic population for this species (Veit et al. 2005, pp. 165–166). A study of natal and breeding dispersal between years using stable isotope analysis corroborates this hypothesis by suggesting a relatively high level of interannual adult dispersal between regions, particularly within the central portions of the breeding range (USFWS 2006, Appendix 4, Day 1—p. 14). Adult dispersal to different breeding locations between years appears to be lower in both the southern and northern portions of the range than in the center of the range, suggesting higher site fidelity to breeding locations in those portions of the range. Natal dispersal between regions within the breeding range did not appear to be any more pronounced than adult dispersal. This is different than many other warbler species, which typically exhibit much higher natal dispersal than adult dispersal. Dispersal characteristics of cerulean warblers probably influence source-sink dynamics of the population, and more information on dispersal is needed to understand the current population trend of the species.

On the wintering grounds, this species may prefer forests with old-growth conditions, but it has also been found in second-growth forests and shade-grown coffee plantations (Hamel 2000b, p. 5; Jones et al. 2000, p. 958). As with its breeding habitat, a structurally diverse canopy with multiple vegetation layers appears to be an important component of its wintering habitat. It is generally found in mixed-species flocks of canopy-dwelling birds, and this association with mixed-species flocks could be an important characteristic of their occurrence on the wintering grounds (Hamel 2000b, p. 5), although more study of their social behavior is needed. Cerulean warblers usually reside on their winter grounds from October to February (Hamel 2000b, p. 9—Figure 3).

Cerulean warblers are nocturnal migrants. Little is known about habitat preferences and other ecological aspects of this bird's migration. Several stop-over locations for spring migration have been found in Belize (Parker 1994, p. 70), Honduras, and Guatemala (Welton et al. 2005, p. 1), but records of this species during migration elsewhere are scarce. To explain this, one hypothesis is that cerulean warblers could migrate in pulses of large groups of individuals that make relatively long flights between stops (for example, northern South America to middle Central America and then across the Gulf of Mexico to southern United States). Even fewer records exist for cerulean warblers during the southward migration in the fall, prompting the suggestion that these birds might fly non-stop from the southern U.S. all the way to the northern coast of South America. Isotope analyses indicate some level of migratory connectivity for this species (USFWS 2006, Appendix 4, Day 2—pp. 7–8), suggesting that individuals residing in the northern portions of the breeding range tend to go to more northerly portions of the wintering range and birds from the southern portions of the breeding range go to the

more southerly portions of the wintering range.

Survival rates of cerulean warblers have not been studied widely across their range. Only one study has published estimates of minimum survival rates. Jones et al. (2004, p. 17) reported an annual adult male survival rate of 0.49 over the period 1995 to 2001; or 0.54 in ''normal years'' and 0.40 following an ice storm in 1998. These estimates are minimum values because they do not account for adult dispersal and emigration between breeding seasons.

Population Size and Trends

Background

Since its inception in 1966, the North American Breeding Bird Survey (BBS) is the primary data source for estimating population trends of more than 400 species of birds breeding in North America (Droege 1990, p. 1). More than 4,000 BBS survey routes are distributed along secondary roads across the United States and southern Canada in a stratified random design. Each year, volunteer observers count birds along these routes, following standardized protocols. Surveys are conducted at approximately the same time each year, which is typically during the first half of June in most locations. Each survey route consists of 50 stops spaced 0.8 km (0.5 mi) apart. Observers count all the birds seen and heard within 0.4 km (0.25 mi) of each stop location during a three-minute period (Droege 1990, p. 1). The sum of the counts for each species over the 50 stops is used as an index of relative abundance for that route (Link and Sauer 2002, pp 2833).

Statistical analyses are performed on these index values across routes to estimate population trends for particular species or groups of species. Two statistical analysis techniques are currently employed by analysts working with the BBS data: The route-regression method (Geissler and Sauer 1990, pp. 54–56) and the hierarchical model method (Link and Sauer 2002, pp. 2,833–2,836). The hierarchical model method is the more recently developed method, and BBS analysts are in transition from using the route-regression method to using primarily the hierarchical model method, which is a less subjective and more efficient method for estimating trend (Link and Sauer 2002, p. 2,837). The presentation of BBS data in the 2000 petition (Ruley 2000) used the route-regression method. Throughout this finding we discuss BBS data using the newer hierarchical model method. As a result, the figures used herein to describe BBS population trends differ from those used in the petition. Statistical analyses can be conducted across different time frames and spatial scales (for example, States, bird conservation regions, range-wide).

It is important to recognize that the BBS was designed to estimate trends (changes in population) and not actual abundance (population size) of birds. Much of the criticism that has been leveled at the BBS—including doubts expressed about the BBS in the Service's positive 90-day finding on the petition to list the cerulean warbler—stems from confusion about the survey's objective and the protocols required to meet that objective. The following discussion addresses four aspects of the BBS that contribute to this confusion and why these issues do not detract from the usefulness of BBS for tracking bird population trends.

(1) The point count survey methodology of the BBS does not result in a complete count of the birds present. The efficiency with which birds are counted varies between observers and within observers over time and space. In addition, a 3-minute count is not long enough to detect all birds present in a given location due to temporal variability (both daily and seasonally) in detectability of different species. However, the BBS methodology does provide an index of relative abundance of birds along the survey routes. This index can be scaled to different levels of abundance using different analysis methods and provides an appropriate means for assessing population change along the routes. An index of relative abundance is suitable for tracking changes in the size of the entire population if the ratio between the number of birds detected in the surveys and number of birds actually present across the landscape remains fairly constant and without any directional bias across years (Bart et al. 1998, pp. 212–214).

The statistical analyses of BBS data help to address some of the limitations pertaining to observer efficiency by incorporating variables that account for observer effects into the analyses. Such effects as differences in counts between observers in different years on the same route or the differences between an observer's first count and counts in subsequent years on the same route (the novice effect) are accounted for in the statistical analysis of the survey data (Sauer et al. 1994, pp. 59–60; Link and Sauer 2002, p. 2,834).

Another factor contributing to incomplete counts of all the birds present is that most detections of forest-associated songbirds are largely through observers hearing the songs of males. Females of most forest songbirds do not sing and, therefore, are more difficult to detect during the breeding season. Thus, females of these species are greatly undersampled by the BBS. Again, this limitation is not relevant to the detection of population trends as long as trends in the male portion of the population are representative of trends in the entire population. For most small songbirds, such as the cerulean warbler, there is no substantial data indicating either a highly skewed sex ratio or a large difference in survival rates between the sexes such that trend data might be biased.

(2) BBS surveys are conducted along roadsides and might not accurately reflect habitats across entire landscapes. The proportion of different habitat types could be different across landscapes compared with what is sampled by BBS routes. However, this limitation, in and of itself, does not render the BBS ineffective in estimating trends of forest birds unless there is a consistent bias in the rate of change of habitats bordering roads compared to change of habitats away from roadsides. The fact that birds that avoid habitat edges might not be as abundant near roads as away from roads also does not influence trend estimates, except perhaps to reduce overall sample size for such species and require more years of data or more detections to achieve appropriate levels of statistical significance.

Experimental studies comparing roadside with off-road counts or modeling efforts to assess relative amounts of different habitats in the areas immediately surrounding BBS survey routes and areas away from routes are necessary to address the issue of roadside habitat bias for the BBS. Two published studies have evaluated the bias associated with roadsides in the eastern United States. These studies were conducted in Ohio and Maryland. They both concluded that, although BBS routes under-sampled forest habitats in the regions evaluated (areas adjacent to BBS routes tended to have proportionately less forest cover than did the region as a whole), they did not find a bias in the change in habitats over time along BBS roadside routes compared with the larger landscapes surrounding those routes (Bart et al. 1995, p. 760; Keller and Scallan 1999, pp. 53–55). These studies suggest that the roadside nature of the BBS does not create a substantial bias in the BBS data pertaining to habitat changes that are likely to influence bird population trends. In contrast with this apparent lack of bias in trend estimates, the indication from these studies that BBS routes might under-sample forest

habitats in the East could have implications for the population size estimates based on the Partners in Flight method (discussed below). However, an unpublished study from West Virginia (Weakland et al. 2003, p. 8) found no significant difference between the abundance estimates of cerulean warblers from off-road counts and from BBS routes. The study found a tendency for the off-road counts to be higher than counts on BBS routes, but the difference was not significant. The study concluded that, for cerulean warblers, data collected on BBS routes in West Virginia are comparable to data collected from off-road locations (Weakland et al. 2003, p. 8).

In the positive 90-day finding on the petition to list the cerulean warbler, the Service expressed doubt on the ability of BBS data to reliably determine bird population trends of mature forest-associated species, such as the cerulean warbler. Reasons for this doubt were primarily associated with concerns about a possible roadside bias and concerns about lack of uniform coverage of BBS routes across the range of the cerulean warbler. To date, the published evidence on the topic of the roadside bias suggests that the roadside nature of the BBS does not significantly bias its ability to accurately track population trends of mature forest species, such as cerulean warblers (Bart et al. 1995, p. 760; Keller and Scallan 1999, pp. 53–55). Furthermore, the more recently implemented hierarchical model method for analyzing BBS data estimates trends more efficiently (resulting in smaller confidence intervals around the trend estimate) based on the available data (Link and Sauer 2002, p. 2837), reducing concerns about lack of uniformity in coverage of BBS routes, particularly at the rangewide scale.

It is also worth noting that efforts to compare population trends calculated from BBS data with independent data sources have corroborated the trends indicated by the BBS for a variety of species, including independent trends based on the Christmas Bird Count, Mourning Dove Survey, raptor migration counts, and checklist programs (Droege 1990, p. 3). In addition, many peer-reviewed publications have been completed using BBS data (for example, Robbins et al. 1989b, Sauer et al. 1994, Link and Sauer 1997, Link and Sauer 1998, Royale et al. 2002, Sauer and Link 2002), indicating the overall robustness and scientific credibility of the BBS and its utility for monitoring bird population trends.

(3) A published analysis of BBS data using the hierarchical model method indicates that at the range-wide level, cerulean warblers have declined at an average rate of 3.04 percent per year during the period of 1966 to 2000, with the 95 percent credible interval (confidence interval for hierarchical method; C.I.) for the trend estimate being −4.02 to −2.07 (Link and Sauer 2002, p. 2837). A more recent, but unpublished, analysis of the BBS data for the years 1966 to 2005 using the hierarchical model method indicates a similar result: cerulean warbler trend was −3.2 percent per year (95 percent C.I.: −4.2 to −2.0) for this 40-year period (USFWS 2006, Appendix 5, slide 21 of J. Sauer's PowerPoint presentation). This recent estimate was based on data from 243 BBS routes on which cerulean warblers were detected at least once during that 40-year period. The rangewide relative abundance reported from this recent analysis was 0.25 birds per route, which is relatively low (less than 1 bird per route), and warrants some caution when considering the BBS results for this species, because a positive bias in the trend might occur with low counts, and because the variances are imprecise (Sauer et al. 2005b). Within the core of the species' range in the Appalachian Mountains (Bird Conservation Region 28), which currently supports an estimated 80 percent of the breeding population (as calculated using the methods described by Rosenberg and Blancher 2005), the relative abundance from the recent analysis was 1.03 birds per route and the 40-year trend was −3.1 percent per year (95 percent C.I.: −4.4 to −1.7; USFWS 2006, Appendix 5, slides 17–19 from J. Sauer's presentation).

Analysis of the rangewide trend over the last 10 years (1996 to 2005) compared with the previous 30 years (1966 to 1995) indicated no significant change in the trend between those two periods (estimated change in trend = −0.5 percent, 95 percent confidence interval = −3.8, +3.4). The trend estimate for cerulean warblers over the first 30 years of the BBS was −3.0 percent per year (C.I.: −4.3, −1.8) and the estimate for the past ten years was −3.6 percent per year (C.I.: −6.3, −0.1). Because 10 years is a smaller sample size than 30 years, the trend estimate based on the last 10 years is less precise than the estimate from the previous 30 years, so that the 10-year credible interval completely overlaps the 30-year credible interval. Thus, the available data suggest that the trend for cerulean warblers has not changed during the more recent period and the population continues to decline by about 3 percent per year, including within the Appalachian core region (Sauer 2006).

(4) Partners in Flight produced estimates of global population size for North American land birds (Rich et al. 2004, pp. 69–77) based on a method developed by Rosenberg and Blancher (2005, pp. 58–61). The estimate of the cerulean warbler population was 560,000 individuals based on an average of counts made on BBS routes during the period of 1990 to 1999; it can be thought of as an estimate for the year 1995 (the mid-point of the time period). Partners in Flight rated the relative accuracy of their population estimates based on known sources of variation and limitations of the methodology pertaining to each species. Statistically derived confidence limits could not be provided because the variance has not been measured for some of the parameters and assumptions used in the method. Partners in Flight rated the accuracy of the population estimate for cerulean warblers as ''moderate,'' suggesting that they felt the estimate was likely to be within the correct order of magnitude (100,000's of birds rather than millions or 10,000's of birds) and could be within 50 percent of the true number (for example, 280,000 to 840,000).

The Partners in Flight method uses BBS relative abundance data along with several assumptions and correction factors to calculate the estimated population size for species covered by the BBS (Rosenberg and Blancher 2005, pp. 58–61). The method is based on the idea that, at each stop on a BBS route, an observer is recording birds within 400m (1,300 ft) of that stop location (per BBS survey protocol). Thus, the observer is effectively sampling an area equal to a circle with a 400m (1,300 ft) radius. Over the 50 stops of a BBS route, this sums to an effective sampling area of 25.1 km^2 (9.7 mi^2). After making some assumptions regarding BBS routes adequately representing habitats across large landscapes and assumptions about the detectability of birds, the average number of birds counted on BBS routes within a particular region can be extrapolated across that region to calculate an estimated population size.

The following paragraphs present a list of the primary assumptions of the Partners in Flight method and discussion of the effects violations of these assumptions are likely to have on calculations of cerulean warbler population estimates.

(a) BBS routes are distributed randomly across regional strata. The BBS methodology prescribes random distribution of survey routes within

sampling strata, and the assumption that BBS routes are randomly distributed has not been questioned. However, the intensity of route allocation within particular strata and the topographic location of routes are two factors that could lead to biased population estimates. For example, if BBS routes in the Appalachian Mountains tend to be along roads that follow creek bottoms, and if cerulean warblers tend to be more abundant on ridge tops, as indicated in Weakland and Wood (2005, pp. 503–504), Wood et al. (2006, pp. 160–161), and Buehler et al. (in press, p. 9), then the BBS counts could be biased by undersampling the topographic locations where these birds are likely to be most abundant. Both the route allocation and topographic location biases could lead to an underestimate of total cerulean warbler population size.

(b) BBS routes sample habitats in proportion to their relative amounts within the regional strata. The possibility of a habitat bias from the roadside nature of BBS routes contributes to uncertainty about the accuracy of population estimates derived from the Partners in Flight method. As discussed above in relation to population trend estimation, the two studies that have been conducted in the eastern United States have shown that BBS routes in Ohio and Maryland undersample forest habitats compared to the surrounding landscape (Bart et al. 1995, pp. 759–761; Keller and Scallan 1999, pp. 53–55). If a similar bias toward underrepresenting forest habitat exists throughout much of the cerulean warbler's range, then such a bias would result in an underestimation of the total population size when using the Partners in Flight method. Various efforts are underway to evaluate the habitat bias of BBS routes across much of the United States, but results are not available yet.

(c) Detectability of different bird species is a function of their distance from the observer and time of day, and all species have a fixed, average maximum detection distance. Correction factors for detection distance and time of day were incorporated into the estimation method to address this assumption. For the detection distance, species were assigned to one of five categories corresponding to different average maximum distances at which these birds were likely to be detected based on habitat type, song quality, and likelihood of being detected in some way other than by song (for example, hawks soaring in the distance): 80m (260 ft), 125m (400 ft), 200m (650 ft), 400m (1,300 ft), and 800m (2,600 ft). These different detection distances result in different effective sampling areas for BBS routes. Cerulean warblers were assigned a detection distance of 125m (400 ft), which is the assumed average maximum distance at which an observer will be able to detect a singing bird. This assumption has not been tested, and some experts believe that this detection distance might be an overestimate of the distance at which a singing cerulean warbler can always be heard; it is unlikely to be an under-estimate (USFWS 2006, Appendix 4, Day 2—pp. 1–2). If the real maximum detection distance for this species is less than 125m (400 ft), it would result in a larger population estimate based on the Partners in Flight method. For example, using a detection distance of 100m (325 ft) would result in a population estimate that is approximately 60 percent higher than the estimate using a 125m (400 ft) detection distance. The large influence of relatively small changes in detection distance on the resulting population estimate indicates that detection distance is a critical parameter in the population estimation methodology and contributes a large amount of uncertainty pertaining to the population estimate for a particular species when the accuracy of this parameter is unknown.

To correct for detection issues associated with time of day, Rosenberg and Blancher (2005, pp. 59–61) developed distribution curves of the detections for each species over the 50 stops of BBS routes. Based on these curves, peak detection probabilities were determined for each species and then a ratio of the peak detections to average detections was calculated. This ratio is used to adjust the average numbers of birds detected per route to peak numbers per route, reflecting numbers that would be expected if the peak detection probability lasted throughout the morning hours when BBS routes are surveyed. The time of day correction factor calculated for cerulean warbler is 1.35 (Rosenberg and Blancher 2005, p. 63—Table 2). The methods for deriving this correction factor are empirically based, and there is little reason to believe that it is biased or otherwise inappropriate for cerulean warblers.

One potential correction factor that was not incorporated into the Rosenberg and Blancher (2005) method and that could influence population estimates for cerulean warblers is a correction for detectability associated with the season. The song rate of most cerulean warbler males declines once they become mated and as the breeding season progresses (USFWS 2006, Appendix 4, Day 2—p. 2). The breeding season typically begins between mid-April and early May throughout much of the breeding range. Most BBS routes are run during the first half of June, and overall song rate of mated males is likely to be lower at that time than earlier in the breeding season. Such a time of season effect could contribute to an under-estimate of the total cerulean warbler population size.

(d) Individuals detected during a count represent one member of a pair. A pair correction factor of two times the initial estimate was also incorporated into the method to address Assumption D. Most individuals in breeding populations are mated during the time of the BBS survey, but it is usually only one member of each pair that is detected (for example, a singing male). Rosenberg and Blancher (2005, p. 61) acknowledge that the appropriate pair correction factor for all species is somewhere between one and two, because not all individuals in a breeding population are mated. However, this correction factor has not been empirically established for any species yet. Field studies indicate that not all male cerulean warblers attract mates during the breeding season, although some males of this species are also known to be bigamous (USFWS 2006, Appendix 4, Day 2—p. 2). The proportion of unmated and bigamous males across the species range is unknown. The most appropriate pair correction factor for cerulean warblers might be a number less than two, but insufficient data currently exist to estimate what this number should be for the entire population. A pair correction factor less than two would result in a smaller population estimate, while a pair correction factor greater than two would result in a larger population estimate.

Status of the Cerulean Warbler Population

We used a stepwise approach to evaluate what single factor or combination of factors may affect the cerulean warbler's population trend in order to evaluate whether the species warrants listing as threatened or endangered under the Endangered Species Act. First, we used all available information, including that contained within the petition, scientific literature, and expert opinion (USFWS 2006) to identify potential factors that might explain the historical and projected population trends (see previous section ''Population Size and Trend''). Next, we gathered information to assess whether the likelihood of occurrence or magnitude of effect of the factors were likely to result in population-level effects. We used the qualitative judgments of independent experts (USFWS 2006) to assess these potential

causal factors where quantitative data are unavailable. Then, we synthesized the information on the past and future factors with estimates of historical (Link and Sauer 2002, p. 2837, Sauer 2006) and projected (Thogmartin 2006) cerulean warbler population trends to estimate to what degree potential factors might influence the species' risk of extinction. Finally, we compared the results of our analysis to the five factors listed in the Act to ensure thorough consideration of potential threats, and, in light of the Act's five-factor analysis, we evaluated whether the species' current or projected status met the definitions of threatened and endangered.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and our implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal endangered and threatened species list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1), as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information regarding the status of, and threats to, the cerulean warbler in relation to the five factors is discussed below.

In developing our 12-month finding for the cerulean warbler, we considered all scientific and commercial information on the status of the species that we received during the comment period following our 90-day finding. We also searched the scientific literature for relevant data and consulted experts on the cerulean warbler and threats to its habitat to ensure that this finding is based on the best scientific and commercial data available.

As noted earlier, we considered the population trend estimate of −3.2 percent per year (CI = −4.2 to −2.0), which is based on Breeding Bird Survey data (Link and Sauer 2002, p. 2837; Sauer unpublished data 2006), to be the best available representation of the species population status. This trend estimate comprises all of the factors causing population change during the 40-year period of Breeding Bird Survey data collection. In other words, all the factors affecting cerulean warbler demographics have combined over the past 40 years to produce an annual average decline of 3.2 percent per year, with 90 percent certainty that the true decline is between 4.2 and 2.0 percent per year (Link and Sauer 2002, p. 2837; Sauer unpublished data 2006). The information available suggests that the factors described in this section will continue affecting cerulean warbler habitats and demography in a similar manner, resulting in a continuing population decline of approximately 2 to 4 percent per year.

We describe the potential contributing factors to the species' approximately 3 percent annual decline in the following description of the five listing factors (iterated above).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

After consideration of all available information, the Service has determined that four biological mechanisms operating throughout the species' annual range are likely to be primary contributors to the species' declining population trend. Each of these mechanisms is related to changes in habitat in North America, South America, and along the species' migration routes. These mechanisms are:

1. Reduction in available nesting sites and suitable breeding territory characteristics because of loss or degradation of habitat,

2. Reduction in foraging success resulting from decreased prey abundance, primarily on the wintering ground in South America,

3. Increased predation throughout the species' annual range and nest parasitism of cerulean warblers in the breeding grounds, resulting from habitat fragmentation, and

4. Loss of migration habitat.

Each of these four mechanisms results, either directly or indirectly, from the reductions in quality and quantity of cerulean warbler habitat (Factor A of the Act) and therefore, all will be discussed under Factor A.

1. Reduction in available nesting sites and suitable breeding territory characteristics because of loss or degradation of habitat:

Although we do not have a rangewide numerical relationship between habitat loss and population change, we do know that there is a positive relationship between cerulean warbler nest presence and mature and old-growth hardwood forests with large trees, small gaps, and vertical diversity in vegetation layers (Hamel 2000b, pp. 12–18; Weakland and Wood 2002, p. 13). Therefore, we can conclude that degradation or removal of suitable mature and old-growth hardwood forestland will result in reductions in nesting opportunities, and that accumulation of habitat losses is likely to result in declines in cerulean warblers.

We do not know what happens to individual birds when breeding habitat is removed. Displacement of adults and mortality of nestlings is likely if removal of nesting stands occurs during the breeding season. Nestling or post-fledging mortality may also occur if habitat within nesting territories is eliminated or quality is reduced below an unknown threshold level. Results of recent studies suggest that cerulean warblers are capable of interannual movement (Veit et al. 2005, pp. 165–166; USFWS 2006, Appendix 5f, slide 17 of Jones PowerPoint); therefore, breeding habitat loss during the non-breeding season is likely to result in relocation of adults that return during the subsequent breeding season. However, the degree to which reproductive success or survival of displaced individuals is affected is likely dependent upon several variables, including whether the displaced birds relocate into already occupied or unoccupied, or whether remaining habitat is optimal or suboptimal. We do not have information to assess the degree and type of impact of breeding habitat of site-specific habitat loss, unless known occupied nests are removed.

Degradation of habitat quality can occur at several scales, and the resulting effect on cerulean warblers is likely to be context-dependent. Loss of a single dominant tree in a stand possessing numerous other dominant trees may have little or no effect on the reproductive success of breeding cerulean warblers, whereas loss of a single dominant tree in a stand having few other large trees may render a formerly suitable site unsuitable for nesting birds. Context is probably similarly important at larger scales. Reduction in patch size and introduction of hard edges may result in greater local population declines and habitat unsuitability where a forest stand is surrounded by an already fragmented landscape as opposed to largely intact forest. Thus, habitat content factors that operate at local scales (to include nest trees, prey base, etc.) and habitat context factors that operate at larger scales (to include things like habitat patch size, degree of landscape fragmentation, etc.) are both important determinants of overall habitat quality for breeding cerulean warblers.

The amount, distribution, and quality of habitat for breeding cerulean warblers has been altered dramatically since European settlement in the early 1600s. An estimate of total forestland in 1630 in 19 States in which cerulean warblers occur today and for which there was analyzed BBS data (Sauer 2006) was 133,000,000 ha (328,695,000 ac) (Smith et al. 2004, p. 33, citing Kellogg 1909). Today, the estimate of forest cover in those same States is 73,600,000 ha (181,850,000 ac) (Smith et al. 2004, p. 33), a total reduction of approximately 45 percent. The most dramatic change occurred between the early 1600s and 1900, when approximately 51 percent of forestland was converted to agricultural and other uses (Smith et al. 2004, p. 33). Since 1900, approximately 8,500,000 ha (21,000,000 ac) have reverted from primarily agricultural uses to forestland. Approximately 52 percent of today's hardwood forest within the eastern United States is in mature sawtimber (Smith et al. 2004, p. 64); some of this area is northern hardwood forest and outside the range of the cerulean warbler.

The cerulean warbler appears capable of using previously unoccupied stands that have matured to develop necessary habitat characteristics. Evidence of this capacity comes from New Jersey, New York, and parts of New England, where the species has recently expanded its range (Hamel 1992, pp. 385–400; Robbins et al. 1992, p. 551). Population information indicates that this expansion occurred during the later part of the 1900s, although experts suggest that the expansion does not appear to be continuing today (USFWS 2006, Appendix 4, Part II, p. 5). We do not know the distribution of cerulean warblers prior to 1966; therefore, we do not know whether this expansion is a reoccupation of restored forest or true expansion into an area not previously occupied.

Despite this recent, gradual increase in the total amount of forestland, cerulean warbler populations have declined since 1966, according to Breeding Bird Survey data. Several hypotheses could explain this phenomenon: (1) The amount of forest stands with diverse structure continues to decline even though total forestland acres increases; (2) local reductions in nesting opportunities in core breeding areas are having disproportionate effects at the population level; or (3) factors occurring elsewhere in the species annual range or not related to nesting opportunities are causing the decline. We will discuss each of the first two of these factors in the following text, and the third factor in subsequent sections.

Rangewide data are not available to quantitatively assess the amount of or change in habitat with desired characteristics for breeding birds. Nevertheless, several pieces of information are important for consideration. It takes hundreds of years for hardwood forests to naturally achieve complex structure of mature and old-growth forests (Hamel 2000, p. 12 citing Widman), which are characteristic of stands selected by cerulean warblers for breeding. Much of the reversion of agricultural lands to forestland has occurred since the early 1900s; therefore, much of the new acreage in forestland remains in relatively younger stands that have yet to achieve desired structural complexity. We note, however, that stand heterogeneity is likely a more important predictor of habitat quality than simply looking at stand age, because natural and anthropogenic disturbances can create desired stand complexity. Forest management practices, such as high-grading, may also affect habitat quality if the largest trees in the stand are removed, reducing structural complexity. Fire suppression, species-specific tree diseases, and locally or regionally high deer densities may also reduce the complexity of forest structure.

Effects in a relatively small portion of the species' range, compared to the species' entire breeding range, could contribute disproportionately to the population decline. This has likely happened in the past and may happen in the future. Historically, cerulean warblers were probably numerous in the bottomland hardwood forests of the Mississippi Alluvial Valley. Today, approximately 80 percent of forest in this area has been converted to nonforest uses (Brown et al. 2000, p. 6). Nesting cerulean warblers currently occur only in scattered locations within this region. It is important to note that most of this loss occurred before the Breeding Bird Survey began in 1966. Currently, large-scale habitat loss is occurring in the core of the species' range, Kentucky and West Virginia, where mountaintop coal mining and valley fill operations through 2012 are expected to remove 567,000 ha (1.4 million ac) of suitable forest habitat (USEPA 2005). The total cumulative forest loss from these activities will likely eliminate breeding habitat for 10 to 20 percent of the total cerulean warbler population currently occurring within that core area. The loss of breeding opportunities for birds in this area may have a disproportionate effect on the species' total population size.

The USDA Forest Service has projected forest change to the year 2050 (Alig and Butler 2004). These projections are based on prior trends in forest change, expected market conditions, and no change in forest management related policies. Under these conditions, the Forest Service expects a slight decline in hardwood forest area. Hardwoods will continue to dominate the southeastern United States; however hardwood forest area is expected to decline by up to 18 percent by 2050 (Alig and Butler 2004, pp. 32–33). Maple-beech-birch and oak-hickory forests are estimated to decrease by 6 percent and 15 percent, respectively (Alig and Butler 2004 p. 18). We note that small portions of the hardwood forest area contained within these estimates are outside the range of the cerulean warbler; refer to Alig and Butler (2004, p. 2) for a map of the forest survey area. We stress that changes in acreage or percent of forest landscape in hardwoods are only one determinant, and the actual composition and structure of hardwoods forests in future landscapes may be equally or more important.

In summary, a variety of factors has affected the quantity and quality of mature and old-growth hardwood forests within the range of the cerulean warbler. Overall, habitat loss beginning in the 1600s likely precipitated a decline in cerulean warblers; however, the conversion of forests stabilized with about 50 percent of forestland remaining in the early 1900s. Rangewide cerulean warbler population information did not become available until the 1960s; therefore, we do not know how the pre-1900s cerulean warbler population size changed as a result of this dramatic habitat loss, nor how it may have responded to post-1900 forest changes. Beginning in the 1900s, re-growth of forests previously converted to agriculture has added potential breeding habitat that may be reoccupied when stands achieve the characteristics selected for by cerulean warblers, as evidenced today in the Northeastern United States.

2. Reduction in foraging success resulting from decreased prey abundance, primarily on the wintering ground in South America:

Cerulean warblers feed exclusively on insects in North America, and on insects and nectar in South America. Availability of these resources is critical to an individual bird's survival. Insufficient fat storage before spring migration could increase an individual's risk of mortality and decrease reproductive success upon return to the breeding grounds. Insufficient fat

storage before fall migration could leave an individual at risk of mortality, especially if the migration route is over water where foraging opportunities are limited, as is currently hypothesized.

Winter range—Abundance of food resources in South America has likely declined because of the degradation and removal of tropical forests. Removal of overstory trees, as forests are cleared and shade-grown coffee plantations are converted to sun coffee plantations, is expected to result in losses of arthropods that are specialized for the canopy layers. For example, in Costa Rica, Perfecto (1996, p. 602) reported an average of 72 percent of the ants in a tropical forest tree canopy to be canopy specialists. However, that we do not know that cerulean warblers prey on ants. In a Costa Rican study, Perfecto et al. (1996, p. 602) reported similar arthropod diversity in overstory trees within shade-grown coffee plantations as within a native forest canopy. We do not have figures for arthropod diversity or abundance in the Northern Andes, but we expect that conditions may be similar. We do not have quantitative information on the differences in nectar resources between tropical forest and developed lands.

Moreno et al. (2006, p. 3) used a climatic and geospatial model to predict the potential maximum occurrence of cerulean warbler wintering habitat in the narrow elevation zone (500 to 1,500 m (1,650 to 5,000 ft)) in the Northern Andes and estimated a nearly 60 percent current reduction from maximum levels. The remaining habitat is tropical forest and shade-coffee plantations. Some field biologists believe that the model overestimates habitat availability, and they estimate that less than 10 percent remains (Moreno et al. 2006 unpublished report, pp. 3, 5).

Most of the loss of tropical forests in the Northern Andes occurred within the latter half of the 1900s. Approximately 15 percent of the species' modeled potential habitat (Moreno et al. 2006 unpublished report, p. 5) is managed under protective status. The effectiveness of this protective status for conserving cerulean warblers is uncertain because none of the documented cerulean warbler winter occurrences are within protected areas (Moreno et al. 2006 unpublished report, p. 5). The rate of loss of the remaining tropical forest is likely to be decreasing because remnant forests are in steep and inaccessible areas; however, removal of portions of the remaining tropical forests continues.

We know that cerulean warblers occupy shade-coffee plantations during the non-breeding season, but we do not know whether shade-coffee plantations are optimal or sub-optimal habitat because data are not available to compare body condition of cerulean warbler on shade-coffee plantations with birds occupying tropical forests. In other words, presence does not necessarily equate to suitability of these habitats. The amount of habitat supplied by shade-coffee plantations is diminishing, as some of these plantations are converted to sun-coffee plantations that lack the overstory required by wintering cerulean warblers (Moreno et al. 2006 unpublished report, p. 2). Cerulean warblers are not known, and are highly unlikely, to occur in sun-coffee plantations due to the plainly inadequate structure of such vegetation.

In summary, the population-level effects of habitat loss and degradation on forage abundance and foraging success have not been quantified. It is reasonable to conclude, however, that a greater than 60 percent decline of wintering habitat in South America has contributed to the approximately 3 percent annual population decline of cerulean warblers through reduced forage availability and increased competition for remaining food resources.

Breeding and Post-Fledging Range—Under pre-European settlement conditions on the breeding grounds, the hardwood forests of the eastern United States were a mosaic of different seral stages (Williams 1989, pp. 22–49). Although the forests were predominately mature and old growth, patches of younger seral-stage forests occurred within small gaps (Lorimer 1989, pp. 565–566). Today, cerulean warblers occur in greater relative abundance within landscapes with similar mosaic characteristics. Information suggests that cerulean warblers select nests sites in stands where canopies are interrupted by small gaps and canopy closure is between 65 percent and 85 percent (Hamel 2000, p. 16). Nests are found in areas with large diameter trees and stands with complex canopies, but small patches of seedling-sapling aged trees within the mature forest mosaic may provide important habitat for post-fledging first-year birds.

Today's mature forest characteristics may not mimic the mosaic conditions of original hardwood forest because of alterations in the disturbance regimes through fire suppression, dense populations of deer, and certain timber harvest methods. The effects of this change in forest disturbance regimes on cerulean warblers are not well studied or understood. It is possible, however, that the replacement of the natural disturbance regime—characterized by frequent, small-scale disturbances—with the less-frequent larger-scale disturbances (Lorimer 1989, pp. 565–566) may not produce understory conditions that favor foraging success for post-fledging birds because of the lack of interspersed seedling-sapling patches.

3. Increased predation throughout the species' annual range and nest parasitism of cerulean warblers in the breeding grounds, resulting from habitat fragmentation:

Fragmentation of cerulean warbler habitat has occurred throughout the species' range. High rates of predation and brood parasitism often accompany habitat loss and fragmentation, especially in forested landscapes interspersed with agricultural lands and grasslands (Hoover and Brittingham 1993, p. 234; Brittingham and Temple 1983, pp. 31–34; Faaborg et al. in Martin and Finch 1995, p. 361). Several studies have shown low rates of nest success (less than 40 percent) for cerulean warblers in areas of fragmented forest within agricultural landscapes due to high levels of predation and the presence of nest parasitism (Hamel 2000a, p. 4; Roth 2004, p. 43; Varble 2006 p. 3). Direct measurements of adult and post fledging mortality due to habitat loss and fragmentation during the breeding season on cerulean warblers do not exist; however, this phenomenon is well documented with other canopy and sub-canopy nesting songbird species. It is reasonable to conclude that brood parasitism and predation are exacerbated by habitat loss and fragmentation and that this is contributing to the approximately 3 percent annual population decline.

Wintering Range—Effects of habitat loss and fragmentation include increased risk of mortality from predation of neotropical migrant songbirds in the non-breeding range (Rappole et al. 1989, p. 407; Petit et al. in Martin and Finch 1995, pp. 179–180), especially if birds are forced to wander outside optimal habitat. Although no studies of predation on cerulean warblers in the non-breeding range have been conducted, it is reasonable to assume that predation-caused mortality of cerulean warblers is similar to that documented for other warbler species.

Approximately 60 to 90 percent of wintering habitat of cerulean warblers in South America has been converted to other land uses. This loss of habitat has resulted in a highly fragmented landscape. Geospatial modeling estimates that fragmentation of this habitat has more than doubled (Moreno et al. 2006, p. 14, unpublished report).

Breeding Range—Nest parasitism and predation usually result in mortality of nestlings and post-fledging birds. Brown-headed cowbirds (*Molothrus ater*) lay their eggs in the nests of other species, and when hatched, cowbird chicks outcompete the chicks of the natural parents. Likely nest predators are corvids, chipmunks, squirrels, and other arboreal animals.

Populations of cowbirds and avian predators are higher in highly fragmented forests and in areas where edges delineate sharp differences in land use between the forests and the adjacent stands. For example, cowbird abundance is greater along forest and agricultural edges than along edges created by different forest age classes (Rodewald and Yahner 2001, p. 1021) and are more common where human development provides new feeding sites, such as pastures. Overall, however, cowbird populations have declined since breeding bird surveys began in 1966 (Robbins et al. 1992, p. 7661). We do not know whether, or the degree to which, reductions in cowbird populations result in less pressure on cerulean warblers.

Effects of habitat loss and fragmentation on songbirds of North America have been relatively well studied compared with birds in South America; however, little specific information is available on cerulean warblers. In general, we know that increased fragmentation and decreased habitat patch size within the breeding range is likely to increase risk of predation and nest parasitism (Robinson et al. 1995, pp. 1988–1989; Donovan et al. 1995, p. 1393). Nest success was low (less than 25 percent) at Big Oaks National Wildlife Refuge in Indiana due to nest predation and nest parasitism; the breeding habitat on the refuge is surrounded by an agriculturally dominated landscape (Roth 2004, p. 43; Varble 2006, p. 3).

Studies on cerulean warblers have concluded that increased distance from edge was a significant positive predictor of cerulean warbler territory density (Bosworth 2003, p. 21; Weakland and Wood 2002, p. 505). The reason for decreased cerulean warbler density near edges is not known, but may be a result of lower availability of suitable or optimal habitat near edges, or edge habitat avoidance, possibly as a result of increased predation pressure or other factors. The effects of fragmentation are likely to be context-dependent, where increasingly fragmented landscapes lead to decreased reproductive success due to increased predation and brood parasitism (Donovan et al. 1995, p. 1393). Specifically, Donovan et al. (1995) found that nest failures of three forest-nesting, neotropical migrants (ovenbird (*Seiurus aurocapillus*), red-eyed vireo (*Vireo olivaceus*), and wood thrush (*Hylocichla mustelina*)), were significantly higher in fragmented forests than in contiguous forests.

4. Loss of migration habitat:

Migrating warblers that cross the Gulf of Mexico to and from breeding and wintering grounds depend on finding suitable patches of terrestrial habitat near coastlines. Such habitats are essential in providing food resources necessary to replenish energy and fat stores of enroute migrants and to provide shelter from predation and inclement weather events. As coastal forest habitat along the U.S. and Central American Gulf coasts is lost to development and conversion, compounding the adverse impacts of hurricanes and other natural factors, the vulnerability of cerulean warblers to mortality during migration has increased.

Conservation Actions Currently Underway

There are several existing conservation actions and programs that specifically focus on the cerulean warbler and its habitat. We did not rely on these ongoing conservation actions in our determination that listing the cerulean warbler is not warranted and, therefore, we did not evaluate them under our 2003 Policy for Evaluation of Conservation Efforts When Making Listing Decisions (68 FR 15100; March 28, 2003). The cerulean warbler Technical Group (CWTG) is a partnership of biologists, managers, and scientists from the forest-products industry, Federal and State agencies, nongovernmental organizations, and academia. It was formed in 2001 to develop a broad-based, technically sound approach to conservation of the cerulean warbler. By seizing the initiative and bringing key stakeholders and technical experts together, the CWTG seeks to keep the focus on identifying meaningful and proactive conservation solutions through sound science, clear communication, and trust. CWTG was loosely modeled after the highly successful Louisiana Black Bear Conservation Committee formed in the early 1990s. Collaborative actions of the CWTG on behalf of the species are coordinated by a Steering Committee charged to spur action and chart future activities and directions. There are currently 72 CWTG participants working on the following committees: Coordination, conservation, monitoring, research, international, and mining. Hamel et al. (2004, pp. 12–14) provides a thorough discussion on the history, organization, and objectives of the CWTG.

In December 2002, the CWTG met at the National Conservation Training Center in Shepherdstown, West Virginia, at a workshop sponsored by the Service and the U.S. Geological Survey. This important workshop was attended by 65 people from a broad category of disciplines, including biologists from Colombia, Ecuador, and Venezuela. The main purpose of the workshop was to develop a proactive, broad-based, and cohesive strategy for cerulean warbler conservation. Four working groups were established; their goals and accomplishments are summarized below:

(1) The Breeding Season Research Group identified rangewide research priorities and designed a research experiment to test cerulean warbler response to commonly applied forest management practices, replicated at five study areas across the core of the breeding range. The project will provide information on cerulean warbler ecology and demography, and insights to key limiting factors and to management prescriptions that could benefit it and associated species. In 2003, the project was endorsed by the Northeast and Southeast working groups of Partners in Flight as the highest research priority for forest songbird conservation.

(2) Priorities for the Breeding Season Surveys and Monitoring Group are to map cerulean warbler distribution more completely, improve regional and global estimates of population size and trend, and integrate inventory and monitoring efforts with predictive modeling. Successes include bringing together major forest-products companies in the mid-Appalachians in partnership with the National Council for Air and Stream Improvement (NCASI) and the Cornell Laboratory of Ornithology to evaluate cerulean warbler status on as much as 100,000 ha (250,000 ac) of likely suitable habitat that have not previously been surveyed. During the nesting seasons of 2003 to 2005, the partners surveyed hundreds of points on private lands. The data are being used to test and refine predictive models, developed by University of Tennessee, the Service, and U.S. Geological Survey, on the spatial distribution, abundance, and habitat associations of cerulean warblers in their core breeding range.

(3) The Breeding Season Conservation Group is developing a vision and goals for long-term sustainability of cerulean warblers within the context of integrated ecosystem conservation and to develop habitat conservation and management recommendations for the

cerulean warbler that can be incorporated into management plans for public and private forestlands within its range. One venue for pursuing these goals is the Appalachian Mountains Bird Conservation Initiative (under the Atlantic Coast Joint Venture), a partnership organized to facilitate effective proactive conservation for all birds in the Appalachian Mountains region with an emphasis on cerulean warblers and ecologically related species.

(4) The Non-Breeding Season Group, *El Grupo Cerúleo*, promotes a multispecies approach to habitat conservation on the wintering grounds (including other resident at-risk species that co-occur with cerulean warblers). This group has compiled a database of documented observations of cerulean warblers, assessed non-breeding threats and conservation coverage, identified opportunities for outreach and education to communicate awareness of migratory bird issues, and (through the U.S.D.A. Forest Service and The Nature Conservancy) provided funding for South American biologists to conduct new research on cerulean warblers in the winters of 2003–2004 through 2005–2006. Two workshops (March 2003 and November 2005) in Ecuador with biologists and modelers from throughout northern South America resulted in GIS-based, spatially explicit models of cerulean warbler winter habitat. *El Grupo Cerúleo* recently assisted other conservation organizations in securing an important non-breeding habitat reserve for the cerulean warbler in Colombia (see more on this action in discussion of Important Bird Areas below).

The cerulean warbler Technical Group is moving forward on the premise that the most successful conservation efforts for cerulean warblers will be those that bring together broad partnerships to achieve common goals. To that end, the CWTG Steering Committee conducted two separate one-day meetings with forest and coal industry biologists and managers in March 2006 in Charlestown, West Virginia. The purpose of these meetings was to begin discussions with these two industries on cooperative efforts to broaden cerulean warbler conservation management. Both meetings explored the constraints and potential options for cerulean warbler conservation in the Appalachians and establishing a foundation for a broader conservation partnership summit in February of 2007 that will focus on actions.

There are several projects currently being conducted to study the response of cerulean warblers to targeted management efforts to restore the quantity and quality of its breeding habitat. As previously discussed in this finding, quality cerulean warbler breeding habitat consists of mature forests with a diverse and vertically complex canopy structure, including canopy gaps and associated midstory and understory vegetation. Biologists and land managers are manipulating (managing) forest areas to create the complex canopy structure required by cerulean warblers. If these research and management studies are successful, these methods could be used in many public and private forests to restore the cerulean warbler's breeding habitat and enhance its reproductive capability in a shorter period of time.

The most comprehensive effort involving the scientific evaluation of managing and restoring cerulean warbler breeding habitat is the Cooperative Cerulean Warbler Forest Management Project, which was developed by the Cerulean Warbler Technical Group. Study areas include a national forest in eastern Kentucky, a State wildlife area in north-central Tennessee, a State wildlife area in southeastern Ohio, a State wildlife area in north-central West Virginia, national forests in eastern West Virginia, and an area of private forest industry lands in the coal fields of southern West Virginia. Each study area will consist of four sites representing different levels of forest management intensity: (1) No management, (2) selective harvest with 75 percent residual canopy cover, (3) selective harvest with 50 percent residual canopy cover, and (4) even-aged harvest (clearcutting, less than 10 percent residual canopy cover). Each site will be 20 ha (50 ac), with the management actions being applied on a 10 ha (25 ac) area in the center of each site. This configuration will allow for an undisturbed buffer at least 100 m (330 ft) to isolate the management activities and for assessing edge effects around the different levels of management intensity. Two years of pre-harvest monitoring (2005, 2006) and two years of post-harvest monitoring (2007, 2008) will occur on each site. The pre-harvest monitoring has been conducted and the forest management actions are scheduled to occur during the fall and winter of 2006–2007. A similar forest management-cerulean warbler study is being conducted on the Chattahoochee National Forest in northern Georgia.

In 2005, Fundacion Aves (the ProAves Foundation of Colombia) and the American Bird Conservancy were successful in securing a 1,250-ha (500-acre) reserve of Andean subtropical forest in the Rio Chucur basin of Santander, Colombia (within the Serrania de los Yariguies Important Bird Area) to protect wintering habitat for the cerulean warbler. The area, one of the last natural forest fragments in the region, contains high populations of wintering cerulean warblers. This is the first South American reserve designed to protect a bird species that nests solely in the United States and Canada. The reserve is also a focal point for a continuing regional conservation campaign for the cerulean warbler. Another key area for wintering cerulean warblers—southwestern Antioquia, Colombia—has been targeted for further conservation efforts.

Factor A Summary

We believe that the combined effects of habitat loss have accumulated to produce the 40-year average annual decline of 3.2 percent per year, with 90 percent certainty that the true decline is between 4.2 and 2.0 percent per year. As stated earlier, we do not have information to suggest that the population trend will shift outside the credible interval (Link and Sauer 2002, p. 2837; Sauer 2006) in the future, and we, therefore, assume that the factors described above will continue to support the declining population trend between -4.2 and -2.0 per year. Notwithstanding this assumption, the Service does not find that the cerulean warbler is likely to become a threatened or endangered species within the foreseeable future throughout all or a significant portion of its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any commercial, recreational, or educational uses that result in adverse impacts to the species or to individuals, nor do we envision any such threats developing in the foreseeable future.

There is a potential for adverse impacts resulting from scientific purposes, but data indicate that such impacts are negligible. All scientific activities in the United States that involve taking (for example, pursuing, capturing, hunting, shooting, wounding) cerulean warblers, their nests, or their eggs require a permit issued by the Service under authority of the Migratory Bird Treaty Act. In the United States, 13 cerulean warblers were taken under scientific research permits from the beginning of 2000 to the present, an average of fewer than 3 birds per year. Currently there are four valid and active scientific collection permits that allow the potential lethal take of up to 20 additional cerulean warblers through

March 31, 2008 (Andrea Kirk, Migratory Birds Permit Chief, USFWS Region 3, 2006, in litt.). This level of mortality is deemed to be of negligible impact on a species whose population is most likely in the hundreds of thousands of individuals.

Other research projects that include handling cerulean warblers, such as capturing and handling individuals for banding or applying other markings, may accidentally result in serious injury or death to a small percentage of the captured birds. Permits for these activities are issued by the Bird Banding Laboratory (BBL) of the Biological Resources Division of the U.S. Geological Survey. Data from the BBL show that only 1,879 cerulean warblers were banded during the 50-year period from 1955 to 2004 (BBL data, accessed on September 8, 2006, at *http://www.pwrc.usgs.gov/BBL/homepage/listalph.htm*). The number of cerulean warblers banded during this period is much lower than almost all other warbler species banded during this 50-year period (only four other warbler species had a lower number of bandings). For instance, 3,469 golden-cheeked warblers and 3,236 Kirtland's warblers (both endangered) were banded during this period and 26,919 blackburnian warblers. Compared to banding activities involving other warbler species, this is a very low incidence of banding and handling, indicates that there has been little intentional or incidental banding activity with this species. The behavior of cerulean warblers generally keeps them high in the forest canopy, leading to a low frequency of capture in the mist nets used by bird banders. Thus, we conclude that there are few (if any) adverse populations impacts resulting from banding or marking this species.

We have no data concerning the impacts of scientific research on this species along its migratory route or on its wintering grounds, but there is no reason to suspect those activities have or will produce significant adverse impacts on the species.

In summary, the best available scientific data indicate that there are no significant impacts occurring to the species from overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

We found no evidence to suggest that avian diseases or parasites are affecting cerulean warblers beyond normal baseline levels.

The possible increased impacts of predation and nest parasitism are believed to be caused by changes in habitat quality. Therefore, these impacts are discussed under Factor A, above.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for the cerulean warbler include: (1) United States Federal laws, regulations, and Executive Orders; (2) Canadian Federal and Provincial Laws and Regulations; and (3) State wildlife laws, which are discussed below.

(1) U.S. Federal Laws, Regulations, and Executive Orders

The Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712) prohibits ''take'' of any migratory bird. ''Take'' is defined as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of their actions and management decisions. NEPA documentation of these impacts is provided in an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal. In NEPA documents, Federal agencies may present scientific studies, evaluations, and management decisions involving actions that may impact the cerulean warbler or its habitat. Some Federal agencies may be required by their regulations, policies, and guidance to perform specific assessments under NEPA for actions that could impact the cerulean warbler. Examples include biological evaluations addressing actions by the U.S. Forest Service on national forests where the cerulean warbler is identified as a sensitive species by the Regional Forester.

The Multiple-Use Sustained-Yield Act of 1960, as amended (MUSY; 16 U.S.C. 528–531) provides direction that the national forests be managed using principles of multiple uses and to produce a sustained yield of products and services. Specifically, MUSY provides policy that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. Land management for multiple uses necessarily raises competing and conflicting issues. MUSY provides direction to the Forest Service that wildlife, including the cerulean warbler, is a value that must be managed for, though discretion is given to each forest when considering the value of this species relative to the other uses for which it is managing. Although MUSY could provide some protection for the warbler, it does not have any provisions specific to the conservation of the warbler or its habitat.

The National Forest Management Act (NFMA) as amended (16 U.S.C. 1600–1614) is the primary law governing the administration of national forests by the U.S. Forest Service. NMFA requires all units of the National Forest System to have a Resource Management Plan (RMP), to revise the plans whenever significant changes occur in a unit, and to update the plans at least once every 15 years. The purpose of the RMP is to guide and set standards for all natural resource management activities over time. NFMA requires the Forest Service to incorporate standards and guidelines into RMPs, including provisions to support and manage plant and animal communities for diversity, and the long-term rangewide viability of native and desired nonnative species. Several national forests have identified the cerulean warbler as a ''sensitive species,'' which involves an additional assessment of the impact of individual management actions by the national forest on the cerulean warbler. National forests that have identified the cerulean warbler as a sensitive species have current information on the presence and condition of the warbler and its habitat on the national forests and within individual units where management actions are planned. Surveys for cerulean warblers may be conducted prior to undertaking management actions or to monitor population trends of cerulean warblers, including national forests where the species is not designated as a sensitive species. The cerulean warbler has also been identified as a Management Indicator Species on several national forests. In these cases, the cerulean warbler functions as a biological indicator of desired forest condition, and results in a higher level of awareness of the species' life history and habitat needs, which are considered during analysis of the impacts of site-specific management activities by the national forest. The NFMA allows for habitat management specifically to benefit cerulean warblers on national forests within the species' historical range.

The Surface Mining Control and Reclamation Act (SMCRA; 25 U.S.C. 1201) addresses the necessary approvals for surface mining operations, as well as inspection and enforcement of mine sites until reclamation responsibilities are completed and all performance bonds are released. This law, which regulates the recovery of coal by

mountaintop removal mining (commonly referred to as mountaintop mining), is administered by the U.S. Department of the Interior's Office of Surface Mining (OSM). SMCRA permits for mountaintop removal mining may be issued by the OSM or by individual States only if it has been shown that the proposed mining activities will satisfy general performance standards applicable to all surface coal mining operations. In the Appalachian States where mountaintop mining occurs, the SMCRA regulatory program has been delegated by the Federal Government to State agencies, except in Tennessee (Copeland 2005, p. 2). Among the general performance standards, SMCRA addresses disturbances at the mine-site and in associated offsite areas and approximate original contour (AOC) requirements, as well as the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations (Copeland 2005, p. 2).

Before commencing mountaintop removal mining, a coal company must post a bond to pay for the reclamation of the site. To get this bond released, the company must reclaim the site to meet the standards set by the State responsible for implementing SMCRA. Reclamation at mountaintop mine sites has focused on erosion prevention and backfill stability and not on reclamation with trees. The compacted backfill material that is normally used for reclamation hinders tree establishment and growth. Furthermore, reclaimed soils are more conducive for growing grasses, which outcompeted tree seedlings; grasses are often planted as a fast-growing vegetative cover to reduce erosion. As a result, natural succession by trees and woody plants on reclaimed mined land (with intended post-mining land uses other than forest) is slowed (Environmental Protection Agency 2005, p. 4; Handel et al. 2003, p. 12).

Section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) is another principal environmental law involved in the regulation of mountaintop mining. The section 404 permit program, which regulates the discharge of dredge and fill material into waters of the United States, applies to the disposal of excess overburden associated with mountaintop mining. These permits are issued by the U.S. Army Corps of Engineers with oversight by the U.S. Environmental Protection Agency. In the past, the Corps of Engineers has generally permitted the disposal of mountaintop mining fill under Nationwide Permit 21 (NWP 21). This overburden has frequently been deposited in adjacent stream valleys in a process known as valley fill. This nationwide permit authorizes discharges from surface coal mining activities that result in no more than minimal impacts (site-specifically and cumulatively) to the aquatic environment.

Cerulean warblers and their habitat are impacted by mountaintop mining both by the clearing of forests to remove the coal and by the associated disposal of mine overburden in adjacent valleys. In addition, the practice of establishing non-forested habitats, especially grasses, on reclaimed mine lands that were previously forested has further prevented the restoration of cerulean warbler habitat at these sites. The conservation of the cerulean warbler could be improved by additional focus by the regulatory programs under SMCRA and section 404 of the CWA on the additional protection and improved reclamation of the species' habitat.

The U.S. Department of the Interior (National Park Service and Fish and Wildlife Service) manages lands containing cerulean warblers. The National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3, and 4), states that the NPS will administer areas under their jurisdiction ''* * * by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historical objects and the wildlife therein and to provide for enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Several National Parks are known to contain cerulean warbler populations and habitat.

The National Wildlife Refuge System Administration Act (NWRSAA; 16 U.S.C. 668d–668e) provides guidelines and directives for administration and management of all areas in the National Wildlife Refuge System. National Wildlife Refuges (NWR) are managed for species conservation, consistent with the direction of the NWRSAA, as amended, and related Service policies and guidance.

The Sikes Act (16 U.S.C. 670a–670o; 74 Stat 1052) authorizes the Secretary of Defense to develop cooperative plans for conservation and rehabilitation programs on military reservations and to establish outdoor recreation facilities. Under the authority of the Sikes Act, military installations prepare Integrated Natural Resources Management Plans (INRMP) that address how fish and wildlife resources will be managed. These plans reflect the mutual agreement of the military facility, the Service, and the appropriate State fish and wildlife agency on the conservation, protection and management of fish and wildlife resources.

Executive Order 13186 (entitled Responsibilities of Federal Agencies To Protect Migratory Birds), signed by President Clinton on January 10, 2001, addresses the commitment by all Federal departments and agencies to conserve migratory birds in the United States. Executive Order 13186 directs Federal agencies that implement actions having a measurable negative effect on migratory bird populations to develop and implement a Memorandum of Understanding with the Service that will promote migratory bird conservation. The Executive Order identifies 15 conservation measures that each Federal agency is encouraged to implement. These measures involve a range of actions to be implemented by Federal agencies, including: (1) Integrating migratory bird conservation into agency plans, programs, and actions, including environmental analyses under NEPA; (2) adopting principles and practices in the design of agency actions that avoid or minimize adverse impacts on migratory birds; (3) incorporate comprehensive migratory bird programs, such as Partners-In-Flight, North American Waterfowl Management Plan, and North American Bird Conservation Initiative into agency management plans and guidance; (4) restore and enhance migratory bird habitat; (5) develop partnerships with non-Federal entities to further bird conservation; and (6) promote research and information exchange related to migratory birds, including coordinated inventorying and monitoring on agency lands. The first two Memorandum of Understandings under EO 13186, with the Department of Defense and Department of Energy, were signed on July 12, 2006.

(2) Canadian Federal and Provincial Laws and Regulations

All migratory birds (including cerulean warblers), nests, eggs, and their parts in Canada are protected by the Migratory Bird Conservation Action of 1994, as amended. This law is similar to the Migratory Bird Treaty Act in that it prohibits the taking, possession, transportation, and sale of migratory birds and establishes penalties for violations, but it provides no direct protections for migratory bird habitats. This Canadian law implements the 1916 Convention between the United States and Great Britain (for Canada) for the protection of migratory birds.

In Canada and the two Provinces where the species occurs (Ontario and Quebec), the cerulean warbler is a

Species of Special Concern under schedule 1 of the Species at Risk Act (Canada Gazette, Part III, Chapter 29, Vol. 25, No. 3 2002). Passed in 2002, the Species at Risk Act (SARA) is similar to the Endangered Species Act. Under SARA, a Species of Special Concern is a ''wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats'' (section 2, Species at Risk Act, 2002). Only those species listed as endangered, threatened, or extirpated are protected by the prohibitions of SARA. The prohibitions and other regulatory provisions of SARA do not apply to Species of Special Concern; however, SARA does require the preparation of management plans for Species of Special Concern, including measures for the conservation of the species and its habitat (SARA, sections 65–72). The objective of implementing these management plans is to prevent Species of Special Concern from becoming a threatened or endangered species.

(3) State Laws

All of the 33 States within range of the cerulean warbler have provisions in their Wildlife Codes that protect non-game migratory birds, including the cerulean warbler. These State laws generally prohibit the killing, capture, possession, and sale of migratory birds without proper authorization from the State wildlife agency. Delaware and Rhode Island list the cerulean warbler as a State Endangered Species and the species is listed as a State Threatened Species in Illinois and Wisconsin. The designation as Endangered or Threatened by these States provides additional protection, prohibitions, and conservation emphasis in accordance with their respective State Wildlife Codes. Tennessee has designated the cerulean warbler as a Species in Need of Management, which provides some additional protection and conservation emphasis. Eleven States have placed the cerulean warbler in a category of Species of Special Concern, Species of Special Interest, or Rare. In most of these States, these categories do not provide the cerulean warbler additional protection or prohibitions beyond what is in their general Wildlife Codes. The protections provided the cerulean warbler by the State wildlife laws generally do not include regulatory provisions to protect its habitat.

Summary of Factor D

We believe those existing laws, regulations, and Executive Orders that involve the management of Federal forest and wildlife resources (MUSY, NFMA, National Wildlife Refuge System Administration Act, National Park Service Organic Act, Sikes Act, and Executive Order 13186) are not inadequate mechanisms to conserve the cerulean warbler and its habitat on these specific Federal lands. These laws provide the flexibility and framework to maintain or adjust habitat management objectives that benefit the cerulean warbler. Although these laws and regulations contain sufficient provisions for the conservation of the cerulean warbler, there are limitations in the ability of agencies to implement them in a manner most beneficial to the species they are intended to benefit or protect (for example, cerulean warblers). For instance, limited agency budgets, conflicting policies, lack of public support, and other factors can deter achieving the full management flexibility and benefits.

As discussed above, we believe that certain existing laws pertaining to the management of specific Federal lands in the United States are not inadequate regulatory mechanisms to conserve the cerulean warbler and its habitat. We also believe that some existing regulatory mechanisms are inadequate in protecting the cerulean warbler and its habitat. An example of this is the continued loss, without adequate reclamation, of cerulean warbler breeding habitat from mountain top mining, despite the application of the Surface Mining Control and Reclamation Act and section 404 of the Clean Water Act to these actions. Besides the regulation of mountain top mining under SMCRA and section 404 of the Clean Water Act, we are not aware of any Federal or State regulatory mechanisms that provide for the conservation of cerulean warbler habitat on the extensive private forest lands within the species' breeding range. Furthermore, we are not aware of any laws that protect the cerulean warbler or its habitat in its non-breeding (winter) range in South America.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

We identified several other potential threats, but available information is insufficient to determine that these factors have contributed to or will likely cause a population level decline in cerulean warblers. These factors are:

Mortality From Collisions With Structures

The collision of birds with structures during migration has been well documented, especially since this issue began receiving major emphasis in the 1970s (Manville in press, p. 2). Structures that pose a collision hazard to birds include buildings, communication towers (cell, radio, and television), wind power turbines, smoke stacks, and power lines. There is no confirmed, validated number or accurate estimate of the total number of birds killed by these structures, but estimates range from four to five millions of birds up to 40 million (Shire et al. 2000, p. 3; Manville in press, p. 3). Few studies have been carried out to document cerulean warbler mortalities from tall structures. The analysis by Shire et al. (2000, p. 9) of 149 reports of tower-caused mortalities identified 164 cerulean warblers killed at 5 sites. At this time, there have been insufficient studies conducted for the Service to be able to evaluate the threat of tall structures to cerulean warblers.

Localized Areas of Calcium Depletion Because of Acid Rain

Atmospheric acid deposition (acid rain) has been linked with reduced abundance of some songbird species (Hames et al. 2002, pp. 11238–11239; Hames et al. 2006). Under some conditions, calcium, which is needed for egg production, is leached from basic soils. Researchers have not studied the potential effect of this phenomenon on cerulean warblers.

Reduction in Prey Availability Because of Climate Change

Evidence from Europe indicates that climate change may advance the phenology of insect populations in temperate regions, and the peak in insect prey abundance may therefore occur before long-distance migratory birds arrive from the tropics, and prior to their need for abundant food for their young (Both et al. 2006, pp. 81–82; and Both and Visser 2001, pp. 296–298). We know of no information that indicates this is currently a problem for cerulean warblers.

Small Population Phenomena

We found no evidence that genetic isolation (Veit et al. 2005) or other phenomena associated with small populations are affecting cerulean warblers.

Extinction Risk Analysis

Since our knowledge of the factors that may lead to extinction is incomplete, and because extinction is inherently a probabilistic event (it may or may not happen at any specified time due to random events), extinction risk is best described by a likelihood or probability. The most direct method available to estimate extinction likelihood for cerulean warblers is to

calculate forward from the current total abundance using the average annual trend in abundance. The best available estimate for current global population size of cerulean warblers is based on the Partners in Flight estimate of 560,000 birds in 1995 (Rich et al. 2004, Appendix A—pp. 69–77), decreased by 11 years of declines that average 3.2 percent annually, resulting in an estimate of about 390,000 birds in 2006. Although the Partners in Flight estimate was imprecise (plus or minus 50 percent of the estimate) and may also be biased, most likely underestimating abundance (see Population Size Estimate Based on the Partners in Flight Method above), it is the best available data at the time of this finding. Expressed as a more general figure that reflects the substantial uncertainty about actual population size, we conclude that the current population of cerulean warblers may be around a half-million birds, and perhaps much larger. For the extinction risk analysis that follows, however, an estimate of 400,000 birds was used for 2006.

If the average 3.2 percent per year decline continues without variance, a population of 400,000 birds will decrease to approximately 200,000 in 20 years, 80,000 in about 50 years, and 15,000 in 100 years. In reality, population trends vary from year to year so future population change could be greater or less than these median or ''deterministic'' estimates. Thogmartin (2006, pp. 3–4) applied a statistical method called diffusion approximation (described in Dennis et al. 1991, and Holmes 2001, 2004) to the BBS data to estimate the probability of cerulean warbler population change to different levels over time. This method requires estimates for initial population size, average annual trend, and the year-to-year variance in population counts to project a statistical distribution of potential future population sizes over time—given the key assumption that past year-to-year fluctuations represent the plausible range (a statistical distribution) of annual changes that can happen randomly in the future. Given the available 40-years of BBS abundance indices and assuming the current population size is nearly 400,000 birds, Thogmartin (2006, p. 18) projected an 83 percent chance that the population will decrease to 40,000 birds (90 percent decline) in 100 years. The likelihood of extinction, modeled as a 99.999 percent population reduction or a decline to a few hundred birds, was close to zero in 100 years (Thogmartin 2006, p. 18). To date, there have been no published diffusion approximation models or other extinction risk analyses for the cerulean warbler. Therefore, the work conducted by Thogmartin (2006) is the best scientific information currently available on this topic.

Thogmartin (2006, p. 19) subsequently evaluated whether the likelihood of population declines was sensitive to the uncertainty about current population size. He found that the estimated probabilities of declines differed for projections using the upper and lower ends of the interval estimated by Partners in Flight extrapolated to 2006, that is, 200,000 or 600,000 birds rather than the median or ''best'' estimate of 400,000 birds.

Thogmartin (2006, p. 20) also completed calculations for the eastern or Appalachian portion of the species' range separately from the regions farther west to consider possible regional differences. Initial population in the east (Bird Conservation Regions 13 and 27 to 30) was 345,000 birds (86 percent of total abundance), and in the west (Bird Conservation Regions 22 to 25) it was 55,000 birds (14 percent of total abundance) (relative abundance between regions from Partners in Flight figures; Rich et al. 2004, Appendix A—pp. 69–77). Projected likelihood of a 90 percent decline in 100 years in these two regions was about 70 percent and 90 percent, respectively (Thogmartin 2006, p. 20). The projected risk of decline was actually lower for the Appalachian region alone than for the species rangewide due to relatively less year-to-year variance in counts in this higher density area compared with the estimates that include very small sample size counts in the western parts of the range.

These calculations are helpful in understanding the consequences of a continuation of the historical trend, but they do not address whether underlying population dynamics will differ as time passes. The 100-year time frame in Thogmartin's (2006) analysis is simply a convention from theoretical modeling (*e.g.*, Dennis et al. 1991, and Holmes 2001, 2004) and does not address the reliability of projecting that far forward based only upon historical data. It is clear that the farther into the future we attempt to predict, the less confident we can be that the historical trend will persist. Future population sizes will vary due to a variety of factors, both random events and progressive changes in causal environmental factors that we cannot foresee at this time. Thus we are more confident that the historical trends will continue over the next few decades, than over longer time frames such as 100 years.

Determination of Status Under the Endangered Species Act

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range * * *'' (16 U.S.C. 1533 § 3(6)). The Act defines a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1533 § 3(20)). For each species considered for listing, the Service must review the best available information on the likelihood of extinction over time and determine case-by-case whether the present risk is sufficient to constitute a ''danger'' of extinction, or whether projected future risk is ''likely'' to become a danger of extinction under ''foreseeable'' conditions.

The cerulean warbler has been declining by about 3 percent annually, on average, for the last 40 years, including within the Appalachian core breeding area (see Population Size and Trends). The biological factors most likely to have caused this trend include: (1) Reduction in available nesting sites and suitable breeding territory characteristics because of loss or degradation of nesting habitat; (2) reduction in foraging success resulting from decreased prey abundance, primarily on the wintering ground in South America; (3) increased predation throughout the species' annual range and nest parasitism of cerulean warblers in the breeding grounds resulting from habitat fragmentation; and (4) increased mortality during migration due to coastal forest habitat loss (see The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range). The Service further concludes that those factors are ongoing and thus will likely continue to cause the species to decline, probably at a similar rate, as in the recent past. The best available projection for future trends is to assume that the persistent rate of decline documented by the BBS over the past 40 years will continue within the estimated credible interval, between 2.0 and 4.2 percent per year.

Since projections derived from the BBS data indicate effectively no chance for this species to become extinct in the next 100 years unless conditions change beyond what we can anticipate (see Extinction Risk Analysis above), we do not believe this species is likely to become endangered within the foreseeable future. In short, a species with a current population of perhaps half a million birds and quite possibly more, declining chronically by 2 to 4

percent annually, is neither in danger of extinction now or likely to become in danger of extinction in the future that we can reasonably foresee. Thus, the Service concludes that the cerulean warbler does not presently qualify for protection as an endangered species or a threatened species under the Act and the petitioned action is not warranted.

Summary

The cerulean warbler population is decreasing by approximately three percent per year across its breeding range. A combination of habitat losses and structural changes and fragmentation in remaining forest habitats across the species' annual range are most likely the primary causal factors contributing to this decline. The available information on potential causal factors indicates these threats are, for the most part, both already operating and will continue to operate in the foreseeable future. Hence, we anticipate continued, gradual decline of this species. We also conclude, however, that abundance will remain high enough that the species effectively is in no danger of extinction in the near term, and that, if the historical trend continues, tens of thousands of cerulean warblers will remain in 100 years.

The Act defines an endangered species as a species in danger of extinction in all or a significant portion of its range. Given the available information including a population size approaching half a million, perhaps more, cerulean warblers are not currently facing extinction across their range. We do not consider the westernmost parts of the range, where local extirpation could possibly occur in the next few decades, as significant from the perspective of defining the entire species as endangered, because those portions already contain only a small fraction of the total population and their loss would not put the remainder of the range at risk of extinction. Therefore, those westernmost areas are not a significant portion of the species' range.

A threatened species, as defined in the Act, is a species likely to become endangered in the foreseeable future in all or a significant portion of its range. We do not believe that it is likely (more likely to happen than not) that cerulean warblers will decline to a point where they are endangered or facing extinction within the foreseeable future. This is our conclusion, even if conditions were on the worst end of the range for trends and abundance rather than the median or 'best' estimates indicated by 40 years of breeding bird surveys. Again, we do not consider those portions of the range with currently marginal populations that may become at risk of extinction in less than 100 years as significant to the entire species' projected extinction risk, and thus they are not a significant portion of the range as used in the definition of threatened. Based on the trends recorded in breeding population counts and the assumption that those declines and their causal factors will continue unabated, the likelihood of species extinction, even as far into the future as 100 years, appears close to zero.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the cerulean warbler. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following our 90-day petition finding. This finding reflects and incorporates information we received during the public comment period and responds to significant issues. We also consulted with recognized experts on the cerulean warbler and its habitat from Federal and State agencies, non-governmental conservation organizations, academia, and the forest industry. On the basis of this review we have determined that the listing of cerulean warbler as threatened or endangered is not warranted under the Endangered Species Act, as amended.

If new impacts to the species arise in the future or if the Service finds that the populations are declining significantly faster than they were found to have done in the past or that threats are of greater magnitude than they are currently, the Service can reexamine the listing status of the cerulean warbler. We will continue to monitor the status of the cerulean warbler and its habitat and will continue to accept additional information and comments from all governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Future Conservation

Even though we have determined in this 12-month petition finding that the cerulean warbler does not meet the definition of endangered or threatened, we believe it is essential that existing conservation efforts for the cerulean warbler be pursued and new actions implemented to address the steady decline of the species. Besides the ongoing conservation efforts addressed under Factor A of this finding, there are several important emerging efforts and programs, all involving multiple, diverse partners. We did not rely on these future conservation actions in our determination that listing the cerulean warbler is not warranted and, therefore, we did not evaluate them under our 2003 Policy for Evaluation of Conservation Efforts When Making Listing Decisions (68 FR 15100; March 28, 2003).

In 2005, the Service's Migratory Bird Program initiated a new strategy to better measure its success in achieving its bird conservation priorities and strategies. The Focal Species Strategy involves campaigns for selected species to provide explicit, strategic, and adaptive sets of conservation actions required to return species to healthy and sustainable levels. The Service's list of Birds of Management Concern is a subset of species protected by the MBTA that pose special management challenges due to a variety of reasons. There are currently 412 species, subspecies, or populations of birds on the Birds of Management Concern list, including the cerulean warbler. Through a comprehensive review of the birds on this list and using a combination of evaluation factors, the Service's Migratory Bird Program identified 139 bird species for the development of Focal Species Strategies. The cerulean warbler is in the first group of birds to have focal species strategies developed in Fiscal Years 2005 and 2006. The cerulean warbler Focal Species Strategy, the first draft of which is scheduled to be completed in September 2006, will utilize management and conservation documents to form an action plan (a species-specific mix of monitoring, research, assessment, habitat and population management, and outreach) necessary to accomplish: (1) Desired status; (2) a summary of the responsibilities for actions within and outside the Migratory Bird Program; (3) a focus of Service resources on implementing those actions; and (4) communications to solicit support and cooperation for partners inside and outside the Service. The engagement of partners and stakeholders is essential for developing and implementing this focal species strategy for the future conservation of the cerulean warbler. The Service's Migratory Bird Program has involved cerulean warbler experts and other partners in identifying the future desired status and priority conservation measures for the focal species strategy. The Cerulean Warbler Focal Species Strategy will provide an important ''blueprint'' for use by Federal and State agencies, conservation organizations, researchers, corporations, private landowners, groups like the

Cerulean Warbler Technical Group (see below), and other bird conservation programs, such as the Important Bird Areas, in implementing actions for the conservation of the cerulean warbler.

BirdLife International's Important Bird Areas Program (administered by the National Audubon Society in the United States) identifies, monitors, and conserves a global network of Important Bird Areas (IBA) that provide important habitat for birds and focuses conservation efforts at these sites. The IBA Program recognizes that habitat loss and fragmentation are the most serious threats facing populations of birds. By working through partnerships, principally the North American Bird Conservation Initiative, to identify those places that are essential to birds, the National Audubon Society and its many IBA partners hope to minimize the effects of habitat loss on birds. The identification and inventory of IBAs has been a particularly effective way to prioritize conservation efforts. IBAs are key sites for conservation, often able to be conserved in their entirety and often already part of a conservation-area network. There are approximately 112 IBAs in the United States and six in the Canadian Province of Ontario that contain the cerulean warbler. Several of these IBAs contain large cerulean warbler populations and important breeding habitats (for example, Northern Montezuma Wetlands IBA in New York and Southern Cumberland Mountains IBA in Tennessee). Within the cerulean warbler's wintering range, there are 30 IBAs that contain the species (14 in Colombia, 14 in Venezuela, and 2 in Ecuador).

The State Wildlife Grants Program (SWG; administered by the Service's Federal Assistance Program), provides Federal funds to every State and territory for the development and implementation of programs that benefit wildlife and their habitat, including species that are not hunted or fished. A primary focus of the SWG Program is to target funds to States to implement conservation actions for rare or declining wildlife species to prevent these species from becoming endangered in the future. To be eligible for these funds, States and territories were required to submit to the Service by October 1, 2005, a State Wildlife Action Plan (also called a Comprehensive Wildlife Conservation Strategy) that, at a minimum, addressed the following seven items: (1) Information on the distribution and abundance of wildlife species, including low and declining populations, that are indicative of the diversity and health of the State's wildlife; (2) descriptions of locations and relative condition of key habitats and community types essential to conservation of these species; (3) descriptions of problems which may adversely affect these species; (4) descriptions of conservation actions proposed to conserve these species and habitats and priorities for implementing actions; (5) proposed plans for monitoring these species and their habitats; (6) descriptions of procedures to review the Plan; and (7) plans for coordinating the development, implementation, review, and revision of the Plan. In appropriating funds for the SWG Program, Congress directed the States to place appropriate priority on ''those species of greatest conservation need''. In defining the species required by number 1 above, most State Wildlife Action Plans contain a list and description of the Species of Greatest Conservation Need (SGCN).

All 33 States within the range of cerulean warbler have completed their State Wildlife Action Plans. These plans have been reviewed and approved by the Service. Of these States, 23 have identified the cerulean warbler as a SGCN. In addition, nine States' Plans have identified priority conservation and management objectives and actions for the cerulean warbler. The actions in these nine Plans include monitoring populations, managing forests to provide high-quality nesting habitat, implementing measures to maintain appropriate habitat patch size and reduce forest fragmentation, and collaborating with others to conserve the species' wintering habitat in South America.

The integrated bird conservation efforts under the North American Bird Conservation Initiative and Partners-In-Flight will benefit the future conservation of the cerulean warbler. Concept Plans and Bird Conservation Plans have been completed or are being developed in Bird Conservation Regions (BCR) and Physiographic Areas that contain cerulean warblers. These plans have specific actions pertaining to the cerulean warbler, especially in the Appalachian Mountains Bird Conservation Region. This BCR, encompassing 42 million ha (105 million ac), contains the core breeding population of cerulean warbler and is essential to the future conservation of the species. A future critical need in this BCR is the establishment of a coordinator to integrate and expand conservation actions for the cerulean warbler and other birds in this region. The Partners-In-Flight program is addressing the decline of the cerulean warbler and its habitat in both its breeding and non-breeding range.

We believe these and other existing and emerging collaborative efforts provide an excellent opportunity to reverse the steady decline of the cerulean warbler and preclude the future need to list. The Service believes it is important to continue strong support for monitoring efforts for this species, especially long-term monitoring programs like the Breeding Bird Survey that provides valuable trend information. Tracking population changes is vital to the future conservation of the cerulean warbler and other neotropical migratory birds. We will provide strong support and develop partnerships around the Service's Cerulean Warbler Focal Species Strategy, which will become an important blueprint for helping to reverse the warbler's population decline through proactive conservation efforts. We will also continue to support and provide assistance to the Cerulean Warbler Technical Group because it has the opportunity to effect positive change for the species through its scientifically driven collaborative efforts. We will support and provide technical assistance in using the other integrated bird conservation programs (Partners-In-Flight, North American Bird Conservation Initiative, and Important Bird Areas) and the State's Wildlife Action Plans to further promote the future conservation of the cerulean warbler.

References

A complete list of references used in the preparation of this finding is available upon request from Columbia Ecological Services Field Office (see **ADDRESSES**) or can be downloaded from our Web site at *http://www.fws.gov/midwest/eco_serv/soc/.*

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This finding was written by biologists from the Service's Endangered Species and Migratory Bird Programs in Region 3, 4, and 5 and Washington, DC.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 28, 2006.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–20530 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 234
Wednesday, December 6, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–07–001]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations for Voluntary Grading of Poultry Products and Rabbit Products.

DATES: Comments on this notice must be received by February 5, 2007.

ADDITIONAL INFORMATION OR COMMENTS: Interested parties are invited to submit written comments concerning this notice. Comments must be sent to David Bowden, Jr., Chief, USDA, AMS, PY Standardization Branch, STOP 0256, Room 3932–S, 1400 Independence Avenue, SW., Washington, DC 20250–0256, or fax (202–720–5631). Alternately, comments may be submitted electronically to: *AMSPYDockets@usda.gov* or *http://www.regulations.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

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

FOR FURTHER INFORMATION CONTACT: Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20050–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations for Voluntary Grading of Poultry Products and Rabbit Products—7 CFR Part 70.

OMB Number: 0581–0127.

Expiration Date of Approval: August 31, 2007.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, Section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The regulations in 7 CFR part 70 provide a voluntary program for grading poultry and rabbit products on the basis of U.S. standards and grades. AMS also provides other types of voluntary services under the regulations, e.g., contract and specification acceptance services and certifications of quantity. All of the voluntary grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee).

Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that the cost of service be assessed and collected, information is collected to establish the Agency's cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information. Information is also used by each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: State or local governments, businesses or other for-profits, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 359.

Estimated Number of Responses: 22,464.

Estimated Number of Responses per Respondent: 62.57.

Estimated Total Annual Burden on Respondents: 1,753 hours.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Dated: November 30, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–20579 Filed 12–5–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

2005 Louisiana Sugarcane Hurricane Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice implements section 3011 of the Emergency Agricultural Disaster Assistance Act of 2006 (2006 Act) which authorizes the 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program (2005 Program). The 2005 Program requires the Commodity Credit Corporation (CCC) to provide compensation totaling $40 million to Louisiana sugarcane producers and processors who suffered economic losses from the cumulative effects of Hurricanes Katrina and Rita in August and September of 2005. CCC will make $29 million in payments for 2005-crop (Fiscal Year 2006) losses to affected sugarcane processors, who shall share these payments with affected producers in a manner reflecting current contracts between the two parties. In addition, CCC will make payments of $10 million to compensate affected sugarcane producers for losses that are suffered only by producers, including losses due to saltwater flooding, wind damage, or increased planting, replanting, or harvesting costs. The funds for ''producer-only losses'' will be paid to processors, who will then disburse payments to affected producers without regard to contractual arrangements for dividing sugar revenue. CCC is reserving $1 million in the event of appeals and will disburse the residual, if any, to processors, who will then disburse payments to producers in a manner reflecting current contracts between the two parties. This notice provides eligibility criteria and application procedures that will be used to conduct this program.

DATES: The dates applicable to the 2005 Sugarcane Hurricane Disaster Assistance Program are as follows:

(1) Eligible producers who did not select a base year under the 2003 Hurricane Assistance Program (2003 Program) have until December 21, 2006 to select a base year (1999, 2000 or 2001) to calculate their 2005-crop sugar loss.

(2) Farm operators have until January 22, 2007, to certify ownership tract sugar losses and producer-only losses on their farms.

(3) Sugarcane processor applications for loss compensation must be submitted no later than February 5, 2007.

(4) Payments will be issued to applicants meeting all eligibility requirements beginning February 20, 2007 or as the Louisiana Farm Service Agency (FSA) State Executive Director determines.

(5) Producers must be paid by their processors within 15 days of the date the initial payments were made to the applicants.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Group, USDA/FSA/EPAS, 1400 Independence Ave., SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; facsimile (202) 690–1480; electronic mail: *barbara.fecso@usda.gov.*

SUPPLEMENTARY INFORMATION:

Environmental Compliance

The potential impacts of this notice on the human environment have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for NEPA compliance, 7 CFR part 799. This notice does not constitute a major Federal action significantly affecting the quality of the human environment because the actions involved solely provide financial assistance with no site-specific or ground disturbing actions occurring as an immediate result of implementing this program.

Section 217(b) of Title II of Division N of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7) (2003 Act) requires that this notice be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. Thus, information to be collected from the public to implement this program and the associated burden, in time and money, the information collection will have on the public do not need Office of Management and Budget approval and are not subject to the 60-day public comment period 5 CFR 1320.8(d)(1) requires.

Background

This notice implements the 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program which is intended to partially compensate Louisiana sugarcane producers and processors for losses related to the natural disaster declaration resulting from Hurricanes Katrina and Rita in August and September, 2005. Section 3011(b) of the 2006 Act requires CCC to assist Louisiana sugarcane producers and processors by providing payments totaling $40 million from CCC funds.

The portion of the 2005 Program for distributing $29 million of the $40 million is similar to the 2003 Program for Louisiana, which compensated Louisiana sugarcane growers and processors for the sugar lost from the crop due to tropical storm and hurricane events in 2002. The producer's base sugar yield per acre for measuring sugar loss is required to be the base yield used in the 2003 program. CCC is required to make the payments for estimated sugar loss to sugarcane processors, who will then share the payment with producers that deliver sugarcane to their mills according to the producer/processor contract, as in the 2003 Program. Louisiana processors normally share the revenue from the sale of sugar and molasses, after deducting marketing costs, with their producers, with about 60 percent of the net revenue distributed to producers. Thus, processors are expected to retain about 40 percent of CCC's payments for sugar loss.

However, unlike the 2003 Program, the 2005 Program also compensates for damages strictly borne by producers. The payments for these producer-only losses will not be split with the processor. CCC has determined that it will measure the producer-only losses as (1) lost plant or stubble cane acreage, requiring replanting, due to saltwater flooding, (2) damaged cane acreage due to flooding saltwater intrusion, and (3) additional harvest costs due to wind damaged fields. When hurricane flood waters surged over the Louisiana sugarcane region, approximately 3,500 acres of freshly planted cane and stubble cane were destroyed because they either did not germinate or were uprooted. In addition, saltwater severely damaged the soil on roughly 35,000 acres of the sugarcane cropland, which is expected to result in reduced production on these acres for the 2006 crop. Further, hurricane winds lodged sugarcane on all approximate 422,000 harvested acres, which dramatically slowed harvesting speed and increased fuel costs. Losses for the destruction of plant and stubble sugarcane, saltwater flood-damaged sugarcane, and increased harvesting costs are not compensated under existing programs such as the Emergency Conservation Program, federal crop insurance, or the Hurricane Indemnity Program.

CCC has determined that it will allocate the $40 million among the different damage types with a higher proportion of reimbursement for the

damages that are deemed to have the greatest impact on operation viability. Because the $10 million in producer-only losses were deemed to have a greater impact on sugarcane operation viability, these will be reimbursed at a higher rate.

The total destruction of plant or stubble cane by the saltwater flooding is strictly borne by the producer and will have a reimbursement rate of 65 percent, the general agriculture disaster maximum, or $366 per acre. The per-acre compensation for destroyed sugarcane acres (lost plant and stubble cane) within the storm surge flooded region is derived from the simple average of prorated billet planting costs of $835 per acre for plant cane, $598 per acre for first year stubble and $260 per year for second year stubble.

The next most damaging impacts of the storms, also borne only by the producer, were determined to be the damage to standing cane by saltwater flooding and increased harvest expenditures due to wind damage. CCC will reimburse 34 percent of flooded cane damages, or $100 per acre, as estimated by Louisiana State University (LSU). The payment will partially compensate for increased insecticide application (estimated at $100 per acre) and the producer's share of the 2006-crop yield loss due to elevated soil salt content on an estimated 35,000 acres (estimated by LSU at $194.04 per acre). CCC will reimburse harvest costs at $12 per acre, or 47 percent of the estimated average increase in harvesting costs, $25.44 per acre.

CCC will only reimburse sugar yield loss for the 2005-crop at 19 percent of estimated total losses, using 1999 sugar yield as the base to calculate this loss percentage. This damage, while significant, was determined less likely to affect the operational viability of Louisiana sugarcane producers. To further target the $29 million in assistance to producers and processors with significant losses, only ownership tracts with losses greater than 20 percent will be eligible. This will result in an expected payment per eligible pound of sugar loss of 21 cents per pound.

These reimbursement rates result in a split of $29 million between producers (for the sugar yield losses) and processors (for lost throughput), and $10 million for producer-only losses. $1 million will be held in reserve in the event of program appeals. This is the maximum limit for appeals. Any reserve funds remaining after the appeal process has been satisfied will be paid to processors, who will then share these payments with producers according to their contractual arrangements. Based on the experience with the 2003 Program, CCC expects less than 2 percent of the $29 million, or $580,000, to be spent on sugar-loss appeals, leaving an estimated $420,000 of the reserve for producer-only loss appeals.

As in the 2003 Program, this notice requires evidence of an ownership tract 2005-crop sugar percentage loss equal to or greater than 20 percent relative to the chosen base year (1999, 2000, 2001). Compensation will only be paid on the portion of losses exceeding this threshold. Acres of sugarcane and plant cane lost or destroyed, including cane abandoned, prior to August 29, 2005 are not covered. This percent loss, coupled with estimated economic losses from increased billet planting costs, increased hauling costs, mill cane used for seedcane and increased milling costs results in an implicit required loss of 35 percent, the traditional agricultural loss required for Federal assistance.

2005 Louisiana Sugarcane Hurricane Disaster Assistance Program (2005 Program)

I. Applicability

This notice sets forth terms and conditions under which CCC will make payments to eligible Louisiana sugarcane processors and producers for 2005-crop (Fiscal Year 2006) hurricane-related sugarcane losses.

II. Definitions

Commercially Recoverable Sugar (CRS) Final Settlement Payment Pounds. Equals the product of the actual weight and actual polarity of sugar made divided by 96.

Farm. The acreage identified under one FSA Farm Serial Number.

Farm Operator. An individual, entity or joint operation which is determined by the FSA County Committee to be in general control of the farming operation on all ownership tracts of a farm during the program year.

FSA. The Farm Service Agency.

Ownership Tract. A subset of the acreage of a farm associated with a separate ownership interest.

Producer. An owner, operator, landlord, or tenant who receives a payment or shares in the payment a sugarcane processor makes for delivery of sugarcane.

Split Shippers. Farm operators who deliver their harvested cane to more than one sugarcane processor during a given crop year.

Sugarcane Processor. A person or entity that produces raw cane sugar by commercially processing sugarcane and has an allocation under the sugar marketing allotment program. The sugarcane processor is the 2005 Program applicant.

III. Applicant Eligibility Requirements

Applicants must meet all the following requirements to be eligible for payments under the 2005 Program:

(1) Be a sugarcane processor located in Louisiana.

(2) Be eligible to obtain a loan under section 156(a) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272(a)).

(3) Submit the application according to the requirements and deadlines of this notice.

IV. Aggregate Amount of Assistance

Total compensation shall equal $40 million.

V. 2005-Crop Sugar Loss

(1) Loss will be measured for each ownership tract by the following formula: Loss = [(sugar per acre (base year); not to exceed 12,000 lbs.) minus sugar per acre (2005 crop)] × ownership tract acres in 2005.

(2) The base year for figuring losses will be the year elected by the farm operator under the 2003 Hurricane Assistance Program (2003 Program).

(A) Exceptions:

(i) If the farm operator did not select a base year for the 2003 Program, he must select either 1999, 2000 or 2001.

(ii) If a new entity was formed and 50 percent or more of the members were individuals or members of the previous operation, the new farm operator will use the previously selected base year. If more than 1 member of the new entity had a base year yield, these yields will be weighted for computation of the new base year yield.

(iii) If a person assumes the operation of an ownership tract from a family member, the new farm operator will use the base year previously selected by his family member. A family member is defined as ''an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves. The term 'family member' shall include: Great grandparent; grandparent; parent; child, including legally adopted children; grandchild; great grandchild; sibling of the family members in the farming operation; spouse of family members, if the family member does not make a significant contribution of active personal labor or active personal management to the farming operation as an individual''.

(B) Producers have until December 21, 2006 to select a base year.

(C) Ownership tract acreage must have been FSA-certified for the production of sugar or seed in 2005 to be eligible for disaster reimbursement.

(D) The same base year will be used for all ownership tracts with the same farm operator. If some ownership tracts (cannot be ALL ownership tracts) had no production in the base year, the State yield will be used.

(E) Ownership tracts with production in the base year and no FSA-certified acres will require the farm operator to:

(i) Pick a different base year; or

(ii) Make this ownership tract ineligible for disaster benefits.

(F) Ownership tracts with FSA-certified acreage and no production in the base year will require the farm operator to:

(i) Pick a different base year; or

(ii) Make this ownership tract ineligible for disaster benefits.

(3) Sugar per acre for each ownership tract is calculated as:

(A) The CRS Final Settlement Payment Pounds from sugarcane processor records for the applicable year divided by

(B) The ownership tract's total cane acres identified in the FSA Certified Acreage Report for the same year.

(4) The 1999 average state yield will be applied to any eligible ownership tract that produced sugarcane in the 2005 crop year but did not have production history in 1999, 2000 or 2001, other than the exceptions in paragraphs V(A)(2)(ii) and (iii) above.

(5) In the case of split-shippers, total FSA-certified acres will be prorated to each mill based on pounds of sugar each mill produced. For mills that did not identify sugar produced by ownership tract at time of delivery, the total production will be prorated to each ownership tract based on total FSA-certified acres.

(6) Farm operators have until January 22, 2007 to certify ownership tract sugar losses on their farms.

(7) Applicants must submit a CCC-prescribed form certifying the sugarcane processor's crop loss and producer-only loss calculations to CCC, no later than February 5, 2007.

(A) No late-filed applications will be accepted.

(B) All eligible farm operators must certify the loss calculations included in the application.

VI. Eligible 2005-Crop Ownership Tract Sugar Losses

(1) Ownership tract sugar losses are eligible if the ownership tract's 2005-crop sugar percentage loss is equal to or greater than 20 percent.

(2) The 2005-crop sugar percentage loss for an ownership tract is defined as: [1 − (sugar per acre (2005-crop)/sugar per acre (base year))] × 100.

The eligible ownership tract sugar losses are defined as losses equal to 20 percent or greater.

VII. Producer Only Loss eligibility

(1) *Plant or stubble loss acreage:* Eligible acres will be those acres suffering complete destruction of 2006-crop stubble or 2006-crop plant cane caused by the result of saltwater flooding due to tidal surge included in the acreage delineated on maps provided by LSU. Acres of sugarcane and plant cane lost or destroyed, including cane abandoned, prior to August 29, 2005 are not eligible for payment under this portion of the program. Acreage destroyed and/or reported as failed (planted but not harvested) to FSA after July 15, 2006, (FSA's final acreage reporting date) will not be eligible for payment under this portion of the program.

(2) *Saltwater intrusion acreage:* Eligible acres will be those acres damaged as a result of saltwater intrusion due to tidal surge as included in the acreage delineated on maps provided by LSU, excluding any acreage qualifying for payment under VII(1).

(3) *Wind damage and additional harvest cost acreage:* Eligible 2005-crop acres will be those acres harvested for sugarcane as reported to FSA in 2005.

VIII. Payment Calculations

(1) 2005-crop sugar loss: An applicant's payment will equal the total eligible ownership tract sugar losses for its producers divided by the sum of the total eligible tract sugar losses for all sugarcane processors in Louisiana multiplied by the $29 million allocated for crop losses. If the computed total of all 2005-crop eligible ownership tract sugar losses across all eligible sugarcane processors is less than $29 million, a factor will be applied to make this total exactly $29 million.

(2) Producer-only losses.

(a) Plant or stubble loss acreage: $366 per acre.

(b) Saltwater intrusion acreage: $100 per acre.

(c) Wind damage and additional harvest cost: $12 per acre, except

(i) If payments (a) plus (b) plus (c) above exceed $10 million in aggregate, the harvest cost payment will be reduced by the overage, and

(ii) If payments under (a) and (b) plus (c) are less than $10 million in aggregate, the harvest cost payment will be increased by the underage.

IX. Reserve

A reserve of $1 million will be held pending the resolution of appeals provided in section XV, below. The residual, if any, after appeal payments will be distributed to sugarcane processors, to be shared with producers as in X(1) below.

X. Payments to Affected Producers

(1) *Crop loss:* Applicants must share their sugar loss payments with affected producers according to the percentage shares for dividing net revenue as stated in their 2005 farm processor/producer contracts that govern the delivery of sugarcane.

(2) Payments must be made to producers within 15 days of the date initial payments were made to applicants.

(3) Producers receiving mill payments are responsible for sharing payments with landowners according to their lease arrangements.

XI. Contract Liability

All sugarcane processors and associated farm operators receiving a share of the total hurricane assistance payment are jointly and severally liable for program violations and resulting repayments, if applicable.

XII. Misrepresentation, Scheme, or Device

A person shall be ineligible to receive assistance under this notice and be subject to such other remedies as law may allow if the FSA State or county committee, or any other FSA official with authority to do so, determines that such person has:

(1) Adopted a scheme or other device that tends to defeat the purpose of the program operated under this notice,

(2) Made any fraudulent representation regarding this program, or

(3) Misrepresented any fact affecting a program determination.

XIII. Creditor Liens and Claims; and CCC Offsets and Withholdings

(1) Any benefit or portion thereof due any person under this program shall be allowed without regard to questions of title under State law and without regard to any claim or lien in favor of any person, except agencies of the U.S. Government.

(2) CCC may offset or withhold any amount due CCC in accordance with the provisions of the regulations at 7 CFR part 1403 or successor regulations as designated by the Department.

XIV. Administration

When circumstances beyond the applicant's control preclude compliance, the county committee may request the Louisiana FSA State Executive Director to grant relief. In such cases, except for statutory requirements, the Louisiana FSA State Executive Director may, in order to more equitably accomplish this notice's goals, waive or modify deadlines if the failure to meet such deadlines does not adversely affect program operation. All program payments will be subject to review.

XV. Appeals

Regulations at 7 CFR part 11 apply to this notice. CCC is not involved in resolving disputes between processors and producers.

Signed at Washington, DC on October 31, 2006.

Teresa C. Lasseter,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. E6–20696 Filed 12–5–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland; Hahns Peak/Bears Ears Ranger District; Recreation Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to implement recreation fees.

SUMMARY: In accordance with the Federal Lands Recreation Enhancement Act (FLREA), recreation fees may be charged for standard amenity sites, expanded amenity sites or special recreation permits. The Medicine Bow-Routt National Forest proposes to charge new fees at two sites: Summit Creek Guard Station and Buffalo Pass Winter Recreation Area.

DATES: Comments concerning the scope of the analysis must be received by May 31, 2007. Implementation is expected to begin in December of 2007.

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

• Web Site: *http://www.fs.fed.us/r2/mbr/projects* under Recreation Management. Follow the instructions for submitting comments on the Web site.

• E-mail: *r2_mbr_vis@FSNOTES*. Include ''Recreation Fees'' in the subject line of the message.

• Fax: (970) 870–2284 or (303) 745–2398.

• Mail or Hand Delivery: Ray George, Recreation Staff, Medicine Bow-Routt National Forests, 2468 Jackson St., Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Ray George (307) 745–2300, Medicine Bow–Routt National Forests, 2468 Jackson St., Laramie, WY 82070.

SUPPLEMENTARY INFORMATION:

Proposed Recreation Fees

• Summit Creek Guard Station—The Summit Creek Guard Station was built in 1912 to house forest rangers and their families. It includes a house and garage with electricity, indoor plumbing and propane heat and sleeps up to eight people. The compound is listed on the National Register of Historic Places. The guard station would be available to rent from approximately mid-May to late October and a nightly rental fee of $100 will be charged.

• Buffalo Pass Winter Recreation Area—In order to facilitate recreation management in an intensively used winter backcountry recreation area, all users would be required to purchase a backcountry permit to enter and recreate in the 4,980 acre Buffalo Pass Backcountry Recreation Area. The intensity and variety of uses has led to many user conflicts, safety issues, and avalanche danger. The backcountry permit will alleviate some of these conflicts by educating all users on backcountry etiquette, avalanche dangers, and sharing groomed trails. A fee is necessary to administer the permit system and provide backcountry patrols to ensure users are obtaining necessary permits. The fee will be $5.

Lead and Cooperating Agencies

The Medicine Bow–Routt National Forests is the lead agency.

Responsible Official

The responsible official is Mary Peterson, Forest Supervisor, Medicine Bow–Routt National Forests, 2468 Jackson St., Laramie, WY 82070.

Electronic Access and Filing

All future documents and information on recreation fees will be posted at *http://www.fs.fed.us/r2/mbr/projects* under ''Recreation Management.'' You may submit comments and data by sending electronic mail (E-mail) to *r2_mbr_vis@FSNOTES* and including ''Recreation Fees'' in the subject line of the message.

Dated: November 20, 2006.

Mary H. Peterson,

Forest Supervisor, Medicine Bow-Routt National Forests, USDA Forest Service.

[FR Doc. 06–9534 Filed 12–5–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Cooperative Development Grants program.

DATES: Comments on this notice must be received by February 5, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Loan Specialist, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 260–1506.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: May 31, 2007.

Type of Request: Intent to extend the clearance for collection of information under RD Instruction 4284–F, Rural Cooperative Development Grants.

Abstract: The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 48 hours per grant application.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 60.

Estimated Total Annual Burden on Respondents: 8,200 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of RBS's functions, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 28, 2006.

Leann M. Oliver,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E6–20584 Filed 12–5–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews

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

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of the 2004–2005 semi–annual new shipper reviews and the rescission of one new shipper of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') on July 6, 2006. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of 2004–2005 Semi–Annual New Shipper Reviews and Notice of Final Rescission of One New Shipper Review*, 71 FR 38373 (July 6, 2006) (''*Preliminary Results*''). The period of review (''POR'') is June 24, 2004, through June 30, 2005. The Department invited interested parties to comment on our preliminary results. Based on its analysis of the comments received, the Department has made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: December 6, 2006.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. and Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340 and 482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2005, the Department published a notice of the initiation of new shipper reviews for the following companies: Meikangchi (Nantong) Furniture Company, Ltd. (''Meikangchi''), Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu''), WBE Industries (Hui–Yang) Co., Ltd. (''WBE''), and Dongguan Landmark Furniture Products Ltd., d/b/a Landmark Furniture Ltd. (''Landmark''). *See Wooden Bedroom Furniture from the People's Republic of China; Initiation of New Shipper Reviews*, 70 FR 53344 (September 8, 2005). The Department published its preliminary results of the 2004–2005 semi–annual new shipper reviews and its rescission of one new shipper review for the antidumping duty order on WBF from the PRC on July 6, 2006. *See Preliminary Results*. The Department invited parties to comment on its preliminary results. On August 7, 2006, the Department received case briefs from Petitioners[1] and one respondent, Meikangchi. On August 14, 2006, the Department received rebuttal comments from Petitioners and Landmark. No other interested party provided comments. The Department has conducted these new shipper reviews in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214.

Period of Review

The POR is June 24, 2004 through June 30, 2005.

Scope of the Order

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[2],

[1] The Petitioners are American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721; UBC Southern Council of Industrial Workers Local Union 2305; United Steel Workers of America Local 193U; Carpenters Industrial Union Local 2093; and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991.

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

highboys[3], lowboys[4], chests of drawers[5], chests[6], door chests[7], chiffoniers[8], hutches[9], and armoires[10]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[11]; (9) jewelry armories[12]; (10) cheval mirrors[13] (11) certain metal parts;[14]and (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden...beds'' and under subheading 9403.50.9080 of the HTSUS as ''other...wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors...framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

New Shipper Status

Consistent with its practice, the Department investigated whether the sales made by Kunyu, Landmark, and Meikangchi for these new shipper reviews were *bona fide*. *See, e.g., Notice of Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 70 FR 59031 (October 11, 2005). For Kunyu, Landmark, and Meikangchi, the Department found no evidence that the sale(s) in question are not *bona fide* sale(s). In the examination of Kunyu, Landmark, and Meikangchi's sales, the Department found the sales prices to be within the range of POR sales prices and that these entities received timely payment for their POR sales. Based on the investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Kunyu, Landmark, and Meikangchi, and the Department's verification thereof, the Department determines that Kunyu, Landmark, and Meikangchi have met the requirements to qualify as new shippers during the POR. *See* Memorandum to Wendy J. Frankel, Office Director, *Antidumping Duty New Shipper Reviews of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Bona Fide Analysis of Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu''), Dongguan Landmark Furniture Products Ltd. (''Landmark''), and Meikangchi (Nantong) Furniture Company Ltd. (''Meikangchi'')*, dated June 26, 2006. In addition, the Department has determined that based on the information submitted, Kunyu, Landmark, and Meikangchi each made their first sale and/or shipment of subject merchandise to the United States during the POR, none of these firms exported subject merchandise during the period of investigation, and none was affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these final results of review, the Department is treating their respective sales of WBF to the United States as appropriate transactions to be examined in the context of these new shipper reviews. *See* section 751 (a)(2)(B) of the Act and 19 CFR 351.214(a); *see also* ''*Separate Rates*'' section below.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in these reviews are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''*Issues and Decision Memorandum* for the Final Results of the New Shipper Reviews of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China,'' dated November 21, 2006 (''*Issues and Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties raised and to which the Department responded in the *Issues and Decision Memorandum* is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document that is on file in the Central Records Unit (''CRU'') in

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859 dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, (71 FR 38621).

[13] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base.

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

room B–099 in the main Department building and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on its analysis of comments received, the Department has made changes in the margin calculations for Kunyu, Landmark, and Meikangchi.

- The Department is no longer using the Evergreen International Limited and Jayaraja Furniture Group financial statements in the calculation of the surrogate financial ratios. *See Issues and Decision Memorandum* at Comments 1 and 2.
- The Department included depreciation expense in the numerator of the factory overhead ratio and included interest expenses in the numerator of the selling, general, and administrative (''SG&A'') expense ratio in the calculation of Indian Furniture Products, Ltd. (''IFP'') 2004–2005 financial ratios. *See Issues and Decision Memorandum* at Comment 3.
- The Department excluded changes in finished goods inventory from the material portion of the cost of manufacturing and included the changes in ''work in progress'' in the material portion of the cost of manufacturing in the calculation of IFP's 2004–2005 numerator of factory overhead ratio. *See Issues and Decision Memorandum* at Comment 4.
- The Department moved IFP's 2004–2005 ''Labour charges'' from the labor portion of the cost of manufacturing to factory overhead in calculating of IFP's 2004–2005 numerator for the factory overhead ratio. *See Issues and Decision Memorandum* at Comment 6.
- The Department added the remaining portion of depreciation expense for Raghbir Interiors Pvt. Ltd.'s (''Raghbir'') ''Furniture and Fixtures'' and ''Computers'' to Raghbir's factory overhead. *See Issues and Decision Memorandum* at Comment 7.
- The Department did not offset the numerator of the SG&A ratio by the interest income for the surrogate companies where the Department could not confirm the short–term nature of interest income. *See Issues and Decision Memorandum* at Comment 9.
- The Department reversed the classification of ''job work expenses'' and ''salaries'' in Fusion Design Private, Ltd.'s financial statements by moving ''job work expenses'' into the labor portion of the cost of manufacturing and by moving ''salaries'' into SG&A expenses. *See Issues and Decision Memorandum* at Comment 10.
- The Department moved ''Wages to staff'' from factory overhead to the labor portion of cost of manufacturing in the calculation of D'nD Fine Furniture's financial ratios. *See Issues and Decision Memorandum* at Comment 12.
- The Department excluded packing materials from the calculation of IFP's 2004–2005 surrogate financial ratios. *See Issues and Decision Memorandum* at Comment 14.

Surrogate Country

In the preliminary results, the Department stated that it treats the PRC as a non–market economy (''NME'') country, and therefore, the Department calculated normal value in accordance with section 773(c) of the Act which applies to NME countries. Also, the Department stated that it had selected India as the appropriate surrogate country to use in this review for the following reasons: (1) It is at a similar level of economic development; and (2) it is a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. *See Preliminary Results.* For the final results, the Department made no changes to its findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is free of de jure and de facto control over its export decisions, so as to be entitled to a separate rate.

In the preliminary results, the Department found that Kunyu, Landmark, and Meikangchi demonstrated their eligibility for separate–rate status. For the final results, the Department continues to find that the evidence placed on the record of these new shipper reviews by Kunyu, Landmark, and Meikangchi demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under review and thus determine Kunyu, Landmark, and Meikangchi are eligible for separate–rate status.

Weighted–Average Dumping Margins

The weighted–average dumping margins are as follows:

WOODEN BEDROOM FURNITURE FROM THE PRC

Producer/Manufacturer/ Exporter	Weighted–Average Margin (Percent)
Kunyu	216.01
Landmark	0.00
Meikangchi	1.17

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), the Department has calculated importer–specific assessment rates for merchandise subject to this review. For Kunyu, Landmark, and Meikangchi, the Department divided the total dumping margins of each company's reviewed sales by the total entered value of its reviewed sales for each applicable importer to calculate *ad valorem* assessment rates. The Department will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on Kunyu, Landmark, and Meikangchi's entries under the relevant order during the POR.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer–specific *ad valorem* rates. For Kunyu, Landmark, and Meikangchi, the Department aggregated the dumping margins calculated for all U.S. sales to each importer and divided this amount by the entered value of the sales to each importer. For further details *see Final Analysis Memorandum.* Where an importer–specific *ad valorem* rate is *de minimis*, the Department will order CBP to liquidate appropriate entries without regard to antidumping duties.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of new shipper reviews for all shipments of wooden bedroom furniture from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(2)(c) of the Act: (1) Because the cash deposit rate for Landmark is zero, no cash deposit shall be required.

However, for Kunyu and Meikangchi, the cash deposit rates will be the rates shown above; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 198.08 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 21, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Use of Financial Statements of Evergreen International Limited for Calculation of the Surrogate Financial Ratios
Comment 2: Use of Financial Statements of Jayaraja Furniture Group for Calculation of the Surrogate Financial Ratios
Comment 3: Exclusion of Certain Expenses from the Calculation of the Cost of Manufacturing and Selling, General, and Administrative Expenses
Comment 4: Exclusion of Finished Goods Inventory from the Cost of Manufacturing
Comment 5: Treatment of the Sale of Scrap Offset in the Surrogate Financial Statements
Comment 6: Reclassification of Certain Labor Charges as Selling, General, and Administrative Expenses
Comment 7: Omission of Depreciation Expenses from the Surrogate Financial Ratios
Comment 8: Reclassification of ''Diesel & Petrol'' Expense as Selling, General, and Administrative Expense
Comment 9: Inclusion of Interest Income in the Calculation of Cost of Manufacturing
Comment 10: Treatment of ''Job Work Expenses'' in the Calculation of Surrogate Financial Ratios
Comment 11: Treatment of ''Sawing Charges Expenses'' in the Calculation of Surrogate Financial Ratios
Comment 12: Treatment of ''Wages to Staff'' in the Calculation of Surrogate Financial Ratios
Comment 13: Treatment of Certain Labor Costs in the Calculation of Surrogate Financial Ratios
Comment 14: Inclusion of Packing Materials in Selling, General, and Administrative Expense Using a Surrogate Company's Financial Statements

[FR Doc. E6–20631 Filed 12–5–06; 8:45 am]

BILLING CODE: 3510–DS–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments on a revised ''Application for the President's Higher Education Community Service Honor Roll'' which will involve the collection of information from institutions of higher education concerning community service activities and will provide the basis for the second year of this national honor roll and awards program. This second year of the Honor Roll program application will include special emphasis on student, faculty, and staff tutoring and mentoring activities designed to improve the high school graduation and college access rates of underachieving youth in disadvantaged circumstances. Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 5, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Learn and Serve America; Attention: Amy Cohen, Director, Room 9603; 1201 New York Avenue, NW., Washington, DC 20525. Please note that because we are experiencing significant delays in receiving U.S. Mail, you may wish to consider alternative mail services.

(2) By hand delivery or by courier to: the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3477, Attention: Amy Cohen.

(4) Electronically through the Corporation's e-mail address system: *acohen@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Cohen, (202) 606–6927, or by e-mail at *acohen@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background: Recognizing that community service and civic engagement are among the historic missions of most colleges and universities, the Corporation's Board of Directors has identified Strategic Plan targets that include significant increases in: the use of service-learning in higher education, the number of college students performing community service, and, in particular, the number of college students providing tutoring and other services designed to promote the high school completion and college access of youth in disadvantaged circumstances. The Honor Roll program supports these Strategic Plan goals as well as those of the First Lady's Helping America's Youth initiative.

The first year of the Honor Roll program was extremely successful, with 511 colleges submitting applications. Further information about the program and first-year Honor Roll members and award winners may be found at *http://www.nationalservice.gov/honorroll.*

Current Action: As with the first year of the program, information collected in the Honor Roll application will include: data on the scope and impacts of service projects; estimates of the number of enrolled students participating in community service activities; and information on institutional supports for service such as academic service-learning opportunities, community service coordination offices, and scholarships and other benefits in recognition of student service.

A special emphasis section of the 2007 Honor Roll application will solicit descriptions of exemplary service projects focusing on Youth Education Support. Last year's special focus section on Hurricane Relief has been deleted. Correspondingly, the Presidential Awards for Hurricane Relief that were made as part of the 2006 Honor Roll program will be replaced by Presidential Awards for Youth Education Support. Meanwhile, application guidance will emphasize that information concerning new or ongoing hurricane relief efforts may be included among the five exemplary project descriptions an institution may submit in support of a potential Presidential Award for General Community Service. The Corporation will consult with the higher education community and others concerning potential special emphasis topics for future years.

The selection of institutions for receipt of Presidential Awards under the President's Higher Education Community Service Honor Roll program will be based on information provided in the application. The deadline for institutions to submit applications is July 15, 2007. It is expected that a similar application/ information collection activity will be repeated annually, with a similar annual deadline.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Application for the President's Higher Education Community Service Honor Roll.

OMB Number: 3045–0120.

Agency Number: None.

Affected Public: Degree-granting colleges and universities located in the U.S. and its territories.

Total Respondents: 4,236 higher education institutions.

Frequency: Annual.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 4,236 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 2006.

Elson Nash,

Associate Director, Learn and Serve America, Corporation for National and Community Service. .

[FR Doc. E6–20670 Filed 12–5–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Open Meeting

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act announcement is made of the following meeting:

Name of Committee: DoD Task Force on Mental Health, a Subcommittee of the Defense Health Board.

Dates: December 18, 2006 (Morning—Open Session); December 19, 2006 (Morning—Open Session); December 20, 2006 (Morning—Open Session).

Times: 0800–1200 hours (18, 19 and 20 December).

Location: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

Agenda: The purpose of the meeting is to obtain, review, and evaluate information related to the Mental Health Task Force's congressionally-directed task of assessing the efficacy of mental health services provided to members of the Armed Forces by the Department of Defense. The Task Force members will receive briefings on topics related to mental health concerns among military service members and mental health care delivery. The Task Force will hold a ''Town Hall Meeting'' session to hear concerns from the Washington, DC metro area Active Duty Military, National Guard and Reserve, and Veterans communities and conduct executive working sessions.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Defense Health Board, Skyline One, 5204 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 123.

SUPPLEMENTARY INFORMATION: Morning sessions on December 18, 19 and 20, 2006 will be open to the public in accordance with Section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the Board at the time and in the manner permitted by the Board.

Dated: November 30, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9540 Filed 12–5–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Policy and Standards Team,

Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Policy and Standards Team, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 30, 2006.

Dianne M. Novick,

Acting Leader, Information Policy and Standards Team, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Common Core of Data Survey System.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 92.

Burden Hours: 6,040.

Abstract: The Common Core of Data (CCD) is the National Center for Education Statistics' universe data collection for finance and non-finance information about public school districts and schools. Information is collected annually from school districts about the districts and their member schools including enrollment by grade, race/ethnicity, and gender. Information is also collected about students receiving various types of services such as English Language Learner services. The CCD also collects information about the occurrence of high school dropouts. Information about teachers and staffing is also collected.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3210. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–20622 Filed 12–5–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Closed Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming closed meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter. This notice is appearing in the Federal Register less than 15 days prior to the meeting date due to scheduling conflicts and the importance of selecting a new Director for the Office of Indian Education in a timely manner.

Agenda: The Council will meet in a closed teleconference session to discuss personnel issues related to the selection of the Director for the U.S. Department of Education, Office of Indian Education. The Council will be discussing issues that relate solely to the internal personnel rules and practices of an agency. The Council is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6).

Date and Time: December 12, 2006; 1 p.m. to 3:30 p.m., Eastern Standard Time.

Location: U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Peirce Hammond, Designated Federal Official, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–205–0687. Fax: 202–205–0310.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the ESEA. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C141, 400 Maryland Avenue, SW., Washington, DC 20202.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 06–9542 Filed 12–5–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Advisory Committee

AGENCY: Office of Safe And Drug-Free Schools.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This notice is appearing in the **Federal Register** less than 15 days before the meeting due to difficulties in scheduling within the Agency.

Date: Monday, December 18, 2006.

Time: 2 p.m. EST.

Address: The Committee will meet by telephone conference call.

FOR FURTHER INFORMATION CONTACT: Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC, telephone: (202) 205–4169, e-mail: *OSDFSC@ed.gov*.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice to the Secretary on Federal, State and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The agenda for the December 18th meeting will include discussion to prepare for a January 16–17, 2007 meeting to be conducted by the Advisory Committee, including developing an agenda and identifying possible participants.

There will not be an opportunity for public comment during the December 18th meeting. However the public may listen to the conference call by calling 800–473–8796, Teleconference Chairperson: Deborah Price. Individuals who need accommodations for a disability in order to listen to the meeting may access a TYY line by calling 800–473–8796, Teleconference Chairperson: Deborah Price.

Request for Written Comments: We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

ADDRESSES: Submit all comments to the Advisory Committee using one of the following methods: 1. Internet. We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov* 2. Mail. The public may also submit comments via mail to Catherine Davis, Office of Safe and Drug Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the staff office for the Committee from the hours of 9 a.m. to 5 p.m.

Ray Simon,

Deputy Secretary, U.S. Department of Education.

[FR Doc. 06–9551 Filed 12–5–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Even Start Classroom Literacy Interventions and Outcomes Study

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of new and deleted systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Even Start Classroom Literacy Interventions and Outcomes (CLIO) Study (18–13–09)'' and deletes the system of records entitled ''Even Start Performance Information Reporting System and Experimental Design Study,'' (18–02–01), 64 FR 30110–30112 (June 4, 1999) because the Study has been completed.

The new system of records will contain information about adults and children in the William F. Goodling Even Start Family Literacy Programs (Even Start) (Title I, Part B, Subpart 3, Elementary and Secondary Education Act of 1965 (ESEA)) who participate in the CLIO study, on project staff from the Even Start grantees participating in the CLIO study, and on the kindergarten and first grade teachers of CLIO children. That information includes names, addresses, demographic information such as race/ethnicity, age, educational background and Even Start CLIO participating adults' and project staff and teacher responses to interview questions, and the results of literacy assessments of Even Start CLIO participating adults and children.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records included in this notice on or before January 5, 2007.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 1, 2006. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on January 10, 2007 or (2) January 5, 2007, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*.

You must include the term ''Even Start CLIO'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208–

7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contains individually identifiable information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department, that are published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 1, 2006.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new and deleted system of records to read as follows:

Deleted System

The Department of Education deletes system of records 18–02–01, ''Even Start Performance Information Reporting System and Experimental Design Study,'' 64 FR 30110–30112 (June 4, 1999), because the study has been completed.

New System 18–13–09

SYSTEM NAME:

Even Start Classroom Literacy Interventions and Outcomes (CLIO) Study.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208.

Westat, 1650 Research Boulevard, Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on adults and children in the William F. Goodling Even Start Family Literacy Programs (Even Start) program who participate in the CLIO study, on project staff from Even Start grantees participating in the CLIO study, and on the kindergarten and first grade teachers of CLIO children.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of: (1) The names and addresses of adults and children in the Even Start program who participate in the CLIO study; (2) demographic information such as race/ethnicity, age, and educational background for adults and children participating in the Even Start CLIO Study, for Even Start staff in programs participating in the CLIO study, and for the kindergarten and first grade teachers of CLIO children; (3) responses of adults participating in the Even Start CLIO study and project staff and teachers to interview questions; and (4) and the results of literacy assessments on adults and children participating in the Even Start CLIO study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under: (1) Sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563)); and (2) sections 1232(b)(1)(A) and 1239 of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB) (20 U.S.C. 6381a(b)(1)(A) and 638lh).

PURPOSE(S):

The information in this system is used for the following purposes: (1) To fulfill the requirements of the Even Start legislation for an evaluation of Even Start programs; and (2) To provide information on the effectiveness of specific family literacy interventions in those programs for use in improving the Even Start program. Routine Uses Of Records Maintained In The System, Including Categories Of Users And The Purpose Of Such Uses:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by the Institute of Education Sciences.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department must require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor maintains

data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each individual, which is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site, and the site of the Department's contractor where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users'' ability to access and alter records within the system. The contractor, Westat, has established a set of procedures to ensure confidentiality of data. The system ensures that information identifying individuals is in files physically separated from other research data. Westat will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: password-protected accounts that authorize users to use the Westat system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed. The contractor employees who maintain (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department of Education's Records Disposition Schedules (ED/RDS). In particular, the Department will follow the schedules outlined in Part 3 (Research Projects and Management Study Records) and Part 14 (Electronic Records) of ED/RDS.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information is obtained from interviews with Even Start CLIO study participants, staff, and kindergarten and first grade teachers of CLIO children and direct assessments of Even Start CLIO study participants. Even Start programs participating in CLIO also provide information to the CLIO study on who is participating in the program at each data collection point and their attendance in the program's services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–20681 Filed 12–5–06; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on March 30, 2006, an arbitration panel rendered a decision in the matter of *Gary DeFalco* v. *Nevada Department of Employment, Training and Rehabilitation (Docket No. R–S/05–2).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the complainant, Gary DeFalco.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerned alleged violations of the Act (20 U.S.C. 107 *et seq.*), the implementing regulations in 34 CFR part 395, and State rules and regulations by the Nevada Department of Employment, Training and Rehabilitation concerning complainant's management of Facility #43, a vending machine route.

A summary of the facts is as follows: Complainant has been a licensed vendor in the Nevada Department of Employment, Training and Rehabilitation's Randolph-Sheppard vending facility program since 1987. On January 29, 2002, complainant filed a grievance with the Nevada Department of Employment, Training and Rehabilitation, the State licensing agency (SLA), alleging that the SLA—(1) denied his right as the Southern Nevada Representative to manage a vending facility at the Las Vegas Water District; (2) denied his right as the Southern Nevada Representative to manage a vending site at the Las Vegas Department of Energy Support Facility; (3) denied his right as the Southern Nevada Representative to service all vending sites in southern Nevada since May 1999; and (4) placed him on a corrective action plan concerning his alleged improper management of Facility #43 prior to his receiving a notice of non-compliance from the SLA or being given the opportunity for corrective action. On February 15, 2002, the SLA rejected complainant's four grievances.

Subsequently, complainant filed for a State fair hearing with the SLA. A hearing on this matter was held on May 22 and June 19, 2002. On April 11, 2003, the hearing officer affirmed that complainant failed to establish any violations by the SLA regarding complainant's four grievances and the SLA's administration of the Nevada Randolph-Sheppard vending facility program. However, the hearing officer ruled that the complainant should not be responsible for the lease payments for his business vehicle for Facility #43 while a vending company serviced his vending route. The SLA adopted the hearing officer's decision as final agency action. The complainant sought review of that decision by a Federal arbitration panel.

Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled that—(1) The complainant was never appointed the Southern Nevada Representative and, therefore, had no first right of refusal for new vending routes in southern Nevada; (2) because the complainant completed all of the requirements of the corrective action plan, the SLA must place him back to work either into his previous position or in a suitable route but that there should be no damages because his net compensation during the time he was removed from the route had not diminished; (3) the SLA had fulfilled the order of the State hearing officer by paying for lease and insurance payments on complainant's vehicle because the complainant had been deducting these expenses from the set-aside normally paid to the SLA; (4) the loaning of start-up funds to the vendor by the SLA was not in violation of the Act; and (5) the arbitration hearing was not the proper venue for allegations that one of the panel members should have recused himself from the panel.

One panel member dissented from one of the panel's rulings—that the SLA should return the complainant to his previous vending route or a similar vending route—based upon the belief that an arbitration panel does not have the authority to specify an award to the vendor even when a violation of the Act has been found.

One panel member dissented from the entirety of panel's decision with the exception of the panel's ruling that the SLA should return the complainant to his previous vending route or a similar vending route.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: December 1, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–20680 Filed 12–5–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Windy Point Wind Energy Project; November 2006

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Notice of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for interconnection of up to 250 megawatts of power to be generated by the proposed Windy Point Wind Energy Project (Wind Project) into the Federal Columbia River Transmission System (FCRTS). BPA has considered both the economic and environmental consequences of taking action to integrate power from the Wind Project into the FCRTS. The Wind Project would be interconnected at BPA's Rock Creek Substation (under construction) along BPA's Wautoma—John Day No. 1 500-kilovolt transmission line. The Wind Project would be located between 6 to 15 miles southeast of Goldendale, Washington, north and northwest of the community of Goodnoe Hills. The project would be east of Highway 97 and south of Hoctor Road, and would be constructed on and next to a high ridgeline overlooking the Columbia River. This decision is consistent with and tiered to BPA's Business Plan Final Environment Impact Statement (BP EIS) (DOE/EIS–0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 15, 1995).

ADDRESSES: Copies of the ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD is also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Wittpenn, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *nawittpen@bpa.gov*.

Issued in Portland, Oregon, on November 29, 2006.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E6–20654 Filed 12–5–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–030]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate

November 29, 2006.

Take notice that on November 22, 2006, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective November 22, 2006:

First Revised Sheet No. 10E
First Revised Sheet No. 10F

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. E6–20602 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–76–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2006.

Take notice that on November 22, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets to become effective December 1, 2006:

Third Revised Sheet No. 380H
First Revised Sheet No. 380L

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–20605 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–1–004]

Consumers Power Company; Notice of Compliance Filing

November 29, 2006.

Take notice that on March 16, 2005, Consumers Energy Company (Consumers), formerly Consumers Power Company, submitted a compliance filing in which Consumers proposes a title transfer tracking (TTT) rate of $5.30 per transaction. Consumers states that the record in this proceeding does not contain evidence that any Consumer's FERC blanket certificate customer has ever been charged a TTT service fee by Consumers and that there is no basis for the Commission to consider ordering a TTT refund.

Any person desiring to participate in this rate proceeding must file a motion 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 Dated: 5 p.m. eastern time on December 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20601 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–2–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 29, 2006.

Take notice that on November 15, 2006, Enogex Inc. (Enogex) submitted for filing zonal fuel factors for the East and West Zones on the Enogex System for Fuel Year 2007 pursuant to the terms

of Enogex's fuel tracker on file with the Commission and to the terms of the settlement approved in Docket Nos. PR02–10–000, PR04–15–000, PR04–16–000 and PR05–3–000.

Any person desiring to participate in this rate proceeding must file a motion 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 on December 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20600 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–26–000]

Jo-Caroll Energy, Inc.; Notice of Application

November 29, 2006.

Take notice that on November 22, 2006, Jo-Caroll Energy, Inc (JCE), 793 U.S. Route 20 West, Elizabeth, Illinois 61028, a rural electric distribution cooperative, filed with the Federal Energy Regulatory Commission an abbreviated application pursuant to section 7(f) of the Natural Gas Act (NGA), as amended, requesting the determination of a service area within which JCE may, without further commission authorization, enlarge or expand its natural gas distribution facilities. JCE also requests: (i) A finding that JCE qualifies as a local distribution company (LDC) for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA); (ii) a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA; and (iii) such further relief as the Commission may deem appropriate, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application should be directed to Michael Hastings, Jo-Caroll Energy, Inc., 793 U.S. Route 20 West, Elizabeth, Illinois 61028, (815) 858–2207 (telephone), *mhastings@jocaroll.com;* or Joshua L. Menter, counsel for JCE, Miller, Balis & O'Neil, P.C., 1140 19th Street, NW., Washington, DC 20036, (202) 296–2960 (telephone), *jmenter@mbolaw.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. eastern time on December 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20595 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–61–001]

North Baja Pipeline, LLC; Notice of Amendment to Application

November 29, 2006.

Take notice that on November 21, 2006, North Baja Pipeline, LLC (North Baja), 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, filed in Docket No. CP06–61–001, an amendment, pursuant to section 7 of the Natural Gas Act (NGA), to its application filed on February 7, 2006 to expand its existing pipeline system. Specifically, North

Baja's amendment adopts the Arrowhead Alternative described in supplemental filings made by North Baja on May 1 and May 24, 2006. North Baja does not propose any changes to the transportation capacity of its proposed expansion. The Arrowhead Alternative is an alternative interconnection with Southern California Gas Company (SoCal) as opposed to the originally proposed Blythe Meter Station interconnection both of which are located in Riverside County, California, all as more fully set forth in the request which is on file with Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Carl M. Fink, Associate General Counsel, North Baja Pipeline, LLC, 1400 SW. Fifth Avenue, Suite 900, Portland, Oregon, 97201 at (503) 833–4256 or *Carl_Fink@TransCanada.com*.

The new facilities associated with the Arrowhead Alternative, as well as the originally proposed facilities that would no longer be necessary (and are thus withdrawn from North Baja's proposed action), are described in the draft environmental impact statement (EIS) for the North Baja Pipeline Expansion Project that was issued on September 22, 2006 for public comment. Environmental comments received on this amendment will be combined with those received on the draft EIS and will be addressed in the final EIS prepared for the North Baja Pipeline Expansion Project.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: December 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20594 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–75–000]

Northern Natural Gas Company; Notice of Petition for Limited Waiver

November 29, 2006.

Take notice that on November 21, 2006, Northern Natural Gas Company (Northern) tendered for filing a petition for a limited waiver of its FERC Gas Tariff in order to allow Northern to resolve an erroneously recorded imbalance variance for the month of October 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 Dated: 5 p.m. eastern time December 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20604 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–015]

Rockies Express Pipeline LLC; Notice of Negotiated Rate

November 29, 2006.

Take notice that on November 22, 2006, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued August 9, 2005, in Docket No. CP04–413–000, Rockies Express Pipeline LLC (REX) tendered for filing and acceptance certain tariff sheets of its FERC Gas Tariff to be effective November 23, 2006.

REX stated that a copy of this filing has been served upon all parties to this proceeding, REX's customers, the Colorado Public Utilities Commission and the Wyoming Public Service 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 § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20603 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–78–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2006.

Take notice that on November 22, 2006, Southern Star Central Gas Pipeline, Inc. tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective December 1, 2006:

Fifth Revised Sheet No. 10
Original Sheet No. 10A
Eighth Revised Sheet No. 11.

Southern Star states that copies of the tariff sheets are being provided to Southern Star's jurisdictional 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. E6–20593 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–77–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 29, 2006.

Take notice that on November 22, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 387, to become effective December 22, 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. E6–20606 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

November 29, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2161–023.

c. *Date Filed:* November 21, 2006.

d. *Applicants:* Rhinelander Paper Company (RPC) and Wausau Paper Specialty Products, LLC (WPSP, LLC).

e. *Name and Location of Project:* The Rhinelander Project is located on the Wisconsin River, in Oneida County, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For RPC and WPSP, LLC: Ms. Cara Kurtenbach, Director of Environmental Affairs, Wausau Paper, 100 Paper Place, Mosinee, WI 54455, (715) 692–2023. Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* December 15, 2006.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 electronic filings. Please include the project number (P–2161–023) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under Section 8 of the Federal Power Act, of a transfer of license for the Rhinelander Project No. 2161 from the Rhinelander Paper Corporation to the Wausau Paper Specialty Products, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–2161) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed 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. E6–20597 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

November 29, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2207–030.

c. *Date Filed:* November 21, 2006.

d. *Applicants:* Mosinee Paper Corporation (MPC) and Wausau Paper Specialty Products, LLC (WPSP, LLC).

e. *Name and Location of Project:* The Mosinee Project is located on the Wisconsin River, in Marathon County, Wisconsin. f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For MPC and WPSP, LLC: Ms. Cara Kurtenbach, Director of Environmental Affairs, Wausau Paper, 100 Paper Place,

Mosinee, WI 54455, (715) 692–2023. Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* December15, 2006.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 electronic filings. Please include the project number (P–2207–030) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under Section 8 of the Federal Power Act, of a transfer of license for the Mosinee Project No. 2207 from the Mosinee Paper Corporation to the Wausau Paper Specialty Products, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–2207) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed 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. E6–20598 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

November 29, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2533–041.

c. *Date Filed:* November 21, 2006.

d. *Applicants:* Wausau Paper of Minnesota, LLC (WPM, LLC) and Wausau Paper Printing & Writing, LLC (WPPW, LLC).

e. *Name and Location of Project:* The Brainerd Project is located on the Mississippi River, in Crow Wing County, Minnesota.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For WPM, LLC and WPPW, LLC: Ms. Cara Kurtenbach, Director of Environmental Affairs, Wausau Paper, 100 Paper Place, Mosinee, WI 54455, (715) 692–2023. Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* December 15, 2006.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 electronic filings. Please include the project number (P–2533–041) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under Section 8 of the Federal Power Act, of a transfer of license for the Brainerd Project No. 2533 from the Wausau Paper of Minnesota, LLC to the Wausau Paper Printing & Writing, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–2533) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed 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. E6–20599 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–6–000]

Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission; Notice of Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission

November 29, 2006.

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on Tuesday, January 23, 2007 at the headquarters of the NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The meeting is expected to begin at 1:30 p.m. and conclude at 3:30 p.m. eastern standard time.

Purpose of the Meeting

The NRC and FERC signed a Memorandum of Agreement on September 1, 2004, to facilitate interactions between the two agencies on matters of mutual interest pertaining to the nation's bulk power system reliability.

Earlier, on April 24, 2006, the two agencies held a joint meeting at the headquarters of FERC to begin dialogue in furtherance of the goals set forth in the September 1, 2004 FERC–NRC Memorandum of Agreement. That meeting included presentations by staff of both agencies and initiated a series of questions to be answered by the respective agencies that addressed grid reliability issues and the roles of the agencies in addressing those issues.

Format for Joint Meeting of Commissions

The format for the joint meeting will be discussions between the two sets of Commissioners following presentations by their respective staffs. In addition, representatives of the North American Electric Reliability Council (NERC) and the U.S. Department of Energy (DOE) may attend and participate in this meeting.

A free Webcast of this event will be made available through the NRC Web site, at *http://www.nrc.gov*. In addition, the event will be transcribed and the transcription will be made available through the NRC Web site approximately three business days after the meeting.

All interested persons are invited. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Sarah McKinley at *Sarah.McKinley@ferc.gov* or by phone at 202–502–8004.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20607 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Staff Technical Conference

November 29, 2006.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05–6–044. Docket No. ER05–6–054. Docket No. ER05–6–055.
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04–135–046. Docket No. EL04–135–056. Docket No. EL04–135–057.
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02–111–064. Docket No. EL02–111–074. Docket No. EL02–111–075.
Ameren Services Company	Docket No. EL03–212–060. Docket No. EL03–212–070. Docket No. EL03–212–071.
Midwest Independent Transmission System Operator, Inc.	Docket No. ER06–18–000. Docket No. ER06–18–001. Docket No. ER06–18–002. Docket No. ER06–18–003. Docket No. ER06–18–004. Docket No. ER06–18–005.
PJM Interconnection, LLC	Docket No. ER06–954–000. Docket No. ER06–456–000. Docket No. ER06–1271–000.

As announced in the Notice of Technical Conference issued on October 13, 2006, the Commission staff will convene a technical conference on Tuesday, December 5, 2006, at 9 a.m. at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The room location of the technical conference has been changed to Hearing Room 1.

Also, additional docket numbers have been included in the caption above because issues in these proceedings may be related to issues arising during the course of discussions in the technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. E6–20596 Filed 12–5–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0947, FRL–8251–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; NO_X Budget Trading Program To Reduce the Regional Transport of Ozone, EPA ICR Number 1857.04, OMB Control Number 2060–0445

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0947, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–2006–0947. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.*

FOR FURTHER INFORMATION CONTACT: Kenon Smith, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9164; fax number: 202–343–2361; e-mail address: *smith.kenon@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0947, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are those which participate in the NO_X Budget Trading Program to Reduce the Regional Transport of Ozone.

Title: NO_X Budget Trading Program to Reduce the Regional Transport of Ozone.

ICR numbers: EPA ICR No. 1857.04, OMB Control No. 2060–0445.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The NO_X Budget Trading Program is a market-based cap and trade program created to reduce emissions of nitrogen oxides (NO_X) from power plants and other large combustion sources in the eastern United States. NO_X is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The NO_X Budget Trading Program was designed to reduce NO_X emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest. This information collection is necessary to implement the NO_X Budget Trading Program. While States were not required to adopt an emissions trading program, every State adopted the basic Federal model trading program for fossil fuel-fired NO_X sources. This trading program burden includes the paper work burden related to: Transferring and tracking allowances, the allocation of allowances to affected units, permitting, annual year end compliance certification, and meeting the monitoring and reporting requirements of the program. This information collection is mandatory under 40 CFR part 96. All data received by EPA will be treated as public 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 142 hours per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 2,467.

Frequency of response: Varies by task.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours: 492,192 hours.

Estimated total annual costs: $54,097,149. This includes an estimated burden cost of $25,354,474 and an estimated cost of $28,742,675 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: November 17, 2006.

Sam Napolitano,

Director, Clean Air Markets Division, Office of Air and Radiation.

[FR Doc. E6–20641 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–8252–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Compliance Assurance Monitoring Program; EPA ICR No. 1663.03, OMB Control No. 2060–0376

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on March 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0152 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center

(EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460.

• *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2003–0179. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through www.regulations.gov or e-mail. The Web site is an ''anonymous access'' system, which means we 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 us 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, we recommend 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 we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–5412–1058; fax number: 919–541–1039; e-mail address: *westlin.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0152 which is available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Particularly Interests EPA?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply?

Docket ID No. EPA–HQ–OAR–2003–0152.

Affected entities: Entities potentially affected by this action are all facilities required to have a title V permit under either part 70 or part 71. *See* 40 CFR 70.2 and 71.2. *See also* section 502(a), which defines the sources required to obtain a title V permit.

Title: Compliance Assurance Monitoring Program (40 CFR Part 64).

ICR numbers: EPA ICR No. 1663.03, OMB Control No. 2060–0376.

ICR status: This ICR is currently scheduled to expire on March 31, 2007. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Act contains several provisions directing us to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth title V (operating permits provisions) and title VII (enforcement provisions) of the Act. Title V directs us to implement monitoring and certification requirements through the operating permits program. Section 504(b) of the Act allows us to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring

systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions.'' Section 114(a)(3) requires us to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and record keeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring (CAM) rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

In accordance with these provisions, the monitoring information source owners must submit must also be available to the public, except as entitled top protection from disclosure as allowed in section 114(c) of the Act. 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.

We are soliciting 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) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: We estimate the annual public reporting and recordkeeping burden for this collection of information to average about 340 hours per response. 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 which have subsequently changed; 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.

Based on the Agency's knowledge of the number of title V permits issued since 1997 and the implementation of part 64 through permit renewals, the expected impact of the CAM program for the 3 years from October 1, 2006 until September 30, 2009 is about 2.0 million hours annually. The CAM rule will incur an average annual cost of about $220 million in 2005 dollars. This includes an annualized capital and operation and maintenance cost of about $2.7 million.

The CAM program burden for source owners or operators means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide monitoring 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. We have also included annualized capital and operational and maintenance costs for monitoring programs in the cost burden calculation. The CAM program potentially affects about 3,600 large pollutant-specific emissions units plus about 22,000 other pollutant-specific emissions units nationwide. The annual burden for source owners or operators is about 2.0 million hours for large and other pollutant-specific emissions units combined.

During the review period, permitting authorities will review CAM rule submittals from source owners or operators whose permits have already been issued and are renewing those permits as the 5-year permit terms expire. Permitting authorities will also be interacting with the source owners or operators in addressing the CAM in semi-annual monitoring reports and reporting CAM data as necessary. We estimate the annual CAM burden to permitting authorities to be about 57,000 hours and about $2.6 million. 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 6,000.

Frequency of response: Every 5 years at permit renewal.

Estimated total average number of responses for each respondent: 8.

Estimated total annual burden hours: 2.0 million hours.

Estimated average annual costs: about $221 million. This includes an estimated burden cost of $218 million and an estimated cost of about $2.7 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 1.84 million hours in the total estimated respondent annual burden compared with that identified in the ICR currently approved by OMB. This increase reflects the significant increase in number of respondents resulting from the implementation of the rule through operating permit renewals and EPA's reassessment of the reporting and recordkeeping burdens associate with implementing this rule.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: November 28, 2006.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–20643 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0408; FRL–8251–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Under EPA's Water Efficiency Program; EPA ICR No. 2233.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 5, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA HQ–OW–2006–0408, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cindy Simbanin, Office of Waste Water Management, Office of Water, 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202 564–3837; fax number: 202 501–2396; e-mail address: *simbanin.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 4, 2006 (71 FR 44277), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0408, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Reporting and Recordkeeping Requirements Under EPA's Water Efficiency Program.

ICR numbers: EPA ICR No. 2233.01.

ICR Status: This ICR is for a new information collection activity. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's Water Efficiency Program is a voluntary program designed to create self-sustaining markets for water efficient products and services via a common label. The program provides incentives for manufacturers to design, produce, and market water-efficient products. In addition, the program provides incentives for service providers (e.g., landscapers) to deliver water-efficient products. The program also encourages consumers and commercial and institutional purchasers of water-using products and systems to choose water-efficient products and engage in water-efficient practices.

EPA's Water Efficiency Program partners with manufacturers, retailers, utilities, state and local governments, NGOs, plumbers, developers, contractors, architects, landscapers, irrigation professionals, and service certification programs to market and adopt the Water Efficiency Program, and provide labeled products and programs. To participate in the program, organizations will complete a Partnership Agreement, which details the partner and EPA commitments under the program, and is signed by a senior official at both EPA and the partner organization. EPA asks manufacturers, certification programs, and builders to submit an EPA Water Efficiency Program New Certified Product Notification Form within 12 months of execution of the Partnership Agreement. This document provides EPA information to verify that the product or service meets EPA specifications based on independent testing. EPA will use this information to inform the public on water efficient products and services. In addition, EPA requests partners submit promotional plans and annual updates on progress implementing the program. EPA intends to use this information to identify partnership opportunities and assess progress meeting program goals.

In the third year of the program, EPA plans to initiate an awards program that will require interested partners to submit an awards application form. Participation in the awards program is strictly voluntary. The purpose of this information collection is to document partner successes for further recognition. Partners may designate certain information submitted under this ICR as confidential business information. All information identified as confidential business information collected under this ICR will not be available to the public. Participation on the awards program is entirely voluntary.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89 hours per response. 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 which have subsequently changed; 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.

Respondents/Affected Entities: The universe of each respondent activity varies depending upon the specific activity. The respondent universe for each information collection activity associated with EPA Water Efficiency Program is presented and explained separately below.

Partnership Agreement: EPA estimates that 3,800 partners will join the program in the first year, 5,000 in the second year, and 6,200 in the third year of the program, for an average of 5,000 partners per year. EPA estimates that certified professionals will comprise the vast majority of partnerships. For other partner categories, EPA anticipates welcoming 100 partners in the first year, 75 in the second year, and 125 in the third year.

New Certified Product Notification Form: During the three-year period covered by this ICR, EPA anticipates developing specifications for 13 categories of products and services. Each product category has specific information that must be submitted by partners who desire to label their product(s). EPA anticipates that manufacturers will submit a total of 450 products for certification in the 13 categories over the first 3 years of the program. This translates to 150 products annually. Of the 450 total applications, EPA anticipates updating the Web registry of labeled products on a monthly basis.

Promotional Plan: With an exception for certified professionals, EPA plans to request submission of one Promotional Plan per partner for each year the partner participates in the program. Thus, EPA anticipates receiving 100 promotional plans in the first year, 175 in the second and 300 in the third for an average of 192 per year.

Annual Update: With an exception for certified professionals, EPA plans to require submission of one Annual Update per partner for each year the partner participates in the program. Thus, EPA anticipates receiving 100 Annual Updates in the first year, 175 in the second and 300 in the third for an average of 192 per year.

Award Application: EPA plans to initiate an awards program by the third year of the Water Efficiency Program. Based on the popularity of other EPA awards programs, EPA anticipates receiving 100 applications during the first round of award applications.

Estimated Number of Respondents: 214 State and local government; 427 private sector, 5000 individuals per year.

Frequency of Response: Once/year.

Estimated Total Annual Hour Burden: 50,081.

Estimated Total Annual Cost: $3,372,000, includes $125,000 annual capital/startup and O&M costs and $3,247,000 annual labor costs.

Dated: November 29, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–20644 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL229–1; FRL–8251–5]

Notice of Prevention of Significant Deterioration Final Determination for City of Springfield

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on October 5, 2006, the Environmental Appeals Board (EAB) of the EPA denied a petition for review of a Federal Prevention of Significant Deterioration (PSD) permit issued to City of Springfield, Illinois, by the Illinois Environmental Protection Agency (IEPA).

DATES: The effective date for the EAB's decision is October 5, 2006. Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of December 6, 2006.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Constantine Blathras at (312) 886–0671.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/*.

SUPPLEMENTARY INFORMATION:

Notification of EAB Final Decision

The IEPA, acting under authority of a PSD delegation agreement, issued a PSD permit to the City of Springfield on August 10, 2006, granting approval to construct a new 250 megawatt coal-fired electric generating unit at the City of Springfield's existing power plant in Sangamon County, Illinois. Mr. David Maulding filed a petition for review with the EAB on September 8, 2006. The EAB denied the petition on October 5, 2006.

Dated: November 20, 2006.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

[FR Doc. E6–20649 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0909; FRL–8104–3]

Diazinon; Notice of Receipt of Requests to Voluntarily Amend Pesticide Registrations to Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their registrations to terminate uses of certain products containing the pesticide diazinon. The requests would terminate use of granular diazinon products in or on beets (red and table), broccoli, Brussels sprouts, cabbage, carrots, cauliflower, collards, endive (escarole), ginseng, kale, melons, mustard, onions (bulb and green), radishes, spinach, sugar beets, sweet corn, and tomatoes, and use of liquid or wettable powder diazinon products in or on Chinese broccoli, Chinese cabbage, Chinese mustard, Chinese radish, corn, grapes, hops, mushroom houses, sugar beets, and walnuts, or as a seed treatment. The

requests would not terminate the last diazinon products registered for use in the U.S. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their request(s) within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 5, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0909, 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 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–2006–0909. 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 Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; fax number: (703) 308–7070; e-mail address: *plummer.stephanie@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 on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants Makhteshim Chemical Works, Ltd., Makhteshim Agan of North America, Inc., Drexel Chemical Company, Wilber Ellis Company, and Helena Chemical Company to terminate use of granular diazinon products on 20 crops and 11 uses of liquid or wettable powder diazinon products. Diazinon is an organophosphate insecticide used on a

variety of fruit, nut, vegetable, and field crops, as well as ornamentals. In letters submitted to the Agency in October 2005 through November 2006, Makhteshim Chemical Works, Ltd., Makhteshim Agan of North America, Inc., Drexel Chemical Company, Wilber Ellis Company, and Helena Chemical Company requested that EPA amend their pesticide product registrations to terminate uses identified in this notice (Tables 1 and 2). Specifically, as per the diazinon Interim Reregistration Eligibility Decision (IRED) issued in September 2002, the registrants requested voluntary cancellation of the use of granular diazinon products on beets (red and table), broccoli, Brussels sprouts, cabbage, carrots, cauliflower, collards, endive (escarole), ginseng, kale, melons, mustard, onions (bulb and green), radishes, spinach, sugar beets, sweet corn, and tomatoes. The registrants also requested voluntary cancellation of the use of liquid or wettable powder diazinon products in/on Chinese broccoli, Chinese cabbage, Chinese mustard, Chinese radish, corn, grapes, hops, mushroom houses, sugar beets, and walnuts, and as a seed treatment. Termination of these uses will not result in cancellation of the last diazinon products registered in the United States, or the last pesticide products registered in the United States for these uses.

These uses are being terminated as a result of the Diazinon IRED, which was issued in September 2002. The Diazinon IRED and supporting documents can be accessed through www.regulations.gov, docket number EPA–HQ–2005–0251.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to amend pesticide registrations to terminate certain uses of diazinon. The affected products and the registrants making the requests are identified in Tables 1 through 3 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The diazinon registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1. DIAZINON MANUFACTURING USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
11678–61	Diazol Diazinon Technical Stabilized Ag	Makhteshim Chemical Works, Ltd
11678–63	Diazol (Diazinon) Stabilized Oil Concentrate Ag.	Makhteshim Chemical Works, Ltd.
19713–523	Drexel Diazinon Technical Ag	Drexel Chemical Company

TABLE 2. DIAZINON END–USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
2935–408	Diazinon 14G≤	Wilbur Ellis Co.
5905–248	Diazinon AG500	Helena Chemical Co.
19713–95	Drexel Diazinon 14G	Drexel Chemical Co.
19713–91	Drexel Diazinon Insecticide	Drexel Chemical Co.

TABLE 2. DIAZINON END–USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration No.	Product name	Company
19713–492	Diazinon 50WP Insecticide	Drexel Chemical Co.
66222–9	Diazinon AG500	Makhteshim Agan North America
66222–10	Diazinon 50W	Makhteshim Agan North America
66222–103	Diazinon Ag600WBC Insecticide	Makhteshim Agan North America

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Tables 1 and Table 2 of this unit.

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
2935	Wilbur Ellis Company P.O. box 1286 Fresno, CA 93715
5905	Helena Chemical Company 225 Schilling Blvd, Suite 300 Collierville, TN 38017
11678	Makhteshim Chemical Works, Ltd. Makhteshim Agan of North America, Inc. 4515 Falls of Neuse Rd. Suite 300 Raleigh, NC 27609
19713	Drexel Chemical Company 1700 Channel Ave. P.O. Box 13327 Memphis, TN 38113
66222	Makhteshim Agan of North America 4515 Falls of Neuse Rd. Suite 300 Raleigh, NC 27609

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or

amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Diazinon

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 5, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–20429 Filed 12–05–06; 8:45 am]

BILLING CODE 6560–507–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0687; FRL–8105–2]

Petition to Amend FIFRA Section 25(b); Notice of Availability; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of September 13, 2006, concerning a petition filed by the Consumer Specialty Products Association (CSPA) requesting the Agency to modify the minimum risk regulations at 40 CFR 152.25(f) for those products that claim to control public health pests to be subject to EPA registration requirements as a precondition of their sale. This document reopens the comment period for an additional 30 day period.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0687 must be received on or before January 5, 2007.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of September 13, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Steinwand, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-7973; e-mail address: *steinwand.brian@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. 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 September 13, 2006, **Federal Register** document (71 FR 54055) (FRL–8091–3). If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document reopens the public comment period established in the **Federal Register** of September 13, 2006. In that document, EPA created a public docket (EPA–HQ–OPP–2006–0687) requesting comment on a petition filed by the Consumer Specialty Products Association (CSPA) for the Agency to modify the minimum risk regulations at 40 CFR 152.25(f) for those products that claim to control public health pests to be subject to EPA registration requirements as a precondition of their sale. EPA is hereby reopening the comment period, which ended on November 13, 2006, for an additional 30 days. Comments must be received on or before January 5, 2007.

III. What is the Agency's Authority for Taking this Action?

Under section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), an interested person may petition an agency for the issuance, amendment, or repeal of a rule.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 27, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–20647 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8251–4]

Proposed CERCLA Administrative Cost Recovery Settlement; The Marsh Valve Superfund Site, Dunkirk, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement under Section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past

response costs concerning the Marsh Valve Superfund Site located in Dunkirk, New York with the Settling Party, Electrolux Home Products, Inc., and its predecessors in interest, White Consolidated Industries, Inc., and Sarco Company, Inc. The settlement requires the Settling Party to pay $2,540,000, plus an additional sum for interest on that amount calculated from July 5, 2005 through the date of payment to the EPA Hazardous Substance Superfund in reimbursement of EPA's past response costs incurred with respect to the Site. The settlement includes a covenant not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for Past Response Costs, as defined in the agreement. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before January 5, 2007.

ADDRESSES: The proposed settlement is available for public inspection at USEPA, 290 Broadway, 17th Floor, New York, New York 10007–1866. Comments should reference the Marsh Valve Superfund Site, CERCLA Docket No. 02–2006–2014 and be sent to the individual identified below. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, USEPA, 290 Broadway, 17th Floor, New York, New York 10007–1866, (212) 637–3177.

Dated: November 13, 2006.

William McCabe,

Acting Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II.

[FR Doc. 06–9532 Filed 12–5–06; 8:45 am]

BILLING CODE 6560–50–M

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 5, 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, 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: 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Development of SMR Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,042 respondents; 1,042 responses.

Estimated Time Per Response: 2–4.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 524 hours.

Total Annual Cost: $304,313.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

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. The Commission has revised this collection because on July 22, 2005, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (20 FCC Rcd 16293) to streamline and harmonize licensing provisions in the wireless radio services pursuant to biennial regulatory review responsibilities. The Commission modified section 90.693 (47 CFR 90.693) of its rules to eliminate the necessity of incumbent 800 MHz Specialized Mobile Radio (SMR) licensees filing notifications of minor modifications in certain circumstances. Specifically, notification of minor modifications is no longer required where a license locates its facilities closer than the minimum required distance separation but nonetheless falls within the parameters of the Short Spacing Separation Table under Commission rule section 47 CFR 90.621. The information will be used by the Commission for the following purposes: (a) To update the Commission's licensing data base and thereby facilitate the successful coexistence of Economic Areas (EA) licensees and incumbents in the 800 MHz SMR band; and (b) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20447 Filed 12–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age (''Diversity Committee'') will hold a meeting on December 21, 2006, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. We note that the Commission is in the process of rechartering the Committee. This meeting will be the first that includes a newly constituted membership. In addition, Lisa M. Fowlkes and Barbara Kreisman are now the Diversity Committee's Designated Federal Officer and Alternate Designated Federal Officer, respectively.

DATES: December 21, 2006.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Designated Federal Officer of the FCC's Diversity Committee (202) 418–7452 or e-mail: *lisa.fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATION: At this meeting, the Diversity Committee will discuss and consider possible areas in which to develop recommendations that will further enhance the ability of minorities and women to participate in the telecommunications and related industries.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Lisa M. Fowlkes, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *lisa.fowlkes@fcc.gov* or U.S. Postal Service Mail (Lisa M. Fowlkes, Federal Communications Commission, Room 7–C753, 445 12th Street, SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFAC.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–20687 Filed 12–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2006–18]

Filing Dates for the Texas Special Election in the 23rd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a special runoff election on December 12, 2006, to fill the seat in the Twenty-third Congressional District. On November 7, 2006, a Special General Election was held, with no candidate achieving a majority vote. Under Texas law, a Special Runoff Election will now be held with the two top vote-getters participating.

Committees participating in the Texas Special Runoff Election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Texas Special Runoff Election shall file a 12-day Pre-Runoff Report on November 30, 2006; and a consolidated 30-day Post-Runoff and Year-End Report on January 11, 2007. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a quarterly basis in 2006 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special Runoff Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Texas Special Runoff Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 60 days prior to a special general election. See 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 60-day electioneering communications period in connection with the Texas Special Runoff runs from October 13, 2006, through December 12, 2006.

Calendar of Reporting Dates for Texas Special Election

COMMITTEES INVOLVED IN THE SPECIAL RUNOFF (12/12/06) MUST FILE

Report	Close of books[1]	Reg./Cert. & overnight mailing date	Filing date
Pre-Runoff	11/22/06	11/27/06	11/30/06
Post-Runoff & Year-End[2]	01/01/07	01/11/07	01/11/07

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Committees should file a consolidated Post-Runoff and Year-End Report by the filing date of the Post-Runoff Report

Dated: November 29, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–20587 Filed 12–5–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011982.

Title: Evergreen Line Joint Service Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Hatsu Marine Ltd., and Italia Marittima S.p.A.

Filing Party: Paul M. Keane, Esq.; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to operate a joint service in all U.S. trades.

By order of the Federal Maritime Commission.

Dated: December 1, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–20661 Filed 12–5–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 018073N.
Name: American Logistics Intermodal, Inc.
Address: 320 Pine Ave., Suite 503, Long Beach, CA 90802.
Date Revoked: November 18, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016159N.
Name: American Pioneer Shipping L.L.C.
Address: 379 Thornall St., 3rd Floor, Edison, NJ 08837.
Date Revoked: November 23, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019621NF.
Name: American Trans Solutions, LLC.
Address: c/o 2548 Abaco Ave., Miami, FL 33133.
Date Revoked: November 15, 2006.
Reason: Surrendered license voluntarily.

License Number: 015247F.
Name: Amerindias, Inc.
Address: 5220 NW 72nd Ave., Bay 3, Miami, FL 33166.
Date Revoked: November 10, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014868N.
Name: Auto Logistics Solutions, Inc. dba Island Vehicle Transport.
Address: One Harbor Center, Suite 240, Suisun City, CA 94585.
Date Revoked: November 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004664N.
Name: Cornerstone Logistics Incorporated.
Address: 1017 Grandview Drive, So. San Francisco, CA 94080.
Date Revoked: November 4, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019635N.
Name: Gammacor, Inc.
Address: 594 Industry Drive, Bldg. 6, Tukwila, WA 98188.
Date Revoked: November 16, 2006.
Reason: Failed to maintain a valid bond.

License Number: 002963F.
Name: George S. Engers dba G.S. Engers & Company.
Address: 7301 NW 41st Street, Suite A, Miami, FL 33166.
Date Revoked: November 13, 2006.
Reason: Failed to maintain a valid bond.

License Number: 000988F.
Name: H.E. Schurig and Co. of Louisiana.
Address: 177 O.K. Ave., Harahan, LA 70123
Date Revoked: November 16, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014503N.
Name: Hana Worldwide Shipping Co., Inc.
Address: 20695 S. Western Ave., Suite 120, Torrance, CA 90501.
Date Revoked: November 27, 2006.
Reason: Surrendered license voluntarily.

License Number: 019154NF.
Name: SNS Shipping, Inc.
Address: 147–04 176th Street, Jamaica, NY 11434.
Date Revoked: November 20, 2006.
Reason: Failed to maintain valid bonds.

License Number: 003172N.
Name: The Interport Company, Inc.
Address: 2300 E. Higgins Road, Suite 209–A, Elk Grove Village, IL 60007.
Date Revoked: November 17, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004585F.
Name: Tradewinds USA, Inc.
Address: 4027 S. Wells, Chicago, IL 60609.
Date Revoked: November 23, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014125N.
Name: Transtainer Corporation dba Transtainer Costa Rica.
Address: 3200 NW 112th Ave., Doral, FL 33176.
Date Revoked: November 24, 2006.
Reason: Failed to maintain a valid bond.

License Number: 003503F.
Name: Wisconsin Export Services, Inc.
Address: P.O. Box 170049, Milwaukee, WI 53217.
Date Revoked: November 27, 2006.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–20663 Filed 12–5–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
015247N	Amerindias, Inc., 5220 NW 72nd Avenue, Bay 3, Miami, FL 33166	November 10, 2006.
004664F	Cornerstone Logistics Incorporated, 1017 Grandview Drive, So. San Francisco, CA 94080	November 4, 2006.
015548N	Demars International, Inc. dba Service America, Independent Line, Cargo Bldg. 67, Suite 3082, JFK Int'l. Airport, Jamaica, NY 11430.	September 14, 2006.
003961F	Ford Freight Forwarders,Inc., 8081 NW 67th Street, Miami, FL 33066	October 15, 2006.
003172F	The Interport Company, Inc., 2300 E. Higgins Road, Suite 209–A, Elk Grove Village, IL 60007	November 17, 2006.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–20673 Filed 12–5–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.
License Number: 019790N.
Name: K.C. Consulting, Inc.
Address: 36565 Nathan Hale Drive, Lake Villa, IL 60046.
Order Published: FR: 11/01/06 (Volume 71, No.211, Pg.64281).

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–20674 Filed 12–5–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:
- Ocean Cargo Carriers Co. LLC, 840 Bond Street, Elizabeth, NJ 07201, Officers: Victor Rao, President, (Qualifying Individual), Wilma Rodriguez-Rao, Vice President.
- Project Freight Transportation, Inc., 623 Staffordshire Drive East, Jacksonville, FL 32225, Officer: Eric K. Sullivan, President, (Qualifying Individual).
- Letter Express of Broward Inc., dba Letter Express Courier & Logistics Inc., 2111 NW 79th Avenue, Miami, FL 33122, Officer: Rafael Landa, President, (Qualifying Individual).
- Cargo Express, 1790 Yardley Langhorne Road, Suite 211, Yardley, PA 19067, Officers: Joseph Pfender, President, (Qualifying Individual), James Ferrero, Vice President.
- AMS Logistics Services Ind., 955 17th Lane SW, Vero Beach, FL 32962, Officers: Richard E. Browne, President, (Qualifying Individual), Joanne M. Browne, Vice President.
- Family Cargo Express, 941 Intervale Avenue, Bronx, NY 10459, Miguel Watos, Sole Proprietor.
- American Cargo Shipping Lines, Inc., 12335 Wake Union Church Road, Suite 206, Wake Forest, NC 27587, Officer: Richard Sheikh, President, (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:
- AAC Transport, Inc., 147–35 183rd Street, Rm. 204, Springfield Gardens, NY 11413, Officer: Edward Ting, President, (Qualifying Individual).
- Airtrans Logistics USA Inc., 230–59 Int'l Airport Center Blvd., Suite 190, Springfield Gardens, NY 11413, Officers: Kwok Keung Wong, Secretary, (Qualifying Individual), Chern Fong Lim, Vice President.
- Alpha Sun International, Inc., 5300 Kennedy Road, Suite C, Forest Park, GA 30297, Officers: Norman Kathryn Williams, CFO, (Qualifying Individual), Donna M. Mullins, President.
- Gillespie-Munro (U.S.A.) Inc., dba Gillship Navigation, 507 Lamberton Road, Mooers Forks, NY 12959–2612, Officers: John Anctil, Vice President, (Qualifying Individual).
- Don Cameron & Associates, Inc., dba Axis Global Logistics, 396 American Blvd. East, Bloomington, MN 55420, Officers: Jeffrey K. Larsen, V. P. Operations, (Qualifying Individual), Donald J. Cameron, President.
- Cargo Rates International LLC, 3322 36th Avenue S, Seattle, WA 98144, Officer: Robert James Greer, Member, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants
- Bosmak, Inc., 1340 Deanwood Road, Baltimore, MD 21234, Officers: Steve Onyilokwu, Owner,

(Qualifying Individual), Beatrice Onyilokwu, Secretary.

Destiny Global Export Corp., 12 Kingsberry Drive, Somerset, NJ 08873, Officer: James Onueha, Director, (Qualifying Individual).

Fried-Sped Logistics LLC, 4100 Chestnut Avenue, Newport News, VA 23607, Officers: Mary Allen Keith, Traffic Manager, (Qualifying Individual), Wayne Gourley, Office Manager.

Dated: December 1, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–20662 Filed 12–5–06; 8:45 am]

BILLING CODE 6730–01–P

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 January 2, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Piedmont Community Bank Group, Inc., Gray, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Piedmont Community Bank, Gray, Georgia.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. P/R Bancorp; to become a bank holding company by acquiring 100 percent of the voting shares of Greensfork Township State Bank, both of Spartanburg, Indiana.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Montana Business Capital Corporation (to be known as Bancorp of Montana Holding Company); to become a bank holding company by acquiring 100 percent of Bank of Montana, both of Missoula, Montana, a *de novo* bank.

In connection with this application, Applicant also has applied to engage *de novo* in commercial and residential loan origination activities, pursuant to section 225.28(b)(1) of Regulation Y.

2. Platinum Bancorp, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Platinum Bank, both of Oakdale, Minnesota.

D. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Oakland Financial Services, Inc., Oakland, Iowa; to merge with Otoe County Bancorporation, Inc., and thereby indirectly acquire Otoe County Bank and Trust Company, both of Nebraska City, Nebraska.

Board of Governors of the Federal Reserve System, December 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–20664 Filed 12–05–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, December 11, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, December 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–9565 Filed 12–1–06; 4:38 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0156]

Service Corporation International and Alderwoods Group, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''SCI Alderwoods Group, File No. 061 0156,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade

Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Joseph Brownman (202–326–2605), Bureau of Competition, or Craig Tregillus (202–326–2970), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 22, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Service Corporation International (''SCI'') and Alderwoods Group, Inc. (''Alderwoods''), formerly known as The Loewen Group, Inc. (''Loewen'').[2] The purpose of the Consent Agreement is to remedy the anticompetitive effects that would be likely to result from SCI's purchase of Alderwoods, as alleged in the Complaint the Commission issued with the Consent Agreement. The Consent Agreement has been placed on the public record for thirty (30) days for the receipt of comments from the public. Comments received during this period will become part of the public record. After the thirty (30) day comment period, the Commission will consider the Consent Agreement and the comments received, and will decide whether to withdraw from the Consent Agreement or make it final.

The Consent Agreement provides for relief in 47 local markets in which the Commission in its Complaint alleged the proposed acquisition is anticompetitive. Under the terms of the Consent Agreement, SCI must divest 40 funeral home facilities in 29 local markets and 15 cemetery properties in 12 local markets across the United States. In each of six additional funeral service markets, the Consent Agreement gives SCI the option of either divesting the Alderwoods funeral home(s) it will be acquiring or terminating its licensing agreement with the third-party funeral homes that are providing funeral services in the markets under SCI's Dignity Memorial trademark. In these Dignity Affiliate markets, until the divestitures required by the Consent Agreement, SCI must cease and desist from suggesting prices to those third-party Dignity Affiliates.

The Commission, SCI, and Alderwoods have also agreed to an Order to Hold Separate and Maintain Assets. This order requires SCI and Alderwoods to hold separate and maintain all of the Alderwoods assets in the markets where divestitures are required, pending the required divestitures. To ensure that the Alderwoods assets are properly held separate and maintained, the Commission has appointed William E. Rowe to act as monitor trustee. The eventual acquirers of the assets required to be divested and the manner of their divestiture must receive the prior approval of the Commission. The order also requires SCI to provide the Commission with regular compliance reports demonstrating how it is complying with the terms of the Consent Agreement, until it is in full compliance with that Agreement.

On April 2, 2006, SCI and Alderwoods agreed to SCI's proposed acquisition of Alderwoods for $1.23 billion (a figure that includes the assumption of debt by SCI). The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in connection with the provision of funeral services (and associated products) or cemetery services (and associated products and property) in many of the local markets in which SCI and Alderwoods compete.[3]

The purpose of this analysis is to invite public comment on the Consent Agreement, including the proposed required divestitures, to aid the Commission in its determination whether to make final the Consent Agreement. This analysis is not an official interpretation of the Consent Agreement nor does it modify any of its terms.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] In mid 1999, Loewen, a Canadian corporation, filed for Chapter 11 bankruptcy protection. It emerged in early 2001 as a Delaware corporation under the Alderwoods name.

[3] The Complaint identifies the market share of the parties, concentration levels in each market, and whether the principal anticompetitive concern is the increased likelihood of coordinated interaction among remaining competitors in the market or the exercise by SCI of unilateral market power, or both. The Complaint also alleges that new entry is not likely, or is likely to be insufficient in magnitude to constrain anticompetitive behavior in each of the markets of concern.

II. The Parties and the Transaction

SCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019. SCI had sales in 2005 of $1.7 billion. SCI is the nation's largest chain of funeral homes and cemeteries, with about 10% of all related United States revenues.

Alderwoods is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 311 Elm Street, Suite 1000, Cincinnati, Ohio 45202. Alderwoods had sales in 2005 of approximately $740 million. Alderwoods is the nation's second largest funeral home and cemetery chain, with about 5% of all related United States revenues.

The proposed acquisition is the largest deal of its kind to date in the funeral home and cemetery industry. After the acquisition, SCI will have about 15% of all United States funeral and cemetery service revenues. The Complaint alleges that the proposed acquisition would be anticompetitive in 35 highly concentrated local funeral service markets and 12 highly concentrated cemetery service markets, but not in the nation as a whole. For this reason, the contemplated relief is limited to local markets.

III. The Commission's Complaint

A. The Direct Overlap Markets

According to the Commission's Complaint, SCI and Alderwoods compete in the sale of funeral services [4] and cemetery services [5] in over 100 local markets throughout the United States. In highly concentrated local funeral service or cemetery service markets [6] where SCI and Alderwoods compete, the acquisition will eliminate significant competition between SCI and Alderwoods and, in many of them, substantially increase the likelihood that SCI would be able unilaterally to exercise market power. In many other highly concentrated local funeral service or cemetery service markets where SCI and Alderwoods compete, the acquisition will increase substantially the likelihood that remaining firms in the market will be able to exercise market power through coordinated group behavior.[7] In some markets, the Commission was concerned with both future coordinated interaction and the future exercise of unilateral market power.

1. The Two Ways To Exercise Unilateral Market Power

The Complaint alleges that the acquisition increases the likelihood of SCI unilaterally exercising market power in 19 funeral service markets and nine cemetery service markets. In these markets, SCI is more likely to be able to increase its prices or decrease its services notwithstanding actions taken by other firms already in the market or who may be considering entry. This market power may be exercised in one of two ways. First, in about half of the markets, SCI's post-acquisition market share will approach 100%, and SCI will be in a position to exercise unilateral market power because it will face no real competition. This market power may be exercised by increasing prices or decreasing services. Second, in other markets, SCI will have a significant, but not a monopoly or near monopoly, post-acquisition market share and will also own or control facilities that are the first and second choices for a substantial number of consumers. In these markets, SCI and Alderwoods are now the first and second choices for a substantial number of consumers for several reasons, including: (i) They are the leading providers for certain religious or ethnic groups, including the Jewish or Chinese-American communities; (ii) the proximity of the SCI and Alderwoods facilities makes them the first and second choices for many consumers; or (iii) they are the first and second choice providers of high-end funeral services, which are generally not available at the facilities of nearby competitors. In these markets, SCI's ability to exercise unilateral market power post-acquisition will increase because it will be able to obtain the profit from the combined benefits of (a) the increase in price (or decrease in services) at the facilities of first choice for consumers and (b) the increase in business moving from the facilities of first choice for consumers to their second choices. The Commission alleges that the proposed acquisition would substantially increase concentration, and give SCI a monopoly or near monopoly market share, in 10 funeral service markets (Cartersville, Georgia; Hanford, California; Meridian, Mississippi; Newton, Mississippi; Alhambra, California; Broward County, Florida; Miami-Dade County, Florida; Yuma, Arizona; Yakima, Washington; and Gonzales, Louisiana) and five cemetery service markets (Bradenton/Palmetto, Florida; Broward County, Florida; Fort Myers, Florida; Abilene, Texas; and Baton Rouge, Louisiana). The Commission also alleges that unilateral effects are likely in nine additional funeral service markets (Odessa, Texas; Northern Rockland County, New York; Greensboro, North Carolina; Charlotte, North Carolina; Merced, California; Memphis, Tennessee; Abilene, Texas; Southern Ventura County, California; and Port Orange, Florida) and four additional cemetery service markets (Conroe, Texas; Miami-Dade County, Florida; Ventura County, California; and Macon, Georgia) where, post-merger, SCI will own or operate facilities that are the first and second choices for a substantial number of consumers, and will be in a position profitably to raise prices at one of these facilities.

2. The Exercise of Market Power Through Coordinated Interaction

The Complaint alleges that the acquisition increases the likelihood of SCI exercising market power through coordinated interaction in 15 highly concentrated funeral service markets (Seguin, Texas; Odessa, Texas; Tulare, California; Northern Rockland County, New York; Manassas, Virginia; Baton Rouge, Louisiana; Greensboro, North Carolina; Lansing, Michigan; Abilene, Texas; Killeen, Texas; Merced, California; Lynchburg, Virginia; Lexington/West Columbia, South Carolina; Brownsville, Texas; and Fort Myers, Florida) and four highly concentrated cemetery service markets

[4] Funeral services include some or all of the following: family consultation, collection of the deceased and transportation from the place of death to the funeral home, registration of death, embalming and other preparations, sale of a casket, flowers, catering, and other merchandise, use of funeral home facilities by hosting a viewing and ceremony, transportation to a place of worship, conveying the deceased to the cemetery or crematorium, and advance planning.

[5] Cemetery services include the traditional products and services offered by perpetual care cemeteries, including burial spaces, opening and closing of graves, memorials and burial vaults, mausoleum spaces, cemetery maintenance and upkeep, and advance planning.

[6] In calculating market share, the Commission relied on the number of ''calls'' (funerals or internments) of each competitor (rather than dollar revenues) because this information was available for all firms in the markets under investigation. For purposes of determining market share as well as calculating market concentration based on the Herfindahl-Hirschman Index (''HHI''), the Commission included all market participants that competed with the funeral homes or cemeteries in the market. In addition, the Commission examined the transaction's competitive effects in each market of concern. As part of this assessment, the Commission excluded fringe competitors (participants that did not act as a competitive constraint in the market), *e.g.*, small firms with less than three percent of the market or facilities that primarily offered direct disposals or direct cremations without attendant services.

[7] Market power is the ability of a firm, or group of firms, profitably to reduce output and raise prices above competitive levels or otherwise achieve anticompetitive effects such as by decreasing the quality or level of services.

(Columbia/Lexington, South Carolina; Nashville, Tennessee; Memphis, Tennessee; and Miami-Dade County, Florida). These increased opportunities for successful coordinated interaction will be due to: (a) An increased ease of agreement upon terms of coordination, (b) the availability of opportunities to monitor compliance with those terms of agreement, and (c) the ability of the firms in the market to control or punish firms that deviate from their terms of agreement.

B. The Dignity Affiliate Markets

The Complaint alleges that in six funeral service markets in which Alderwoods is present, but in which SCI does not own or operate a facility, SCI nevertheless has a competitive presence through a licensing arrangement with third-party funeral service providers, which it refers to as Dignity Affiliates. SCI has authorized third parties to sell SCI trademarked Dignity Memorial funeral services. The Dignity Affiliates were competitors of Alderwoods, but not SCI, prior to the proposed acquisition. After SCI acquires Alderwoods, competition between the Alderwoods facility (which would be owned by SCI post-acquisition) and the Dignity Affiliate is likely to be reduced because it is likely that these firms will cooperate on pricing. Such cooperation on pricing would increase the likelihood that firms in these six markets [8] would exercise market power through coordinated interaction.[9]

C. ''Customs-Conscious'' Consumers Sometimes Create Narrow Antitrust Product Markets

The Complaint alleges that in some local markets, some funeral homes or cemeteries cater to specific populations by focusing upon the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In some of the local markets addressed in the proposed Consent Agreement, this market segmentation exists in connection with Jewish, Chinese-American, or African-American populations.

Because of the preferences of ''customs-conscious'' consumers, in some local markets, the alleged product market is limited to facilities that provide the customs and rituals for a specific population. In some other local markets, the alleged product market is limited to facilities that serve the general population but do not provide the customs and rituals that ''customs-conscious'' consumers require. The determination whether a product market was narrower than all facilities that provided funeral or cemetery services was made on a market-by-market basis. However, if other facilities in that market served both the ''customs-conscious'' population as well as abroader population, facilities that performed the customs and rituals associated exclusively with respect to a specific population were included in the overall market definition.

D. Entry Conditions

The Complaint alleges that entry would not be timely, likely or sufficient to prevent anticompetitive effects in the specific markets at issue. With regard to these cemetery service markets, entry would be difficult because of the limited availability of land, zoning regulations and other statutory restrictions, and high sunk costs, as well as the lead time necessary to develop a customer base. As concerns entry into the funeral service markets at issue, new entry, if it occurs, is unlikely to prove sufficient to prevent a significant price increase for ''traditional'' funeral home services of the type offered by most of the parties' homes. If a new traditional funeral home were to enter, it is unlikely that it would make sufficient sales within two years to constrain anticompetitive behavior. Moreover, if ''no frills'' funeral homes were to enter, it is unlikely that the services that they would offer would be sufficiently close substitutes for traditional funeral home services to prevent a price increase for the latter.

IV. The Consent Agreement

The Commission believes that the Consent Agreement, if made final, would fully restore competition and maintain the competitive status quo ante in the local markets that would have been adversely impacted by the proposed acquisition.

A. The Direct Overlap Markets

In 29 local funeral service markets and 12 local cemetery service markets, the Consent Agreement provides for divestitures of specific properties. The following Table A lists each of the local markets in which the Complaint alleges that the proposed acquisition would be competitively problematic, separately for funeral services and cemetery services. Table A also lists the specific SCI or Alderwoods funeral home facilities that SCI will be required to divest under the Consent Agreement.

Table A

1. Funeral Service Markets and the Required Divestitures

Market area	Properties required to be divested
1. Abilene, Texas	Elmwood Funeral Home, 5750 U.S. Highway 277 South, Abilene, Texas (an SCI property).
2. Alhambra, California	Universal Chung Wah Funeral Directors, 225 North Garfield Avenue, Alhambra, California (an SCI property).
3. Baton Rouge, Louisiana	Resthaven Gardens of Memory Funeral Home, 11817 Jefferson Highway, Baton Rouge, Louisiana (an Alderwoods property).
4. Brownsville, Texas	1. Trevino Funeral Home, 1355 Old Port Isabel Road, Brownsville, Texas (an Alderwoods property); and 2. Darling-Mouser Funeral Home, 945 Palm Boulevard, Brownsville, Texas (an Alderwoods property).
5. Broward County, Florida	1. Levitt-Weinstein Memorial Chapel, 3201 N.W. 72nd Avenue, Hollywood, Florida (an Alderwoods property); 2. Levitt-Weinstein Memorial Chapel, 8135 West McNab Road, Tamarac, Florida (an Alderwoods property); 3. Levitt-Weinstein Memorial Chapel, 1921 Pembroke Road, Hollywood, Florida (an Alderwoods property); and 4. Levitt-Weinstein Memorial Chapel, 7500 North State Road 7, Coconut Creek, Florida (an Alderwoods property).
6. Cartersville, Georgia	Parnick Jennings Funeral Home & Cremation Services, 430 Cassville Road, Cartersville, Georgia (an SCI property).

[8] The six markets are identified in Table B, infra.

[9] The Complaint and Consent Agreement do not address SCI's licensing arrangements with third-party Dignity Affiliates except in the six highly concentrated markets.

Market area	Properties required to be divested
7. Charlotte, North Carolina	Hankins & Whittington—Dilworth Chapel, 1111 East Boulevard, Charlotte, North Carolina (an Alderwoods property).[10]
8. Fort Myers, Florida	Fort Myers Memorial Gardens Funeral Home, 1589 Colonial Boulevard, Fort Myers, Florida (an SCI property).
9. Gonzales, Louisiana	Welsh Funeral Home, 426 West New River Street, Gonzales, Louisiana (an SCI property).[11]
10. Greensboro, North Carolina	Lambeth Troxler Funeral Home, 300 West Wendover Avenue, Greensboro, North Carolina (an SCI property).
11. Hanford, California	Whitehurst-McNamara Funeral Service, 100 West Bush Street, Hanford, California (an Alderwoods property).
12. Killeen, Texas	Harper-Talasek Funeral Home, 506 North 38th Street, Killeen, Texas (an Alderwoods property).
13. Lansing, Michigan	1. Estes-Leadley Greater Lansing Chapel, 325 West Washtenaw Street, Lansing, Michigan (an SCI property); and 2. Estes-Leadley Holt/Delhi Chapel, 2121 Cedar Street, Holt, Michigan (an SCI property).
14. Lexington/West Columbia, South Carolina	1. Caughman-Harman Funeral Home, 820 West Dunbar Road, West Columbia, South Carolina (an Alderwoods property); and 2. Caughman-Harman Funeral Home, 5400 Bush River Road, Columbia, South Carolina (an Alderwoods property).[12]
15. Lynchburg, Virginia	1. Diuguid Waterlick Chapel, 21914 Timberlake Road, Lynchburg, Virginia (an Alderwoods property); and 2. Diuguid Funeral Service, 811 Wiggington Road, Lynchburg, Virginia (an Alderwoods property).
16. Manassas, Virginia	Lee Funeral Home, 8521 Sudley Road, Manassas, Virginia (an Alderwoods property).
17. Memphis, Tennessee	Memorial Park Funeral Home, 5668 Poplar Avenue, Memphis, Tennessee (an Alderwoods property).
18. Merced, California	1. Ivers & Alcorn Funeral Home, 901 West Main Street, Merced, California (an SCI property); and 2. Ivers & Alcorn Funeral Home, 3050 Winton Way, Atwater, California (an SCI property).
19. Meridian, Mississippi	James F. Webb Funeral Home, 2514 7th Street, Meridian, Mississippi (an SCI property).
20. Miami-Dade County, Florida	1. Eternal Light Funeral Directors Inc., 17250 West Dixie Highway, North Miami Beach, Florida (an Alderwoods property); 2. Blasberg-Rubin-Zilbert Funeral Chapel, 720 71st Street, Miami Beach, Florida (an Alderwoods property); and 3. Levitt-Weinstein Memorial Chapels, 18840 West Dixie Highway, North Miami Beach, Florida (an Alderwoods property).[13]
21. Newton, Mississippi	James F. Webb Funeral Home, 100 Old Highway 15 Loop, Newton, Mississippi (an SCI property).
22. Odessa, Texas	Sunset Memorial Funeral Home, 6801 East Highway 80, Odessa, Texas (an SCI property).
23. Port Orange, Florida	Cardwell & Maloney Funeral Home, 3571 South Ridgewood Avenue, Port Orange, Florida (an Alderwoods property).
24. Northern Rockland County, New York	1. T.J. McGowan Sons Funeral Home, 71 North Central Highway, Garnerville, New York (an Alderwoods property); and 2. T.J. McGowan Sons Funeral Home, 133 Broadway, Haverstraw, New York (an Alderwoods property).[14]
25. Seguin, Texas	Palmer Mortuary Inc., 1116 North Austin Street, Seguin, Texas (an Alderwoods property).
26. Tulare, California	Miller's Tulare Funeral Home, 151 North H Street, Tulare, California (an Alderwoods property).
27. Southern Ventura County, California	Conejo Mountain Funeral Home & Memorial Park, 2052 Howard Road, Camarillo, California (an Alderwoods property).
28. Yakima, Washington	Shaw & Sons Funeral Directors, Inc., 201 North 2nd Street, Yakima, Washington (an Alderwoods property).
29. Yuma, Arizona	Yuma Mortuary & Crematory, 551 West 16th Street, Yuma, Arizona (an Alderwoods property).

[10] SCI will retain funeral home assets with the ''Hankins & Whittington'' name in this market, but, under the terms of the Decision and Order, is permitted to use this name only for a period limited to twelve months.

[11] SCI will retain funeral homes with the ''Welsh'' name in this geographic market, and thus the proposed Decision and Order includes a provision that limits the acquirer's use of this name for the divested business to a period of twelve months.

[12] SCI will retain funeral homes with the ''Caughman-Harman'' name in this geographic market, and thus the proposed Decision and Order includes a provision that limits the acquirer's use of this name to a period of twelve months.

[13] SCI will retain funeral homes assets with the ''Levitt-Weinstein Memorial Chapel'' name in this market, but, under the terms of the Decision and Order, is permitted to use this name only for a period limited to twelve months.

[14] SCI will retain funeral homes assets with the ''T.J. McGowan'' name in this market, but, under the terms of the Decision and Order, is permitted to the ongoing use of this name only for a period limited to twelve months.

2. Cemetery Service Markets and the Required Divestitures

Market area	Properties required to be divested
1. Abilene, Texas	Elmwood Memorial Park, 5750 U.S. Highway 277 South, Abilene, Texas (an SCI property).
2. Baton Rouge, Louisiana	Resthaven Gardens of Memory, 11817 Jefferson Highway, Baton Rouge, Louisiana (an Alderwoods property).
3. Bradenton/Palmetto, Florida	Skyway Memorial Gardens, 5200 U.S. Highway 19, Palmetto, Florida (an Alderwoods property).
4. Broward County, Florida	Beth David Memorial Gardens & Chapel, 3201 N.W. 72nd Avenue, Hollywood, Florida (an Alderwoods property).
5. Columbia/Lexington, South Carolina	1. Bush River Memorial Gardens, 5400 Bush River Road, Columbia, South Carolina (an Alderwoods property); 2. Elmwood Cemetery, 501 Elmwood Avenue, Columbia, South Carolina (an Alderwoods property); and 3. Southland Memorial Gardens, 700 West Dunbar Road, West Columbia, South Carolina (an Alderwoods property).
6. Conroe, Texas	Conroe Memorial Park, 1600 Porter Road, Conroe, Texas (an Alderwoods property).
7. Fort Myers, Florida	Fort Myers Memorial Gardens, 1589 Colonial Boulevard, Fort Myers, Florida (an SCI property).
8. Macon, Georgia	Glen Haven Memorial Gardens, 7070 Houston Road, Macon, Georgia (an SCI property).
9. Memphis, Tennessee	Memorial Park Inc., 5668 Poplar Avenue, Memphis, Tennessee (an Alderwoods property).
10. Miami-Dade County, Florida	1. Graceland Memorial Park North, 4420 S.W. 8th Street, Miami, Florida (an Alderwoods property); and 2. Graceland South Memorial Park, 13900 S.W. 117th Avenue, Miami, Florida (an Alderwoods property).
11. Nashville, Tennessee	Spring Hill Cemetery, 5110 Gallatin Pike, Nashville, Tennessee (an Alderwoods property).
12. Ventura County, California	Conejo Mountain Funeral Home & Memorial Park, 2052 Howard Road, Camarillo, California (an Alderwoods property).

B. The Dignity Affiliate Markets

In six funeral service markets, the Consent Agreement requires that SCI, at its option, either divest the Alderwoods property being acquired or terminate the SCI licensing relationship with the third-party Dignity Affiliate. The Consent Agreement also requires that until SCI has complied with this requirement in the markets, SCI shall not enter into or enforce any agreement or exchange information with the Dignity Affiliate regarding actual, suggested, or future prices of funeral services.

Table B lists each of the highly concentrated Dignity Affiliate funeral service markets in which the proposed acquisition would create a competitive problem, together with the remedy.

Table B

Funeral Service Markets Where Divestiture or Contract Termination is Required Relief: (a) Properties That May Be Divested Local Market or (b) Dignity Affiliate Contracts That May Be Terminated

1. Anchorage, Alaska	(a) Alderwoods properties that may be divested: Evergreen Memorial Chapel, 737 East Street, Anchorage, Alaska; Alaska Cremation Center, 3804 Spenard Road, Anchorage, Alaska; and Evergreen's Eagle River Funeral Home, 11046 Chugiak Drive, Eagle River, Alaska; or (b) Third-party contracts that may be terminated: Kehl's Forest Lawn Mortuary, 11621 Old Seward Highway, Anchorage, Alaska; and Witzleben Family Funeral Home, 1707 South Bragaw Street, Anchorage, Alaska.
2. Hobbs, New Mexico	(a) Alderwoods property that may be divested: Griffin Funeral Home, 401 North Dalmont, Hobbs, New Mexico; or (b) Third-party contracts that may be terminated: Chapel of Hope, 3321 North Dal Paso Street, Hobbs, New Mexico.
3. Klamath Falls, Oregon	(a) Alderwoods property that may be divested: O'Hair & Riggs Funeral Chapel, 515 Pine Street, Klamath Falls, Oregon; or (b) Third-party contracts that may be terminated: Eternal Hills Funeral Home, 4711 Highway 39, Klamath Falls, Oregon.
4. Mansfield, Ohio	(a) Alderwoods property that may be divested: Finefrock-Williams Funeral Home, 350 Marion Avenue, Mansfield, Ohio; or (b) Third-party contracts that may be terminated: Wappner Funeral Home, 98 South Diamond Street, Mansfield, Ohio; and Wappner Funeral Home, 100 South Lexington Springmill Road, Mansfield, Ohio.
5. Pascagoula, Mississippi	(a) Alderwoods properties that may be divested: Holder Wells Funeral Home, 4007 Main Street, Moss Point, Mississippi; or (b) Third-party contracts that may be terminated: O'Bryant-O'Keefe Funeral Home, 4811 Telephone Road, Pascagoula, Mississippi; and O'Bryant-O'Keefe Gautier Funeral Home, 3290 Ladnier Road, Gautier, Mississippi.

6. Williamsburg, Virginia	(a) Alderwoods property that may be divested: Bucktrout of Williamsburg, 4124 Ironbound Road, Williamsburg, Virginia; or (b) Third-party contracts that may be terminated: Nelsen Funeral Home, 3785 Strawberry Plains Road, Williamsburg, Virginia.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–20591 Filed 12–5–06; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2006–B1]

Federal Management Regulation; Designations and Redesignations of Federal Buildings

AGENCY: Public Buildings Service (P), GSA

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the designations and redesignations of nine (9) Federal Buildings.

EXPIRATION DATE: This bulletin expires May 1, 2007. However, the building designations and redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT General Services Administration, Public Buildings Service (P), Attn: Anthony E. Costa, 1800 F Street, NW, Washington, DC 20405, e-mail at *anthony.costa@gsa.gov*. (202) 501–1100.

Dated: November 21, 2006.

Lurita Doan,

Administrator of General Services.

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2006–B1]

Redesignations of Federal Buildings

TO: Heads of Federal Agencies

SUBJECT: Designations and Redesignations of Federal Buildings

1. *What is the purpose of this bulletin?* This bulletin announces the designations and redesignations of nine (9) Federal Buildings.

2. *When does this bulletin expire?* This bulletin expires May 1, 2007. However, the building designations and redesignations announced by this bulletin will remain in effect until canceled or superseded.

3. *Designations.* The names of the buildings and grounds being designated are as follows:

Carroll A. Campbell, Jr. United States Courthouse, to be constructed, building number SC0017ZZ, exact address TBD, Greenville, SC.

Justin W. Williams Attorney's Building, the Attorney's entrance of the Albert V. Bryan Sr. Courthouse, 2100 Jamieson Avenue, Alexandria, VA 22314.

Clyde S. Cahill Memorial Park, on the grounds of the Thomas F. Eagleton United States Courthouse, 111 South 10th Street, St. Louis, MO 63102.

4. *Redesignations.* The former and new names of the buildings being redesignated are as follows:

Former name	New name
Federal Building, 333 Mt. Elliott Street, Detroit, MI 48207.	Rosa Parks Federal Building, 333 Mt. Elliott Street, Detroit, MI 48207.
Courthouse Annex, 200 3rd Street, NW, Washington, DC 20001.	William B. Bryant Annex, 200 3rd Street, NW, Washington, DC 20001.
Federal Building and United States Courthouse, 211 West Ferguson Street, Tyler, TX 75702.	William M. Steger Federal Building and United States Courthouse, 211 West Ferguson Street, Tyler, TX 75702.
Federal Building and United States Courthouse, 2 South Main Street, Akron, OH 44308.	John F. Seiberling Federal Building and United States Courthouse, 2 South Main Street, Akron, OH 44308.
United States Courthouse, 300 North Hogan Street, Jacksonville, FL 32202.	John Milton Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, FL 32202.
Federal Building, 320 North Main Street,McAllen, TX 78501.	Kika de la Garza Federal Building, 320 North Main Street, McAllen, TX 78501.

5. *Who should we contact for further information regarding redesignation of these Federal Buildings?* General Services Administration, Public Buildings Service (P), Attn: Anthony E, Costa, 1800 F Street, NW, Washington, DC 20405, telephone number: (202) 501–1100, e-mail at *anthony.costa@gsa.gov*.

[FR Doc. E6–20627 Filed 12–5–06; 8:45 am]

BILLING CODE 6820–23–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0000; 30-Day notice]

Office of the Secretary, Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New.

Title of Information Collection: Evaluation of the National Abstinence Media Campaign.

Form/OMB No.: OS–0990–New.

Use: The purpose of the data collection and evaluation is to determine the efficacy of the National Abstinence Media Campaign and its messages upon parents, specifically to encourage and help parents talk to their pre-teens and teens about waiting to have sex.

The following outcomes will be examined: perceived risks from teen sexual activity, perceived susceptibility, attitude towards teen sexual activity, self-efficacy to talk to their child, outcome efficacy, perceived value of delayed sexual activity, and parent-child communication about sex.

Frequency: Reporting on Occasion.

Affected Public: Individuals or Households.

Annual Number of Respondents: 947.5.

Total Annual Responses: 3,493.5.

Average Burden Per Response: 30 mins.

Total Annual Hours: 1,746.75.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 28, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–20583 Filed 12–5–06; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0000; 30-day notice]

Office of the Secretary; Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: The Heart Truth Professional Materials Program Evaluation.

Form/OMB No.: OS–0990–0000.

Use: The Heart Truth Campaign was launched by the National Heart, Lung, and Blood Institute (NHLBI) in September 2002 to increase women's awareness of heart disease. The Heart Truth joins together leaders in women's health—along with corporate and media partners—to create a national movement aimed at delivering an urgent wake-up call to women about heart disease.

As part of The Heart Truth campaign, Office on Women's Health funded programs to develop and disseminate educational materials for health care professionals. This information collection ascertains whether health care professionals exposed to the program materials have incorporated what they learned into their professional practice.

Frequency: One time.

Affected Public: Individuals or Households.

Annual Number of Respondents: 400.

Total Annual Responses: 400.

Average Burden Per Response: 0.1 hours.

Total Annual Hours: 40 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0000), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 28, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–20585 Filed 12–5–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for the Nomination of Candidates To Serve as Voting Members and Representatives of the National Vaccine Advisory Committee

AGENCY: Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

Authority: 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, DHHS, is soliciting nominations of qualified candidates to be considered for appointment as members and representatives to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA).

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his/her capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities.

Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

DATES: Nominations for membership on the Committee must be received no later

than 5 p.m. EST on January 19, 2007, at the address below.

ADDRESSES: Bruce G. Gellin, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Washington, DC 20201; (202) 690–5566; *nvac@osophs.dhhs.gov.*

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. English or by accessing the NVAC Web site at: *http://www.hhs.gov/nvpo/nvac.*

SUPPLEMENTARY INFORMATION: *Committee Function: Qualifications and Information Required:* As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee. Individuals selected for appointment to the Committee will serve as voting members. Voting members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of State or local health agencies, or public health organizations. Individuals selected for appointment to the Committee can be invited to serve terms with periods of up to four years.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Applications cannot be submitted by facsimile. The names of Federal employees should not be submitted for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Dated: November 30, 2006.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E6–20636 Filed 12–5–06; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Amendment of meeting announcement, dated November 28, 2006.

SUMMARY: This notice amends the announcement of the tenth meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: December 12, 2006, from 8:30 to 11:30 a.m.

Meeting Format: This meeting was originally scheduled to be held in the Hubert H. Humphrey Building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800. However, the meeting format has been changed to provide remote participation only (Web cast and/or telephone) for the Community members, HHS staff, invited presenters, and general public. A time period will be allotted before the conclusion of the meeting for the general public to deliver brief (3 minutes or less) oral public comment.

SUPPLEMENTARY INFORMATION: The agenda includes an update on the Personalized Healthcare Workgroup; a panel discussion on the American Health Information Management Association's State Steering Committee Recommendations; and an update on the National Health Information Network (NHIN). The instructions to participate remotely (Web cast and/or telephone) can be found at *http://www.hhs.gov/healthit/m20061212.html.* If you have any questions concerning the remote instructions or meeting format, please call (866) 505–3500.

Dated: November 30, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9549 Filed 12–5–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Pilot Study of Proposed Medical Office Surveys on Patient Safety.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 5, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room 5036, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

Pilot Study of Proposed Medical Office Surveys on Patient Safety

This activity is an expansion and refinement of AHRQ's Hospital Survey on Patient Safety Culture (HSOPSC) which was developed and released to the public for use in November 2004. Two new surveys are proposed to assess patient safety culture in outpatient medical office settings: One for clinicians (physicians, physician assistants, and nurse practitioners who diagnose, prescribe for, and treat patients) and one for medical office staff (all other non-clinician staff). The proposed new surveys will be based on the HSOPSC but also contain new and revised items as well as dimensions that are more applicable to the outpatient medical office setting. The two proposed surveys will contain some items that are the same and some item that are unique to each survey.

The instruments will be pilot tested with clinicians and staff working in 97 outpatient medical offices. The data collected will be analyzed to determine the psychometric properties of each survey's items and dimensions and provide information for the revision and shortening of the final surveys based on an assessment of their reliability and construct validity. The final surveys will be made publicly available to enable outpatient medical offices to assess patient safety culture from the perspectives of their clinicians and staff. The surveys can be used by outpatient medical offices to identify areas for patient safety culture improvement.

Methods of Collection

A purposive sample of 97 outpatient medical offices will be recruited and selected. These medical offices will represent a distribution of single-specialty offices (of various types) and multi-specialty offices, and will vary by office size (based on number of physicians in the office), as well as geographic region of the United States. Recruited medical offices will be allocated to each category in numbers roughly proportionate to the national distribution of offices in each category.

All clinicians in each medical office will be asked to respond to the clinician survey and all other non-clinician staff will be asked to complete the medical office staff survey. Since not all medical office staff have access to email or the internet, paper surveys will be administered. Standard non-response follow-up techniques such as reminder postcards and distribution of a second survey will be used. Individuals and organizations contacted will be assured of the confidentiality of their replies under Section 924(c) of the Healthcare Research and Quality Act of 1999.

Estimated Annual Respondent Burden

Paper surveys will be distributed to a total of approximately 2,340 individuals from 97 medical offices (about 592 clinicians and 1,748 medical office staff), with a target response rate of 70%, or 1,638 completed surveys (414 completed clinician surveys and 1,224 medical office staff surveys). Respondents should take approximately 15 minutes to complete either survey. Therefore, we estimate that the total respondent burden for completing the survey will be 410 hours (414 completed clinician surveys multiplied by 0.25 hours per survey or 104 hours; and 1,224 completed medical office staff surveys multiplied by 0.25 hours per survey or 306 hours).

Type of respondent	Number of respondents	Number of responses per respondent	Estimated time per respondent (hours)	Estimated total respondent burden hours
Clinicians	414	1	0.25	104
Medical office staff	1,224	1	0.25	306
Total	1,638			410

Estimated Annual Costs to the Federal Government

The total cost to the Government for developing the clinician survey is approximately $257,000, and for the medical office staff survey is approximately $268,000. These estimates include the costs of background literature reviews, survey development, cognitive testing, pilot data collection, data analysis, and preparation of final deliverables and reports.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 21, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–9548 Filed 12–5–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of State child support enforcement agencies to locate noncustodial parents and collect child support across State lines. The law requires employers to report newly hired employees to States. States are then required to periodically transmit new hire data received from employers to the NDNH, and to transmit wage and

unemployment compensation claims data to the NDNH on a quarterly basis. Federal agencies are required to report new hires and quarterly wage data directly to the NDNH. All data is transmitted to the NDNH electronically.

Respondents: Employers, State Child Support Enforcement Agencies, State Workforce Agencies, Federal Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,166,000	3.484	.025	449,959
New Hire: Employers Reporting Electronically	1,134,000	33.272	.00028	10,565
New Hire: States	54	83.333	66.7	300,150
Quarterly Wage & Unemployment Compensation	54	8	.033	14
Multistate Employers' Notification Form	2,808	1	.050	140
Estimated Total Annual Burden Hours:				760,828

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 30, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–9539 Filed 12–5–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities: Notice of Quarterly Meeting

AGENCY: President's Committee for People With Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of quarterly meeting.

DATES: The meeting will be held on Thursday, December 7, 2006, from 3 p.m. to 6 p.m. Eastern Standard Time. The full committee meeting of the President's Committee for People with Intellectual Disabilities will be conducted by telephone conference call and will be open to the public. Anyone interested in participating in the conference call should advise Ericka Alston at 202–619–0634, no later than December 6, 2006.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll free, 888–795–2173, passcode DECEMBER2006 on the date and time indicated.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2) notice is hereby given that the President's Committee for People with Intellectual Disabilities will hold its quarterly meeting by telephone conference call. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, assistive listening devices, or materials in alternative format, should inform Ericka Alston, Executive Assistant, President's Committee for People with Intellectual Disabilities, Telephone—202–619–0634, Fax—202–205–9519, E-mail: *ealston@acf.hhs.gov*, no later than December 6, 2006. Efforts will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed.

Agenda: Committee members will hear from Ms. Madeleine Will, Vice President of Public Policy and Director of the National Policy Center at the National Down Syndrome Society. Ms. Will will speak about her personal and professional perspective on the barriers facing people with intellectual disabilities throughout the lifespan, and how the Committee can work in conjunction with President Bush's New Freedom Initiative to tear down those barriers. The Committee will also hear from Mr. Mark Gross, designated representative of the Ex officio member from the U.S. Department of Justice, Attorney General Alberto R. Gonzales. Mr. Gross will brief the Committee on the programs and services in the Justice Department for people with intellectual disabilities. The Committee will then hear reports from the various subcommittees regarding their current projects and goals.

FOR FURTHER INFORMATION CONTACT: Contact Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Office Building, Suite 701, 901 D Street, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life

experienced by citizens with intellectual disabilities and their families.

Dated: December 4, 2006.

Ericka Alston,

Executive Assistant to the Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. E6–20778 Filed 12–5–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices 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: Neurological Devices Panel of the Medical Devices 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 January 26, 2007, from 8 a.m. to 6 p.m.

Location: Hilton Washington, DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3737, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on a premarket notification application for a device intended for the treatment of major depressive disorder. The committee will also hear and discuss post approval study reports for two recently approved neurological device premarket approval applications. The agency intends to make background available to the public no later than 1 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 the agency 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 January 19, 2007. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the committee deliberations. 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 January 11, 2007. 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 January 12, 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 AnnMarie Williams, Conference Management Staff, at 301–827–7291, 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 29, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–20552 Filed 12–5–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of a Funding Priority for Service Multiple Counties Under the Fiscal Year 2007 New Access Points in High Poverty Counties Grant Opportunity

AGENCY: Health Resources and Services Administration (HRSA), HHS

ACTION: Solicitation of comments.

SUMMARY: The President's Health Center Initiative, which began in fiscal year (FY) 2002, was established to significantly impact 1,200 communities by creating new or expanded health center access points. Building on the successes of this Initiative, a second health center initiative has been proposed by the President for FY 2007 to continue to increase access to high quality comprehensive primary health care for the most vulnerable populations in the Nation. The goal of the President's new High Poverty Counties Health Center Initiative is to increase access to primary health care in 200 of the Nation's poorest counties that do not have a health center. This new Initiative is subject to the availability of funds in the FY 2007 Health Center Program appropriation.

The President's High Poverty Counties Health Center Initiative contains two components, New Access Point and Planning grants to be funded under the Consolidated Health Center Program, as authorized by section 330 of the Public Health Service Act (42 U.S.C. 254b, as amended). New Access Point grants will be made for the provision of high quality comprehensive primary and preventive health care services through a new delivery site to a designated medically underserved area or population located in an eligible high poverty county.

As part of the Initiative, it is anticipated that the New Access Points in High Poverty Counties grant opportunity will contain a funding priority. A funding priority is defined as the favorable adjustment of combined review scores of individually approved applications when applications meet specified criteria. The adjustment is typically made by a set, pre-determined number of points. For this grant opportunity, a funding priority is planned for applicants proposing to serve multiple counties (i.e., the proposed target population comes from other county(ies) in addition to the eligible high poverty county). Please

note that this priority will not be given to applicants applying for the Planning opportunity of the High Poverty Counties grant opportunities as Planning grant applicants may not have a defined service area, and will not be providing health services through the grant funding. More detailed information about the funding priority will be included in the funding opportunity guidance.

DATES: Please send comments no later than COB January 5, 2007. The comments can be e-mailed to *DPDGeneral@hrsa.gov* or mailed to Ms. Preeti Kanodia, New Access Point Coordinator, Health Resources and Services Administration, Parklawn Building, Room 17–61, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be incorporated, as appropriate, into the final guidance for the FY 2007 New Access Points in High Poverty Counties funding opportunity, subject to the availability of FY 2007 funds.

FOR FURTHER INFORMATION CONTACT: Preeti Kanodia, Division of Policy and Development, Bureau of Primary Health Care, Health Resources and Services Administration. Ms. Kanodia may be contacted by e-mail at *DPDGeneral@hrsa.gov* or via telephone at (301) 594–4300.

Dated: November 29, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–20558 Filed 12–5–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HIV/AIDS Bureau Policy Notice 99–02

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of opportunity to provide written comments.

SUMMARY: The HRSA HIV/AIDS Bureau (HAB) Policy Notice 99–02 entitled, *The Use of Ryan White CARE Act funds for Housing Referral Services and Short-term or Emergency Housing Needs*, provides grantees with guidance on the use of Ryan White Comprehensive AIDS Resources Emergency (CARE) Act funds for short-term and emergency housing assistance for persons living with HIV/AIDS. The current policy does not establish a time limit for such assistance under the Ryan White CARE Act. An amendment to Policy Notice 99–02 is proposed, which places a cumulative lifetime period of 24 months on short-term and emergency housing assistance under the Ryan White CARE Act.

This proposed amendment results from an Office of Inspector General audit encouraging HRSA to clarify the definition of short-term housing and emergency housing assistance. This amendment will help align the HRSA definition of short-term housing with the widely accepted program standard used by the U.S. Department of Housing and Urban Development, Continuum of Care Homeless Assistance Programs and the Housing Opportunities for Persons with AIDS program. This policy becomes effective March 1, 2007.

SUPPLEMENTARY INFORMATION: The proposed amendment to HRSA HAB Policy Notice 99–02 establishes a cumulative lifetime period of 24 months use of Ryan White CARE Act funds for short-term and emergency housing assistance. Such assistance is limited to a time period totaling a cumulative lifetime period of 24 months per household. HRSA is seeking comments only on the proposed amendment to HRSA HAB Policy Notice 99–02 notated in bold text below.

DATES: Submit written comments no later than February 5, 2007.

ADDRESSES: Written comments should be sent to HRSA, HAB, Division of Science and Policy, Attention: LCDR Gettie A. Butts, 5600 Fishers Lane, Room 7–18, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: LCDR Gettie A. Butts, via e-mail: *GButts@hrsa.gov* or by writing to the address above.

Proposed Policy: HRSA HAB Policy Notice-99–02, Amendment # 1

Document Title: The Use of Ryan White CARE Act Funds for Housing Referral Services and Short-term or Emergency Housing Needs.

The following policy establishes guidelines for allowable housing-related expenditures under the Ryan White CARE Act. The purpose of all Ryan White CARE Act funds is to ensure that eligible HIV-infected persons and families gain or maintain access to medical care.

A. Funds received under the Ryan White CARE Act (Title XXVI of the Public Health Service Act) may be used for the following housing expenditures:

i. Housing referral services defined as assessment, search, placement, and advocacy services must be provided by case managers or other professional(s) who possess a comprehensive knowledge of local, State, and Federal housing programs and how they can be accessed; or

ii. Short-term or emergency housing defined as necessary to gain or maintain access to medical care and must be related to either:

a. Housing services that include some type of medical or supportive service (a listing of supportive services can be found at *http://hab.hrsa.gov/reports/data2b.htm*) including, but not limited to, residential substance abuse or mental health services (not including facilities classified as an Institute of Mental Diseases under Medicaid), residential foster care, and assisted living residential services; or

b. Housing services that do not provide direct medical or supportive services but are essential for an individual or family to gain or maintain access to and compliance with HIV-related medical care and treatment. Necessity of housing service for purposes of medical care must be certified or documented by a case manager, social worker, or other licensed healthcare professional(s).

B. Short-term or emergency housing assistance is understood as transitional in nature and for the purposes of moving or maintaining an individual or family in a long-term, stable living situation. Such assistance is limited to a cumulative lifetime period of 24 months per household. Short term or emergency assistance must be accompanied by a strategy to:

i. Identify, relocate, and/or ensure the individual or family is moved to a long-term, stable housing; or

ii. Identify an alternate funding source for support of housing assistance.

C. Housing funds cannot be in the form of direct cash payments to recipients or services and cannot be used for mortgage payments.

D. The Ryan White CARE Act must be the payer of last resort. In addition, funds received under the Ryan White CARE Act must be used to supplement but not supplant funds currently being used from local, State, and Federal agency programs. Grantees must be capable of providing HAB with documentation related to the use of funds as payer of last resort and the coordination of such funds with other local, State, and Federal funds.

E. Ryan White CARE Act housing-related expenses are limited to Titles I, II, and IV and are not an allowable expense for Title III.

Dated: November 29, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–20556 Filed 12–5–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1664–DR]

Hawaii; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–1664–DR), dated October 17, 2006, and related determinations.

DATES: *Effective Date:* November 21, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Lee H. Rosenberg, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–20570 Filed 12–5–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–22]

Notice of Proposed Information Collection for Public Comment; Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 5, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection.

OMB Control Number: 2577–0029.

Description of the need for the information and proposed use: Section 9(f) of the United States Housing Act of 1937 establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) which assistance is determined using a formula approach under the Operating Fund Program. PHAs compute their operating subsidy eligibility by completing the following HUD prescribed forms, as applicable, each fiscal year: Calculation of Utilities Expense Level (HUD–52722); Operating Fund Calculation of Operating Subsidy (HUD–52723); and Calculation of Subsidies for Operations: Non-Rental Housing (HUD–53087). HUD uses the information on these forms to determine the operating subsidy obligation and proration level for each PHA. The three forms listed in this collection will be automated in the Subsidy and Grant Information System (SAGIS) that is under development and will be operational in April 2007. The automation of these forms will provide more accurate and timely information reporting by PHAs.

Agency form number: HUD–52722, HUD–52723, and HUD–53087.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 7,807 asset management property respondents annually with 1 response per respondent for forms HUD–52722 and HUD–52723 for a total of 11,710.5 responses; and 1 response per 17 respondents for form HUD–53087 for a total of 17 responses. Average time per response for each form is .75 hours and total annual burden hours are 11,723.25.

Status of the proposed information collection: Revision of currently approved collection to include automated forms.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 29, 2006.

Bessy Kong,

Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiative, PIH.

[FR Doc. E6–20560 Filed 12–5–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–13]

Delegation of Authority to the Deputy Assistant Secretary for the Office of Public Housing Investments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The Assistant Secretary of Public and Indian Housing is delegating to the Deputy Assistant Secretary of the Office of Public Housing Investments concurrent authority to approve proposals submitted by Public Housing Agencies (PHA) pursuant to section 30 of the United States Housing Act of 1937. The Assistant Secretary of Public and Indian Housing is delegating to all Public Housing Field Office Directors all authority to execute Amendments to Consolidated Annual Contributions Contracts that are associated with Proposals submitted by PHAs pursuant to Section 30, which have been approved by either the Assistant Secretary of Public and Indian Housing or the Deputy Assistant Secretary of the Office of Public Housing Investments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 708–1640 extension 7378 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Capital Fund Financing Program (CFFP), which is based on Section 30 of the United States Housing Act of 1937, 42 U.S.C. 1437z–2, has been administered by the Office of Public Housing Investments (OPHI) as a pilot program since 2003. The Department is in the process of finalizing draft rules in regard to both the CFFP and the Operating Fund Financing Program (OFFP), which also utilizes this statutory authority. The rules will standardize implementation of the CFFP and initiate the implementation of the OFFP. Both programs will be implemented by OPHI.

Section 30 of the United States Housing Act of 1937 authorizes PHAs, subject to approval by the Secretary, to pledge or mortgage public housing projects or other property. Transactions approved under this authority are also processed by OPHI. By this delegation, the Assistant Secretary for the Office of Public and Indian Housing retains all authority based on Section 30 of the United States Housing Act of 1937, and delegates concurrent authority to the Deputy Assistant Secretary for the Office of Public Housing Investments. As a matter of HUD protocol, Public Housing Field Office Directors generally execute any amendments to the Consolidated Annual Contributions Contract, regardless of the program with which the amendment is associated.

Section 106 of the HUD Reform Act amended section 7 of the Department of Housing and Urban Development Act to allow delegation of authority to approve a waiver of a regulation only to an individual of Assistant Secretary or equivalent rank. This delegation does not include the authority to approve the waiver of a regulation.

Accordingly, the Assistant Secretary for the Office of Public and Indian Housing delegates authority as follows:

Section A. Authority Delegated

The Deputy Assistant Secretary for the Office of Public Housing Investments is hereby delegated concurrent authority with the Assistant Secretary for the Office of Public and Indian Housing with respect to the authority based on Section 30 of the United States Housing Act of 1937, except the authority to approve a waiver of a regulation.

The Assistant Secretary of Public and Indian Housing is delegating to all Public Housing Field Office Directors all authority to execute Amendments to Consolidated Annual Contributions Contracts that are associated with Proposals submitted by PHAs pursuant to Section 30, which have been approved by either the Assistant Secretary of Public and Indian Housing or the Deputy Assistant Secretary of the Office of Public Housing Investments.

Section B. Authority To Redelegate

The authority delegated in this document may not be redelegated by the Deputy Assistant Secretary for the Office of Public Housing Investments.

Authority: 42 U.S.C. 1437z–2, 3535(d), and 3535(q)(2).

Dated: November 28, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E6–20562 Filed 12–5–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Appointment of Norman H. DesRosiers to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed appointment.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of Norman H. DesRosiers as an associate member of the National Indian Gaming Commission for a term of 3 years.

DATES: Comments must be received before January 5, 2007.

ADDRESSES: Comments should be submitted to the Director, Office of Executive Secretariat, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tim Murphy, Division of General Law, United States Department of the Interior, 1849 C Street NW., Mail Stop 7315, Washington, DC 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, established the National Indian Gaming Commission (Commission), composed of three full-time members. 25 U.S.C. 2704(b). Commission members serve for a term of 3 years. 25 U.S.C. 2705(b)(2)(4)(A). The Chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(B). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the commission and * * * allow a period of not less than thirty days for receipt of public comments.'' 25 U.S.C. 2704(b)(2)(B).

Notice is hereby given of the proposed appointment of Norman H. DesRosiers

as an associate member of the Commission for a term of 3 years. Mr. DesRosiers is well qualified to serve as a member of the Commission. Mr. DesRosiers is currently Commissioner of the Viejas Gaming Commission, a position to which he was first appointed in 1998. Mr. DesRosiers developed the commission and wrote its ordinances and its regulations. He developed an organization with 50 regulators and a $4 million budget. From 1994 to 1998, Mr. DesRosiers was executive director of the San Carlos Apache Tribal Gaming Commission, which he also established, promulgating regulations and hiring and training inspectors and support staff. He also served as supervisor of inspectors at the Fort McDowell Gaming Commission. From 1982 to 1984, Mr. DesRosiers owned and managed a private investigation firm. From 1970 to 1979, Mr. DesRosiers served at the Lynnwood, Washington Police Department, concluding his service as a sergeant. Between 1968 and 1970, Mr. DesRosiers served in the United States Army, where he earned the rank of Sergeant.

Mr. DesRosiers has served on two advisory committees reporting to the Commission. He received a bachelor's degree in law and justice from the Central Washington State University in 1975.

Mr. DesRosiers does not have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed appointment of Norman H. DesRosiers may submit written comments to the address listed above. Comments must be received by January 5, 2007.

Dated: November 29, 2006.

David L. Bernhardt,

Solicitor.

[FR Doc. E6–20592 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169–1220–AL]

Notice of Public Meeting, Carrizo Plain National Monument Advisory Committee

SUMMARY: In accordance with Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the United States Department of Interior, Bureau of Land Management (BLM), Carrizo Plain National Monument Advisory Committee will meet as indicated below:

DATES: The meeting will be held on Saturday, January 27, 2007, at the Carrisa Elementary School on Highway 58. The school is located approximately 2 miles to the NW of the Soda Lake Road turn-off on Hwy. 58. The meeting will begin at 10 a.m. and finish at 5 p.m.. There will be a public comment period from 3–4 p.m. Please bring your own sack lunch.

SUPPLEMENTARY INFORMATION: The nine-member Carrizo Plain National Monument Advisory Committee advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated the public land management in the Carrizo Plain National Monument in Central California. At this meeting, Monument staff will present updated information on the progress on the draft Carrizo Plain National Monument Resource Management Plan, and discuss other coordination opportunities. This meeting is open to the public, who may present written or verbal comments. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact BLM as indicated below.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Johna Hurl, Acting Monument Manager, 3801 Pegasus Drive, Bakersfield, CA, 93308. Phone at (661) 391–6093 or e-mail at: *jhurl@blm.gov.*

Dated: November 27, 2006.

Johna Hurl,

Acting Monument Manager, Carrizo Plain National Monument.

[FR Doc. E6–20625 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–6334–bj: GP07–0026]

Filing of Plats of Survey: Oregon/Washington

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on September 28, 2006.

Willamette Meridian

Washington

T. 24 N., R. 8 E., accepted July 19, 2006.
T. 9 N., R. 11 W., accepted July 19, 2006.
T. 39 N., R. 30 E., accepted August 11, 2006.
T. 38 N., R. 38 E., accepted August 11, 2006.
T. 33 N., R. 32 E., accepted August 11, 2006.
T. 38 N., R. 33 E., accepted August 18, 2006.
T. 39 N., R. 33 E., accepted August 18, 2006.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on October 23, 2006.

Willamette Meridian

Oregon

T. 38 S., R. 2 E., accepted September 12, 2006.
T. 38 S., R. 5 E., accepted September 12, 2006.

Willamette Meridian

Washington

T. 21 N., R. 12 W., accepted September 29, 2006.
T. 29 N., R. 39 E., accepted September 29, 2006.
T. 28 N., R. 39 E., accepted September 29, 2006.
T. 33 N., R. 36 E., accepted September 29, 2006.
T. 37 N., R. 37 E., accepted September 29, 2006.
T. 29 N., R. 36 E., accepted September 29, 2006.

The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 37 S., R. 1 W., accepted November 9, 2006.

A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: November 21, 2006.

Fred O'Ferrall,

Branch of Lands and Minerals Resources.

[FR Doc. E6–20586 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites comments on a proposed new collection of information (OMB # 1024–XXXX).

DATES: Public comments will be accepted on or before February 5, 2007.

ADDRESSES: *Send Comments To:* Patricia A. Taylor, Ph.D. (Professor, Departments of Statistics and Sociology, and WYSAC Faculty Affiliate)—University of Wyoming, Department of Sociology/Dept. 3293 or Dept of Statistics/Dept. 3332, 1000 E. University Ave., Laramie, Wyoming 82071; *gaia@uwvo.edu;* (307) 766–6870 (office direct line), (307) 766–4229 (Statistics office).

To Request a Draft of Proposed Collection of Information Contact: Patricia A. Taylor, Ph.D. (Professor, Departments of Statistics and Sociology, and WYSAC Faculty Affiliate)—University of Wyoming, Department of Sociology/Dept. 3293 or Dept of Statistics/Dept. 3332, 1000 E. University Ave., Laramie, Wyoming 82071; *gaia@uwvo.edu;* (307) 766–6870 (office direct line), (307) 766–4229 (Statistics office).

FOR FURTHER INFORMATION CONTACT: James Gramann, Social Science Program, National Park Service, 1201 Eye Street, NW (2300), Washington, DC 20005; Phone 202–513–7189; E-mail *igramann@tamu.edu*

SUPPLEMENTARY INFORMATION:

Title: 2007 National Park Service Comprehensive Survey of the American Public.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The NPS conducted its last comprehensive survey of the American public in 2000. That survey provided valuable information on patterns of use and non-use of parks and on the demographic characteristics of visitors and non-visitors that have been used to inform NPS decision-making. However, since 2000 many events and actions have occurred with the potential to affect the public's knowledge, behavior, and opinions regarding the NPS and the National Park System. Examples include the terrorist attacks of September 11, 2001, higher fuel prices, and several catastrophic hurricanes and wildfires. In addition, the U.S. population has aged and become more racially and ethnically diverse since the last comprehensive survey. Although the NPS and its research partners regularly survey visitors to selected National Park System units, these separate surveys cannot be rolled up into a description of visitors at the national and regional levels, nor do they describe the knowledge, attitudes, and behaviors of non-visitors and former visitors. Furthermore, individual park visitor surveys are not able to show trends in the knowledge, opinions, and behavior of the U.S. population over time. This information is essential to informing many important planning and management decisions of the NPS, ranging from visitor services, fee policy, and resource management actions to civic engagement and visitors and non-visitors over time can also provide a perspective on how national and regional populations are changing in their knowledge of the National Park System and in their use of parks, including leisure travel patterns, perceived service quality, and constraints to park visitation.

The method of information collection for the 2007 survey will be a nationwide telephone survey of households conducted using a random-digit-dial (RDD) telephone sample, disproportionately stratified by the seven NPS administrative regions (including the states of Alaska and Hawaii). In each of the seven regions, 500 completed interviews of about 15 minutes length will be obtained, for a total of 3,500 completions.

The data collected from the comprehensive survey will profile patterns in visitation and non-visitation to the National Park System. These findings will be described in a national technical report and in reports for each of the seven NPS regions. Thematic reports on specific policy and management issues included in the survey will be produced, and a summary report tracking changes in key variables between 2000 and 2007 will be written.

Response rates to telephone surveys have been declining. Therefore, it is probable that future NPS surveys of the American public will shift from telephone interviewing to a mail response or to a combination of response modes. Changes in response mode from telephone to mail can affect answers to survey questions. Because the NPS comprehensive survey tracks several ''core'' variables over time, it is important to know if measured changes in these variables are due to a switch in response modes or to real changes in the variables. To understand how response mode affects answers to core questions, the NPS will compare the telephone mode of survey administration with a paper and pencil self-administration. This test will utilize an additional sample of 4,000 listed mailing addresses with associated phone numbers (screened to eliminate numbers that duplicate numbers in the RDD sample) and randomly split in half.

A short-form questionnaire including a few core variables from the full survey, such as visitation patterns and demographics, will be used for this test. One-half of the sample will be administered as a phone survey. The other half will be sent a printed version of the short-form questionnaire. The project anticipates obtaining 1,000 completed questionnaires from each of the two response modes, for an additional 2,000 short interviews beyond the 3,500 completed for the main telephone survey. A report on response-mode effects on survey interviewing will be produced, including mode effects on response rates, non-response bias, the demographic characteristics of respondents, item non-response, and substantive responses to core variables.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Automated data collection: This information will be primarily collected via telephone interviews. Some information will be collected through paper and pencil, self-administered mail-back surveys. No automated data collection will take place.

Description of respondents: Residents of the United States of America in the seven administrative regions of National Park Service.

Estimated average number of respondents: 5,500 (3,500 for the main telephone survey and 2,000 for the response-mode test).

Estimated average number of responses: 5,500.

Estimated average burden hours per response: 10 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 1,100 hours.

Dated: November 29, 2006.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 06–9538 Filed 12–5–06; 8:45 am]

BILLING CODE 4310–EJ–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 877–880, and 882 (Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* Date of Commission Approval of Action Jacket.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 6, 2006, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (71 FR 66974, November 17, 2006). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on April 20, 2007, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 10, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 1, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 3, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 1, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 22, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 22, 2007. On June 19, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may

submit final comments on this information on or before June 21, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 1, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–20672 Filed 12–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–482; Investigation No. Singapore FTA–103–015]

U.S.-Singapore FTA: Probable Economic Effect of Accelerated Tariff Elimination and Modification of Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for written submissions.

SUMMARY: Following receipt of a request on October 27, 2006, from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) and in accordance with section 103 of the United States-Singapore Free Trade Agreement (USSFTA) Implementation Act (19 U.S.C. 3805 note), the Commission instituted Investigation Nos. 332–482 and Singapore FTA–103–015, U.S.-Singapore FTA: Probable Economic Effect of Accelerated Tariff Elimination and Modification of Rules of Origin.

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

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Vincent Honnold, Office of Industries (202–205–3314 or *vincent.honnold@usitc.gov*); for information on legal aspects, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*).

Background: According to USTR's request letter, the United States and Singapore have agreed to enter into consultations to consider acceleration of the reduction or elimination of tariffs (including an increase in the quota level of certain tariff rate quotas) for certain articles, and a rules of origin change. Sections 201(b) and 202(o) of the United States-Singapore Free Trade Agreement Implementation Act (Act) authorize the President to proclaim modifications in duty treatment and rules of origin changes, respectively, subject to the consultation and layover requirements in section 103 of the Act. Section 103 requires that the President obtain advice regarding the proposed action from the Commission.

The USTR requested that the Commission provide advice, with respect to three articles, as to the probable economic effect of accelerating the reduction or elimination of the U.S. tariff under the USSFTA on domestic industries producing like or directly competitive articles, and on consumers of the affected goods. The three articles are (1) preparations for infant use, put up for retail sale (HS 1901.10); (2) peanuts in snack products (HS 2008.11); and (3) polycarbonates (HS 3907.40.00). The USTR also requested that the Commission provide advice on the probable effect of a modification in the rules of origin for photocopiers (HS 9009.12.00) on U.S. trade under the USSFTA, on total U.S. trade, and on domestic industries. Additional information concerning these articles is available from the Office of the Secretary to the Commission or by accessing the electronic version of this notice at the Commission's Internet site (*http://www.usitc.gov*). The current USSFTA rules of origin can be found in General Note 25 of the 2006 Harmonized Tariff Schedule of the United States (see ''General Notes'' link at *http://www.usitc.gov/tata/hts/bychapter/index.htm*).

As requested, the Commission will forward its advice to the USTR by February 5, 2007. USTR indicated that those sections of the Commission's report that analyze the probable economic effects, as well as other information that would reveal aspects of the probable effects advice, will be classified.

Written Submissions: In lieu of a public hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 19, 2006. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, from which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing

submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. However, should the Commission publish a public version of this report, such confidential business information will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 30, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–20671 Filed 12–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–062]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 15, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–444–446 and 731–TA–1107–1109 (Preliminary)(Coated Free Sheet Paper from China, Indonesia, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on December 15, 2006; Commissioners' opinions are currently scheduled to transmit its determination to the Secretary of Commerce on or before December 22, 2006.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9578 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–060]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 12, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–891 (Review)(Foundry Coke from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 29, 2006.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9579 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–061]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 14, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. AA1921–197, 701–TA–319, 320, 325–327, 348, and 350); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review) (Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 17, 2007.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9580 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mario Alberto Diaz, M.D.—Denial of Application

On June 27, 2005, the Deputy Assistant Administrator, Office of

Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mario Alberto Diaz, M.D. (Respondent) of Miami, Florida. The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that granting Respondent a registration would be inconsistent with the public interest. See Show Cause Order at 1; see also 21 U.S.C. 824(a)(4), *id.* § 823(f).

More specifically, the Show Cause Order alleged that in May 2003, Respondent, who had previously been registered as a practitioner, entered into a contract with Pharmacom, an Internet pharmacy, under which he agreed to issue prescriptions online. Show Cause Order at 5. The Show Cause Order alleged that Respondent issued approximately 100 prescriptions per day, and that Respondent admitted having issued approximately twenty to twenty-five thousand prescriptions during the period of his employment with Pharmacom. See *id.*

The Show Cause Order further alleged that Respondent issued prescriptions for controlled substances based on questionnaires submitted by customers over the Internet. See *id.* The Show Cause Order alleged that the questionnaire solicited from the customer information regarding the drugs the customer wished to purchase and obtained the customer's payment information and was then electronically transmitted to Respondent. See *id.* The Show Cause Order alleged that based on the questionnaire, Respondent would issue a prescription for a controlled substance and that the principal drugs he prescribed were hydrocodone, a Schedule III controlled substance, and Valium, a Schedule IV controlled substance. See *id.*

The Show Cause Order also alleged that Respondent never saw the customers and did not perform a physical exam on them, that he did not have a pre-existing doctor-patient relationship with them, and that he did not create or maintain patient records for them. See *id.* The Show Cause Order further alleged that Respondent never consulted with the customers' primary care physicians or obtained from them the customers' medical records, and that the only information he reviewed was the questionnaires submitted by the customers. See *id.* at 5–6.

The Show Cause Order additionally alleged that many of the prescriptions written by Respondent were for minors. See *id.* at 6. The Show Cause Order also alleged that during its investigation of Pharmacom, the Iowa Board of Pharmacy contacted approximately 20 customers who had received prescriptions for controlled substances that were issued by Respondent. See *id.* The Show Cause Order alleged that each of these customers told investigators that before receiving controlled substances, they had had no contact with Respondent other than by e-mail. *Id.* The Show Cause Order thus concluded by alleging that Respondent was ''responsible for the diversion of large quantities of controlled substances,'' and that he had ''indiscriminately dispensed large volumes of controlled substances to persons'' he had never seen or physically examined. *Id.*

On July 15, 2005, the Show Cause Order was served on Respondent by certified mail as evidenced by the Return Receipt Card. Thereafter, on July 23, 2005, Respondent submitted a letter to me in which he waived his right to a hearing and submitted a written statement setting forth his position on the matters of fact and law involved. See 21 CFR 1301.43(c). The investigative file was then forwarded to me for final agency action.

Based on Respondent's letter to me, I conclude that Respondent has waived his right to a hearing. Moreover, having considered the record as a whole including Respondent's statement, I conclude that granting Respondent's application for a new registration would be inconsistent with the public interest and make the following findings.

Findings

Respondent, a medical doctor with a specialty in anesthesiology, formerly held a DEA certificate of registration as a practitioner under which he was authorized to prescribe Schedule II through Schedule V controlled substances. On May 20, 2004, Respondent surrendered his registration during the execution of a search warrant at his residence/registered location, which was located in Miami, Florida.

On September 12, 2003, two DEA Diversion Investigators from the Des Moines, Iowa office, DEA Task Force Officers, and investigators from the Iowa Board of Pharmacy Examiners executed a federal search warrant at the Union Family Pharmacy, 2541 Central Avenue, Dubuque, Iowa. The search was initiated based on information that the Union Family Pharmacy was engaged in filling purported prescriptions that it downloaded from an Internet site and that it distributed the drugs to persons nationwide.

During the search, investigators seized approximately twenty thousand prescriptions that the pharmacy had filled and dispensed from March 2003 through September 12, 2003, the date the warrant was executed. Of these twenty thousand prescriptions, approximately five thousand of them had been filled and dispensed on behalf of Pharmacom. All of the Pharmacom prescriptions were filled between August 18, 2003, and September 12, 2003.

The investigation determined that Pharmacom was located in Miami, Florida, and that it owned the domain name Buymeds.com and operated the Web site *http://www.buymeds.com*. Approximately 1,240 of the controlled substance prescriptions downloaded by Union Family Pharmacy from the Pharmacom web site and filled by the pharmacy were issued by Respondent.

Because of unusual banking activity, Pharmacom had previously come to the attention of the Internal Revenue Service (IRS) and, on September 2, 2003, two IRS special agents interviewed Mr. Orlando Birbragher, Pharmacom's President and CEO. During the interview, the IRS special agents determined that Pharmacom operated multiple on-line pharmacy Web sites including Buymeds.com. The interview determined that Pharmacom's customers submitted on-line questionnaires to purchase Schedule III and IV controlled substances, and that Pharmacom's doctors evaluated the questionnaires to determine whether to approve or reject the order. Pharmacom's doctors did not, however, conduct a physical exam of the customer. Instead, the questionnaires required the patient to indicate whether they had been examined by a physician within the past year. Mr. Birbragher further maintained that Pharmacom's doctors contacted the customers and their physicians when evaluating the questionnaires. Those prescriptions which were approved were then sent to a pharmacy, which filled the prescriptions and shipped them to the customers. Pharmacom paid both the doctor who issued the prescription and the pharmacy which filled it.

Mr. Birbragher told the IRS agents that Respondent had started working for Pharmacom in March 2003. Respondent's duties involved reviewing the questionnaires and determining whether a prescription should be issued. Pharmacom initially paid Respondent $20 for evaluating a request for a new prescription and $10 for evaluating a request for a refill. Because of the volume of business it attracted, Pharmacom subsequently cut its payment rates in half. Even at this reduced payment rate, Pharmacom paid Respondent $218,586 between April and August 2003. Mr. Birbragher further

told the IRS agents that Respondent used physician assistants (PA's) to assist him in evaluating the patient questionnaires. Mr. Birbragher did not know, however, whether Respondent or the PA's actually reviewed the questionnaires.

Thereafter, one of the DIs reviewed prescription data obtained during the search of the Union Family Pharmacy. More specifically, the DI reviewed the prescription data that the pharmacy downloaded from the buymeds.com website and filled on September 7, 2003. On that date, the pharmacy filled 583 Buymeds' prescriptions. Of the 583 prescriptions, only 29 (4.9%) were for non-controlled substances. The remaining prescriptions were for controlled substances such as hydrocodone, codeine, propoxyphene, and Ambien (zolpidem). Respondent issued 146 of the 583 prescriptions that were filled that day. While the investigative file does not indicate how many of these prescriptions were for controlled substances, even if Respondent issued all of the non-controlled substance prescriptions, he still would have issued 117 controlled substance prescriptions that were filled on that day.[1]

On May 20, 2004, investigators executed a search warrant at Respondent's residence in Miami. While Respondent was not home when the search commenced, his son contacted him by cell phone. Respondent spoke with a DEA Special Agent and agreed to return to his residence. Upon his return, a DI and IRS special agent interviewed him.

Respondent told the investigators that he began working for Pharmacom in April 2003 and quit in November 2003. Respondent stated that another physician had told him about Pharmacom's business and had recommended him to Marshall Kanner, one of the owners. Thereafter, Respondent interviewed with Kanner for a position with Pharmacom. Kanner told him that the position would involve authorizing medication over the Internet to patients who were seeing or had seen a doctor in the past year. Respondent claimed that he expressed to Kanner his concerns regarding prescribing medicine in this manner, but Kanner told him it was legal. According to Respondent, Kanner also told him he could authorize prescriptions for customers throughout the United States.

Respondent told the investigators that customers would contact Pharmacom through the Internet and fill out a questionnaire provided by it. Pharmacom then assigned a list of patients to Respondent. Respondent's job was to review the questionnaires and then interview the customers either by telephone or e-mail to determine whether the customers were eligible to receive the drug they requested.

Respondent stated to the investigators that he told Pharmacom that he was only willing to review 100 customers a day and that he did not issue prescriptions to ten to twenty-five percent of the customers. Respondent also told the investigators that he reviewed approximately 40 to 50 refill prescriptions a day and that he made as much as $14,000 a week.

Respondent further told the investigators that he never saw any of the customers and that he never developed a doctor/patient relationship with any of them as everything was done either via the Internet or by telephone. According to the DI's report, Respondent admitted that the information provided by the customers was never verified and that when he interviewed customers by telephone, he could not verify whom he was talking to.

When the DI asked Respondent whether he knew it violated the law to issue a prescription for a controlled substance without having a legitimate doctor/patient relationship, Respondent did not give a specific answer. Instead, Respondent asserted that whenever he questioned the legality of the practice, Kanner or Birbragher assured him that it was legal. When the DI reminded Respondent that he was the doctor, Respondent stated, ''Yes, I know that.''

Respondent also told the investigators that he quit Pharmacom because sometime in September or October 2003, Birbragher told him that all customers would have to receive a physical exam and that he did not agree with this policy. When questioned as to the basis of his disagreement, Respondent became vague and evasive and would not specifically answer the question. Towards the end of the interview, Respondent was also advised by the DI that having surrendered his DEA registration, he was not authorized to handle controlled substances in any manner and could not possess, dispense, administer or prescribe them.

Subsequently, on September 14, 2004, Respondent agreed to undergo a proffer interview at the DEA Miami field office. During the interview, at which he was represented by counsel, Respondent stated that he was currently employed at a cosmetic surgery center where he provided anesthesia services even though he had previously surrendered his DEA registration.

During this interview, Respondent asserted that he had researched the DEA w Web site and could not find any statute indicating that prescribing over the Internet ''could not be done.'' Respondent further stated that he thought the practice was similar to that in an emergency room where the patients are ''unknown'' to the physician. Respondent again maintained that he had contacted Kanner to determine whether the practice was legal and had been told by Kanner that Pharmacom's attorneys had ''stated that it was legal.'' Respondent further stated that when he met with Kanner and Birbragher, they told him ''they were licensed in all states and [that] he could make a huge amount of money.''

Respondent further admitted that while he limited himself to 100 ''patients'' per day, a general practitioner would normally see thirty to forty patients per day. Respondent asserted that the only difference between his activities and that of a general practitioner was that a ''general practitioner sees the patient.'' Respondent added that he would review the medical history provided by the customer and such other information as the customer's location, age, weight, height, and previous and current medications. Later in this interview, Respondent admitted that he ''felt uncomfortable with the number of patients'' he was assigned, and that when he telephoned patients, ''some appeared to be druggies.'' Respondent also stated that as time went on, he ''felt people were ordering medications for habits or entertainment,'' and that the ''types of people ordering were getting worse and worse.''

Respondent admitted that the customers submitted requests for specific drugs, but that he would ''never ask a patient what drug they wanted'' because doing so would be contrary to ''good medical practice.'' He further stated that the ''best professional care would be face to face.'' He also claimed that he had quit because the physical examinations that Pharmacom had started providing were incomplete.

Respondent admitted that some customers requested multiple drugs such as hydrocodone and alprazolam. Respondent also stated that he approved between twenty and twenty-five thousand prescriptions during the period of his association with Pharmacom and that the highest number of prescriptions he authorized in a day

[1] A further analysis of the computer data seized during the search of the Union Family Pharmacy found that Respondent issued 1,240 prescriptions for controlled substances during the period August 18, 2003, through September 12, 2003.

was about 200. In response to a question regarding the danger of prescribing medication without establishing a doctor/patient relationship, Respondent stated that the ''potential for killing people can happen in a hospital,'' but that ''a bigger potential [exists] over the Internet.''

In his written statement responding to the Show Cause Order, Respondent asserted that he ''attempted to perform my medical functions in a professional and ethical manner.'' Respondent further stated that he ''did call the patient to evaluate them for their prescriptions,'' and that he ''denied a high percentage of the prescriptions requested.''

Respondent asserted that he searched the websites of both DEA and the Florida Department of Health to see if there were ''any laws that made this business illegal.'' Respondent also stated that Pharmacom's owners had ''fooled [him] into thinking that their business was legal'' and that he ''would never knowingly violate any laws.'' Respondent further asserted that he was unaware of the statements of DEA, the American Medical Association, the Federation of State Medical Boards, the Food and Drug Administration, and the National Association of Boards of Pharmacy (all of which were recited in the Show Cause Order) and all of which discuss the illegality and/or impropriety of prescribing over the Internet without establishing a bona-fide doctor-patient relationship.

Respondent contended that as an anesthesiologist he had rarely written prescriptions and that while he ''knew that a patient-doctor relationship had to be established,'' he ''honestly believed that having a patient fill out a questionnaire about their health and another dedicated section related to the medication they were requesting would fulfill this criteria.'' Respondent also maintained that he ''would question the patient about any previous prescriptions for the medication they were then requesting,'' and that ''[a] very large percentage of them had already been prescribed the medication by their family physician.'' Respondent further stated that he ''did call a few of their physicians in cases I suspected of problems.''

In his written statement, Respondent added that he resigned when he became aware ''that a physical examination was needed to write a prescription.'' Respondent also stated that he ''will never work for any endeavor of this type ever again.'' Respondent concluded by stating that he ''accept[ed] that the selling of medications over the Internet is not correct and that a prescription should not be written without a physical examination.''

I further take official notice of the fact that on May 17, 2006, the Florida Department of Health issued an order imposing an emergency suspension of Respondent's state medical license. That order remains in effect.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are * * * considered in the disjunctive,'' Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I ''may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' Hoxie v. DEA, 419 F.3d 477, 483 (6th Cir. 2005); see also Morall v. DEA, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this matter, I conclude that multiple grounds support the denial of Respondent's application. Specifically, Respondent currently lacks authority under Florida law to practice medicine and therefore is not entitled to a DEA registration. Moreover, even if the State of Florida were to rescind its order of emergency suspension, my analysis of several other factors also demonstrates that granting his application would be inconsistent with the public interest.

Factor One—The Recommendation of the State Licensing Board

It has long been recognized that ''[a]gencies may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Therefore, pursuant to 5 U.S.C. 556(e) and 21 CFR § 1316.59(e), I hereby take official notice of the fact that on May 17, 2006, the Florida Department of Health issued an order imposing an emergency suspension of Respondent's state medical license.[2] Respondent is therefore without authority under state law to handle controlled substances in the state in which he intends to practice medicine.

Our precedents have repeatedly construed the Controlled Substances Act (CSA) as precluding DEA from issuing a registration to an applicant who lacks authority to handle controlled substances in the state where the applicant practices medicine. See 21 U.S.C. 802(21) & 823(f); see also George Thomas, 64 FR 15811, 15812 (1999); Robert E. Hales, 52 FR 17646 (1987). Moreover, denial of an application is appropriate even ''when a State license has been suspended, but [there is] a possibility of future reactivitation.'' Alton E. Ingram, Jr., 69 FR 22562 (2004). Therefore, I conclude that Respondent's lack of state authority is reason alone to deny his application for a registration. But because the Florida Department of Health's order is not a final decision and may be rescinded, an analysis of Respondent's conduct as charged in the Show Cause Order and his defenses is warranted.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and His Record of Compliance With Applicable Laws

The CSA's implementing regulations state that for ''[a] prescription for a controlled substance to be effective [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''[a]n order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of * * * 21 U.S.C. 829 * * * and the person * * * issuing it, shall be subject to the penalties provided for

[2] In accordance with the Administrative Procedure Act and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e). See also 21 CFR 1316.59(e). DEA's regulations contain no provision for requesting reconsideration of a final order. See Robert A. Leslie, M.D., 60 FR 14004, 14005 (1995). To allow Respondent the opportunity to refute the facts of which I am taking official notice, publication of this final order shall be withheld for a fifteen-day period, which shall begin on the date of service by placing this order in the mail.

violations of the provisions of law relating to controlled substances.'' *Id.*

As the Supreme Court has recognized, the CSA reflects Congress's ''intent to limit a registered physician's dispensing authority to the course of his professional practice.'' *United States* v. *Moore*, 423 U.S. 122, 140 (1975). The Court has further explained that the CSA ''reflect[s] the intent of Congress to confine authorized medical practice within accepted limits.'' *Id.* at 141–42. Thus, in Moore, the Court upheld a criminal conviction of a physician for knowingly or intentionally distributing controlled substances in violation of the CSA, explaining that the physician's ''conduct exceeded the bounds of professional practice'' when the physician prescribed controlled substances and ''gave inadequate physical examinations or none at all.'' *Id.* at 142–43.

The evidence in this case establishes that Respondent repeatedly acted outside the course of professional practice and violated the CSA. Respondent, while contracted to Pharmacom, issued between twenty and twenty-five thousand prescriptions to persons with whom he had no bonafide doctor-patient relationship. While the investigative file does not establish the exact number of controlled substance prescriptions issued by Respondent, the analysis of the 583 Buymeds.com prescriptions filled by Union Family Pharmacy on September 7, 2003, establishes that at least 117 (out of a total of 143) prescriptions issued by Respondent and filled on that date were for a controlled substance.[3] Furthermore, the analysis of the prescriptions filled by the Union Family Pharmacy for Pharmacom between August 18, 2003, and September 12, 2003, shows that Respondent issued 1240 controlled substance prescriptions. Given that this represents only a small portion of the period during which Respondent was engaged with Pharmacom, it is reasonable to infer that Respondent issued many more prescriptions for controlled substances.

Respondent issued the prescriptions notwithstanding that he did not perform a physical exam and had no face-to-face interaction with Pharmacom's customers. While Respondent maintained that he called or contacted via e-mail the customers ''on a regular basis'' to discuss their questionnaires and denied some percentage of the requests, Respondent admitted in the interviews that there was generally no way to verify the information provided by the customers.[4]

Furthermore, while Respondent asserts that he asked Pharmacom's owners about the legality of issuing Internet prescriptions (who assured him that the practice was lawful), there were numerous reasons to question its legality. For example, customers were not required to submit any documentation (other than the questionnaire) regarding a medical condition that would demonstrate the need for a drug.[5] Moreover, Respondent did not review the customer's questionnaires and choose a drug to prescribe based on his ''diagnosis'' of the customer's medical condition. Rather, it was the customer who requested a specific drug. Respondent admitted, however, that he would ''never ask a patient what drug they wanted'' because doing so would be contrary to ''good medical practice.''

Finally, Respondent should have questioned why Pharmacom's customers did not submit prescriptions issued by their own doctors but rather required that prescriptions be issued by him and the other Pharmacom doctors. Indeed, Respondent admitted that when he telephoned patients, ''some appeared to be druggies,'' and that as time went on he ''felt people were ordering medications for habits or entertainment.'' In short, Respondent had numerous indications that issuing prescriptions in this manner ''exceeded the bounds of professional practice,'' Moore, 423 U.S. at 142, and violated federal law notwithstanding the comments of Pharmacom's owners.

Respondent maintains that he visited the DEA and Florida Department of Health Web sites but could find no information that the practice of Internet prescribing was illegal. As for his effort to find information on the issue at the DEA Web site, Respondent must not have looked very hard. On April 27, 2001, DEA published a Notice in the **Federal Register** entitled ''Dispensing and Purchasing Controlled Substances over the Internet.'' See 66 FR 21181. To the extent DEA was required to give notice of this policy statement, publication in the **Federal Register** is all that was necessary to comply with the Administrative Procedure Act. See 5 U.S.C. 552(a)(1)(D). DEA, however, took the further step of posting this policy statement on the Office of Diversion Control's Web page and the document is easily found by using the Web page's search engine.

The purpose of the Notice was ''to provide guidance to prescribers * * * and the public concerning the application of current laws and regulations as they relate to the use of the Internet for dispensing [and] purchasing * * * controlled substances.'' *Id.* The Notice further explained that ''[w]ith the advent of Internet pharmacies, DEA registrants and the public have asked how these Internet pharmacies fit into the requirements that currently exist for the prescribing and dispensing of controlled substances.'' Thus, DEA issued this policy statement, which was based on the application of existing law to the new circumstances that arose with the emergence of the Internet as a mechanism to engage in commerce.

The Notice expressly addressed the potential illegality under existing law of prescribing a controlled substance based on an on-line questionnaire. After noting the regulation pertaining to the purpose of a prescription, see 21 CFR 1306.04, the Notice explained that ''[u]nder Federal and state law, for a doctor to be acting in the usual course of professional practice, there must be a bona fide doctor/patient relationship.'' 66 FR at 21182. The Notice further observed that:

> many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor/patient relationship has been established:
> - A patient has a medical complaint
> - A medical history has been taken
> - A physical examination has been performed; and
> - Some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed.

Id. at 21182–83.

The Notice thus concluded that ''[c]ompleting a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship. * * * It is illegal to receive a prescription for a controlled substance without the establishment of a legitimate doctor/patient relationship, and it is unlikely for such a relationship to be formed through Internet correspondence alone.'' [6] *Id.* at 21183.

[3] The investigative file does not establish the precise date that Respondent issued these prescriptions.

[4] I note, however, that Respondent does not contend that he actually contacted every patient. Moreover, the assembly line nature of his activity begs the question of what Respondent did when a customer did not answer the phone or failed to timely call him back or respond to his e-mail.

[5] This is not to suggest that Respondent would have acted lawfully if he had issued prescriptions on the basis of medical reports submitted directly to him by customers.

[6] As the Notice explained, ''[a] consumer can more easily provide false information in a questionnaire than in a face-to-face meeting with a doctor.'' *Id.* at 21183.

The Notice further stated that doctors who issued prescriptions without establishing a legitimate doctor/patient relationship could be subjected ''to criminal, civil, or administrative actions,'' and that ''[f]or DEA registrants administrative action may include the loss of their DEA registration.'' *Id.* Thus, contrary to Respondent's suggestion that no information was publicly available regarding the potential illegality of the practice, DEA had given fair warning that prescribing a controlled substance based on an on-line questionnaire and without conducting a physical exam could be deemed a violation of the CSA's longstanding requirement that a prescription must be issued for a legitimate medical purpose. DEA also warned that issuing a prescription without such a purpose could subject a physician to criminal, civil and administrative proceedings.

Moreover, in April 2002, the Federation of State Medical Boards adopted its model guidelines for the use of the Internet in medical practice. Section Five of this document states that ''[a] documented patient evaluation, including history and physical evaluation adequate to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided, must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise.'' Federation of State Medical Boards of the U.S., Inc., Model Guidelines for the Appropriate Use of the Internet in Medical Practice 5 (2002) (emphasis added).

The guidelines further state that ''[t]reatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings.'' *Id.* Finally, the guidelines state that ''[t]reatment, including issuing a prescription, based solely on an online questionnaire or consultation, does not constitute an acceptable standard of care.'' *Id.*

Thus, while Respondent may have lacked actual knowledge of DEA's interpretation of the CSA and the position of other entities involved in the regulation of his profession, I conclude that such information was readily available at the time Respondent commenced his contract with Pharmacon and therefore will not excuse his misconduct.[7] Moreover, I find that Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws involve numerous violations of the CSA in that Respondent issued prescriptions without a legitimate medical purpose and that these factors demonstrate that granting Respondent's application (in the event the State were to rescind its order) would be inconsistent with the public interest. Having found so, it is unnecessary to address the remaining factors. See, e.g., Hoxie, 419 F.3d at 483; Morall, 412 F.3d at 165.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f), and 28 CFR 0.100(b) and 0.104, I hereby order that the application of Mario Alberto Diaz for a DEA Certificate of Registration as a Practitioner be, and it hereby is, denied. This order is effective January 5, 2007.

Dated: November 3, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–20630 Filed 12–5–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 10–06]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, December 14, 2006, at 10 a.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 06–9568 Filed 12–4–06; 10:10 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

The Notice also discussed some Internet sites which ''ask[ed] patients to waive the requirement for a physical and to agree to have a physical before taking a drug they purchase via the Internet.'' *Id.* In this regard, the Notice stated: ''[a]n after-the-fact physical does not take the place of establishing a doctor/patient relationship. The physical exam should take place before the prescription is written.'' *Id.*

[7] I do not rely on the fact that Respondent worked as an anesthesiologist after he surrendered his DEA registration. While the administration of anesthesia invariably requires the use of controlled substances and it seems highly probable that Respondent further violated the CSA by administering controlled substances without a registration, this conduct was not alleged in the Show Cause Order.

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: New collection of information.

Title: International Training Application.

OMB Number: 1220–0NEW.

Type of Response: Reporting.

Frequency: On occasion.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Annual Responses: 100.

Average Response Time: 20 minutes.

Total Annual Burden Hours: 34.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance to collect information to support the BLS international training program. This collection will allow the BLS to collect the information needed to register trainees for the international training programs.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–20615 Filed 12–5–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Employment Information Forms (WH–3 and WH–3 Spanish). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 5, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Fair Labor Standards Act (FLSA) section 11(a), 29 U.S.C. 211(a), provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. Other Federal laws the Wage and Hour Division (WHD) of the DOL administers provide similar authority. Form WH–3 is an optional form complainants (e.g. current and former employees, unions, and competitor employers) may use to provide information to the WHD about alleged violations of the labor standards provisions the WHD administers. Complainants themselves or WHD staff, using information provided by the complainants, complete the form. WHD staff use the completed forms to obtain information about employer compliance with the provisions of the various labor standards laws enforced by the agency and to determine if the WHD has jurisdiction to investigate the alleged violation(s). Form WH–3 is available in both English and Spanish. When the WHD schedules a complaint-based investigation, the agency makes the completed Form WH–3 part of the investigation case file. This information collection is currently approved for use through June 30, 2007.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks approval for the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to investigate alleged violations of the various labor standards laws enforced by the WHD.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employment Information Form.

OMB Number: 1215–0001.

Agency Number: WH–3 and WH–3 Spanish.

Affected Public: Individuals or households.

Total Respondents: 35,000.

Total Responses: 35,000.

Time per Response: 20 minutes.

Frequency: On Occasion.

Estimated Total Burden Hours: 11,667.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–20589 Filed 12–5–06; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 5, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Black Lung Benefits Act (FBLBA). 30 U.S.C. 933(a) requires coal mine operators to secure the payment of benefits for which they may become liable by: (a) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (b) insuring the payment of such benefits with any stock or mutual company or association, or with any other person or fund, including any state fund, while such company, association, person or fund is authorized under the laws of any state to insure workers' compensation. 30 U.S.C. 933(d) includes a civil penalty of not more than $1,000 which may be assessed to coal mine operators by the Secretary for each day during which the operator fails to secure the payment of benefits. 20 CFR 725.531, requires self-insured operators or insurance carriers to retain receipts for black lung benefit payments made for five years after the date on which the receipt was executed. A canceled check is considered adequate receipt of payment. This information collection is currently approved for use through June 30, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order that coal mine operators and insurers can provide evidence, as necessary, that payment to claimants has been made and received.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator.

OMB Number: 1215–0124.

Affected Public: Business or other for profit and State, Local or Tribal Government.

Recordkeeping: On occasion.

Total Respondents: 140.

Total Responses: 140.

Estimated Total Burden Hours: 1.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–20590 Filed 12–5–06; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–087]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent To grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,361,961 B1 to Mor_NuTech, Inc., having its principal place of business in West Lafayette, Indiana. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight

Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–20557 Filed 12–5–06; 8:45 am]

BILLING CODE 7510–13–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Neighborworks® America; Regular Meeting of the Board of Directors; Sunshine Act

TIME & DATE: 10 a.m. Thursday, December 7, 2006.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372; *jbryson@nw.org.*

AGENDA:

I. Call to Order.

II. Approval of the Minutes.

III. Summary Report of the Audit Committee.

IV. Summary Report of the Finance, Budget and Program Committee.

V. Financial Report.

VI. Chief Executive Officer's Quarterly Management Report.

a. Gulf Coast Rebuilding Initiative.

b. NHSA Update.

VII. Information Management Division Presentation.

VIII. Adjournment.

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 06–9582 Filed 12–4–06; 2:42 pm]

BILLING CODE 7570–02–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 175th meeting on December 12–14, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, December 12, 2006

10 a.m.–10:05 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman, Dr. Michael Ryan, will make opening remarks regarding the conduct of today's sessions.

10:05 a.m.–11:30 a.m.: Semi-Annual Briefings by the Office of Nuclear Material Safety and Safeguards (NMSS) (Open)—The Committee will be briefed by the NMSS Office and Division Directors on recent and future activities of interest within their respective programs.

1 p.m.–2:30 p.m.: RACER: Tools and a Process to Guide Decisions about Risk Reduction for Contaminants in the Environment (Open)—Dr. John Till from the Risk Assessment Corporation will brief the Committee on a methodology (RACER) used for guiding decisions on remediating contaminated sites.

2:45 p.m.–4:15 p.m.: Nuclear Energy Institute (NEI) and Electric Power Research Institute (EPRI) Views on NRC Interim Staff Guidance (ISG) DHLWRS–ISG–01 on Seismic Event Sequences (Open)—Representatives from NEI and EPRI will brief the Committee on their organizations' respective views on the ''Review Methodology for Seismically Initiated Event Sequences.'' This ISG is intended to supplement the existing Yucca Mountain Review Plan to be used to review any U.S. Department of Energy License Application for the proposed geologic repository.

4:15 p.m.–5:30 p.m.: Discussion of Draft ACNW Letter Reports (Open)—The Committee will discuss proposed ACNW letters.

Wednesday, December 13, 2006

8:30 a.m.—8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Proposed Revision to Standard Review Plan Chapter 11.2, ''Liquid Waste Management System'' (Open)—A representative from the NRC Staff will brief the Committee on the proposed revisions to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Chapter 11.2, ''LIQUID WASTE MANAGEMENT SYSTEM,'' in support of new power reactor licensing.

9:30 a.m.–10:30 a.m.: Public Comments on NRC 2006 Low-Level Radioactive Waste (LLW) Strategic Planning Initiative (Open)—An NRC staff representative will brief the Committee on the public comments received in response to the staff's ongoing LLW strategic assessment described in the **Federal Register** in July 2006 (71 FR 38675).

10:45 a.m.–12 p.m: Conceptual Licensing Process for Global Nuclear Energy Partnership (GNEP) Facilities (Open)—NMSS representatives will brief the Committee on their conceptual approach to licensing future GNEP facilities.

1 p.m.–2:30 p.m.: Generic Safety Issue 196: Boral Degradation (Open)—An ACNW staff member will provide the Committee with background information related to the use of Boral for both storage and transportation of spent nuclear fuel as well as conditions under which this material has shown degradation issues. Representatives from the Office of Nuclear Regulatory Research (RES) will brief the Committee with their reasons for removing Boral degradation from the Generic Safety Issue list.

3:45 p.m.–5:30 p.m.: Discussion of Draft ACNW Letter Reports (Open)—The Committee will discuss proposed ACNW letters.

Thursday, December 14, 2006

9:30 a.m.–11:30 a.m.: ACNW December 2006 Briefing to the Commission (Open)—ACNW members will brief the Commission on their recent and planned activities. The last Commission briefing was held on January 11, 2006.

3:30 p.m.–5 p.m.: Discussion of Draft ACNW Letter Reports (Open)—The Committee will discuss potential and proposed ACNW letter reports.

5 p.m.–5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 12, 2006 (71 FR 60196). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined

by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Dias.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: November 30, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–20536 Filed 12–5–06; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a new collection of information under Part 4003 of its regulations relating to Administrative Appeals. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 5, 2007.

ADDRESSES: Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for approval may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The administrative appeals regulation may be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Donald F. McCabe, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by the PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes regulations on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with the PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062 (b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or e-mail. For appeals of benefit determinations, the PBGC has developed new optional forms for filing appeals and requests for extensions of time to appeal.

The PBGC is requesting that OMB approve this collection of information for three years. 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 PBGC estimates that an average of 850 appellants per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 0.75 hours and $55 per appellant, with an average total annual burden of 640 hours and $46,750.

Issued in Washington, DC, this 29th day of November, 2006.

Jon Baake,

Acting Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. E6–20559 Filed 12–5–06; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–Q; SEC File No. 270–519; OMB Control No. 3235–0578.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

• Form N–Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company.

Form N–Q (17 CFR 249.332 and 274.130) is a reporting form under Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), in addition to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') that requires a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission. Form N–Q contains collection of information requirements. The respondents to this information collection will be management

investment companies subject to Rule 30e–1 under the Investment Company Act registering with the Commission on Forms N–1A, N–2, or N–3. Approximately 3,237 entities, including 8,963 portfolios are required to file Form N–Q, which is estimated to require an average of 21 hours per portfolio per year to complete. The estimated annual burden of complying with the filing requirement is approximately 188,223 hours. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The collection of information under Form N–Q is mandatory. The information provided by the Form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–20575 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 30e–1; SEC File No. 270–21; OMB Control No. 3235–0025.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

The collection of information is entitled: ''Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies.'' Section 30(e) (15 U.S.C. 80a–29(e)) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing information and financial statements as the Commission may prescribe. Among other requirements, Rule 30e–1 (17 CFR 270.30e–1) under the Investment Company Act directs funds to include in the shareholder reports the information that is required by the fund's registration statement. Failure to require the collection of this information would seriously impede the amount of current information available to shareholders and the public about funds and would prevent the Commission from implementing the regulatory program required by statute. The estimated annual number of respondents providing shareholder reports under Rule 30e–1 is 4,040. The proposed frequency of response is semi-annual. The estimate of the total annual reporting burden of the collection of information is approximately 145.8 hours per shareholder report and the total estimated annual burden for the industry is 1,178,064 hours (145.8 hours per report × 2 reports × 4,040 funds). Providing the information required by Rule 30e–1 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

November 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–20576 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27587]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 30, 2006.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2006. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 2006, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F

Street, NE.,Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

The Guardian Cash Fund, Inc. [File No. 811–3324]; The Guardian Bond Fund, Inc. [File No. 811–3634]; GIAC Funds, Inc. [File No. 811–6231]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 9, 2006, each applicant transferred its assets to RS Variable Products Trust, based on net asset value. Expenses of $2,500 were incurred in connection with each reorganization and were paid by Guardian Investor Services LLC, applicants' investment adviser, or its affiliates.

Filing Dates: The applications were filed on October 19, 2006, and The Guardian Bond Fund, Inc., filed an amended application on November 16, 2006.

Applicants' Address: 7 Hanover Sq., New York, NY 10004.

Old Mutual Analytic Global Long-Short Fund [File No. 811–21795]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on October 16, 2006, and amended on November 13, 2006.

Applicant's Address: c/o Old Mutual Capital, Inc., 4643 South Ulster St., Suite 600, Denver, CO 80237.

The Park Avenue Portfolio [File No. 811–5641]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 9, 2006 and October 16, 2006, applicant transferred its assets to RS Investment Trust, based on net asset value. Expenses of $2,500 incurred in connection with the reorganization were paid by Guardian Investor Services LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on October 20, 2006.

Applicant's Address: 7 Hanover Sq., New York, NY 10004.

The Bramwell Funds, Inc. [File No. 811–8546]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 17, 2006, applicant transferred the assets of each of its two series to newly created series of Sentinel Group Funds, Inc., based on net asset value. Expenses of approximately $367,468 incurred in connection with the reorganization were paid by Sentinel Advisors Company, the investment adviser for the acquiring fund, or an affiliate and Bramwell Capital Management, Inc., applicant's investment adviser.

Filing Dates: The application was filed on October 17, 2006, and amended on November 7, 2006.

Applicant's Address: 745 Fifth Ave., New York, NY 10151.

Morgan Stanley Total Return Income Securities Fund [File No. 811–10357]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 25, 2006, and amended on October 25, 2006.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Columbia Daily Income Company [File No. 811–2507]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 21, 2005, applicant transferred its assets to a corresponding series of Columbia Funds Series Trust, based on net asset value. Expenses of approximately $181,275 incurred in connection with the reorganization were paid by applicant and Columbia Management Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on June 23, 2006, and amended on November 9, 2006.

Applicant's Address: 1301 SW Fifth Ave., Portland, OR 97201.

Columbia Funds Trust III [File No. 811–881]; Columbia Funds Trust IV [File No. 811–2865]; Columbia Funds Trust II [File No. 811–3009]; Columbia Funds Trust VIII [File No. 811–4552]; Columbia Funds Trust XI [File No. 811–4978]; Columbia Funds Trust V [File No. 811–5030]; Columbia Funds Trust VI [File No. 811–6529]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2006, each series of each applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of approximately $152,827, $76,413, $57,310, $38,207, $229,240, $286,550 and $57,310, respectively, incurred in connection with the reorganizations were paid by Columbia Management Advisors, LLC, applicants' investment adviser.

Filing Dates: The applications were filed on June 23, 2006, and amended on November 7, 2006.

Applicants' Address: One Financial Center, Boston, MA 02111.

Columbia Oregon Municipal Bond Fund, Inc. [File No. 811–3983]; Columbia Mid Cap Growth Fund, Inc. [File No. 811–4362]; Columbia Balanced Fund, Inc. [File No. 811–6338]; Columbia Small Cap Growth Fund, Inc. [File No. 811–7671]; Columbia Real Estate Equity Fund, Inc. [File No. 811–8256]; Columbia Technology Fund, Inc. [File No. 811–10159]; Columbia Strategic Investor Fund, Inc. [File No. 811–10161]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2006, each applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of approximately $19,103 incurred in connection with each reorganization were paid by Columbia Management Advisors, LLC, applicants' investment adviser.

Filing Dates: The applications were filed on June 23, 2006, and amended on November 7, 2006.

Applicants' Address: 1301 SW Fifth Ave., Portland, OR 97201.

Columbia Funds Trust VII [File No. 811–6347]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 10, 2005, applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of approximately $114,620 incurred in connection with the reorganization were paid by Columbia Management Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on June 23, 2006, and amended on July 17, 2006 and November 7, 2006.

Applicant's Address: One Financial Center, Boston, MA 02111.

Columbia High Yield Fund, Inc. [File No. 811–7834]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2006, applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of $19,103 incurred in connection with the reorganization were paid by Columbia Management Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on June 23, 2006, and amended on November 7, 2006.

Applicant's Address: 1301 SW Fifth Ave., Portland, OR 97201.

USAA Life Investment Trust [811–8672]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 2006, applicant made a liquidating distribution of assets to its shareholders, based on net asset value. Expenses of $13,915 incurred in connection with the liquidation were paid by USAA Life Insurance Company, an affiliate of USAA Investment Management Company, the adviser and principal underwriter for applicant.

Filing Dates: The application was filed on August 31, 2006, and amended on November 24, 2006.

Applicant's Address: USAA Life Investment Trust, 9800 Fredericksburg Road, San Antonio, Texas 78288.

MetLife of CT Variable Life Insurance Separate Account Four [File No. 811–7889]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 9, 2006.

Applicant's Address: MetLife Insurance Company of Connecticut, One City Place, 185 Asylum Street 3CP, Hartford, CT 06103–3415.

MetLife of CT Fund VA for Variable Annuities [File No. 811–8740]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not engaged, or intending to engage in any business activity other than those necessary for winding up its affairs.

Filing Dates: The application was filed on September 17, 2002, and amended on September 7, 2006.

Applicant's Address: MetLife Life and Annuity Company of Connecticut, One City Place, 185 Asylum Street 3CP, Hartford, CT 06103–3415.

Tactical Growth and Income Stock Account for Variable Annuities [File No. 811–5090]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with MetLife Stock Index Portfolio of Metropolitan Series Fund, Inc. Expenses of $ 57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

Tactical Short-Term Bond Account for Variable Annuities [File No. 811–5089]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with BlackRock Money Market Portfolio of Metropolitan Series Fund, Inc. Expenses of $57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

The Travelers Growth and Income Stock Account for Variable Annuities [File No. 811–1539]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with Batterymarch Growth and Income Portfolio of Met Investors Series Trust. Expenses of $57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

The Travelers Quality Bond Account for Variable Annuities [File No. 811–2571]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with BlackRock Bond Income Portfolio of Metropolitan Series Fund, Inc. Expenses of $57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

Travelers Money Market Account For Variable Annuities [File No. 811–3409]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with BlackRock Money Market Portfolio of Metropolitan Series Fund, Inc. Expenses of $57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

Tactical Aggressive Stock Account for Variable Annuities [File No. 811–5091]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2006, applicant made a distribution of its assets to its shareholders in connection with its merger with MetLife Mid Cap Stock Index Portfolio of Metropolitan Series Fund, Inc. Expenses of $57,745 were incurred in connection with the merger. These expenses were paid by The Travelers Insurance Company, applicant's depositor.

Filing Date: The application was filed on August 18, 2006.

Applicant's Address: One Cityplace, Hartford, Connecticut 06103.

LSW Variable Annuity Account I [File No. 811–8681]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant abandoned its intention to operate before it received any assets. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in any

business activity other than that necessary to wind up its affairs.

Filing Date: The application was filed on April 21, 2006.

Applicant's Address: 1300 West Mockingbird Lane, Dallas, TX 75247.

LSW Variable Life Insurance Account [File No. 811–10315]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant abandoned its intention to operate before it received any assets. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in any business activity other than that necessary to wind up its affairs.

Filing Date: The application was filed on April 21, 2006.

Applicant's Address: 1300 West Mockingbird Lane, Dallas, TX 75247.

Guardian Variable Contract Funds, Inc. [File No. 811–3636]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of applicant on September 28, 2006, and applicant distributed its assets on October 9, 2006. The fund surviving the merger is RS Variable Products Trust, a Massachusetts business trust and open-end management investment company. Guardian Investor Services LLC, applicant's investment adviser, or its affiliates paid the fees incurred in connection with the merger.

Filing Date: The application was filed on October 19, 2006.

Applicant's Address: 7 Hanover Sq., New York, NY 10004.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–20632 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 69149, November 29, 2006].

STATUS: Open Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, December 4, 2006 at 10 a.m.

CHANGE IN THE MEETING: Deletion of Items.

The following items will not be considered during the Open Meeting on Monday, December 4, 2006:

1. 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.

2. 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.

The Commission determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 1, 2006.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 06–9562 Filed 12–1–06; 4:04 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–54813; File No. SR–Amex–2006–19)]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to the Listing and Trading of Options on the Nuveen Municipal Fund Index

November 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On November 13, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the Price-Return Nuveen Municipal Closed-End Fund Index (''NMUNP'') (the ''Nuveen Municipal Fund Index'' or ''Index''), an index based on the shares of exchange-listed closed-end management investment companies that are exempt from federal income tax by investing in portfolios of bonds issued by state and local governments and agencies (''Closed-End Funds'' or ''Funds'').

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at the Amex Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change 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 III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style index options on the Price-Return Nuveen Municipal Fund Index. The Exchange believes that options on the Index will be the first index options based on an index of closed-end funds. The proposed Index options are intended for the use of investors

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex clarified the Index symbol and the rationale for the product.

[4] In Amendment No. 2, Amex replaced the original rule filing in its entirety and incorporated the previously filed Amendment No. 1.

[5] In Amendment No. 3, Amex made modifications to the Purpose section to clarify the ''Index Calculation and Maintenance'' section and included representations made by Nuveen regarding the existence of firewalls to address insider trading concerns.

desiring to achieve exposure to a broad section of the national tax-free municipal closed-end fund market, as well as a hedging vehicle for those investors holding such closed-end funds.

The Index is a capitalization-weighted index based entirely on the shares of Closed-End Funds listed on either the Amex, New York Stock Exchange, Inc. (the ''NYSE'') or the Nasdaq Stock Market, Inc. (''Nasdaq'') that are exempt from federal income tax through investment in bonds issued by state and local governments and agencies. Each component is a NMS stock as defined in Rule 600 under the Securities Exchange Act of 1934 (the ''1934 Act''). Currently, the Index is comprised of the shares of Closed-End Funds that are listed on the Amex or NYSE.

Index Design and Composition. The Nuveen Municipal Fund Index is designed to be a broad representation of the U.S. municipal fund market. This Index is capitalization-weighted and includes only those Closed-End Funds domiciled in the U.S. and its territories and that are traded on the Amex, NYSE, or Nasdaq. The component Closed-End Funds are weighted by their market capitalization, which is calculated by multiplying the primary market price by the outstanding shares.

Each of the component Closed-End Funds are required to have a minimum market capitalization of at least $100 million and an average monthly trading volume over the prior six (6) months of at least 500,000 shares. In addition, for newly listed Closed-End Funds to be an index component, at least one (1) dividend payment with an ex-date prior to inclusion in the Index is required.

The Index is calculated based on a market capitalization weighting methodology. In a market capitalization index, components are weighted based on total market value of the outstanding shares, *i.e.*, share price times the number of shares outstanding. The Exchange states that this type of index typically fluctuates in line with the price moves of the components. After the initial weighting of the Index, the weights are updated in conjunction with scheduled quarterly adjustments.

As of January 31, 2006, the Closed-End Funds comprising the Nuveen Municipal Fund Index had an average market capitalization of $414 million, ranging from a high of $1.9 billion (Nuveen Municipal Value Fund Inc. (NUV)) to a low of $101 million (MBIA Capital/Claymore Managed Duration Investment Grade Municipal Fund (MZF)). The number of available shares outstanding ranged from a high of 194.9 million (NUV) to a low of 7.9 million (MZF), and averaged 31.9 million shares. The six-month average daily trading volume for Index components was 45,000 shares per day, ranging from a high of 159,100 shares per day (NUV) to a low of 13,100 shares per day (Morgan Stanley Quality Municipal Securities (IQM)).

Index Calculation and Maintenance. The value of the Index will be calculated by the Amex on behalf of Nuveen and will be disseminated at 15-second intervals during regular Amex trading hours to market information vendors via the Consolidated Tape Association (''CTA'') or by other major market data vendors (from another Amex market data feed).

The Exchange states that the methodology used to calculate the value of the Nuveen Municipal Fund Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of the Index reflects the total market value of the component Closed-End Funds relative to a particular base period and is computed by dividing the total market value of the Closed-End Funds in the Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the Index. The Index commenced on December 31, 1994 with a base value of 1000.00. On December 30, 2005, the Index value was 1144.05.

Options on the Nuveen Municipal Fund Index will expire on the Saturday following the third Friday of the expiration month. Trading in options on the Index will normally cease at 4:15 p.m. Eastern time (''ET'') on the Thursday preceding an expiration Saturday. The exercise settlement value at expiration of each Nuveen Municipal Fund Index option will be calculated by the Amex on behalf of Nuveen, based on the opening prices of the Index's component Closed-End Funds on the last business day prior to expiration (''Settlement Day'').[6] The Settlement Day is normally the Friday preceding ''Expiration Saturday.'' If a component Closed-End Fund in the Index does not trade on Settlement Day, the last reported sales price in the primary market from the previous trading day would be used to calculate the settlement value. Settlement values for the Index will be disseminated by the Amex over the CTA.

The Nuveen Municipal Fund Index is monitored and maintained by the Amex. The Amex is responsible for making all necessary adjustments to the Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the component securities. Other corporate actions, such as share issuances, change the market value of the Indexes and would require the use of an index divisor to effect adjustments.

The Index is reviewed each December, March, June, and September to ensure that at least 90% of the Index weight is accounted for by components that continue to represent the universe of Closed-End Funds that meet the Index methodology maintenance requirements. To remain in the Index, components must maintain a market capitalization of at least $75 million and have a six (6) month average monthly trading volume over 250,000 shares. Changes to Index components and/or the component share weights typically take effect after the close of trading on the third Friday of each calendar quarter month in connection with quarterly rebalancing. The Amex and Nuveen,[7] by mutual agreement, may change the number of issues comprising the Index by adding or deleting one or more components contained in the Index with one or more substitute Closed-End Funds. If an Index component is added or deleted during a quarterly rebalance, the share weights used in the calculation of the Index will be updated based upon current shares outstanding. The Index components and their share weights are determined and announced prior to taking effect. The share weight of each component in the Index portfolio remains fixed between quarterly reviews, except in the event of certain types of corporate actions such as splits, reverse splits, stock dividends, or similar events. The share weights used in the Index calculation are not

[6] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[7] The Commission notes that Nuveen, because it selects the components for the Index, has represented to Amex that it prohibits individuals at Nuveen who will be privy to information about future changes to the Nuveen Municipal Fund Index rules or constituent stocks from trading on that information, for their own benefit or for the benefit of Nuveen's clients. Additionally, Nuveen has represented that it has firewalls around the personnel who have access to information concerning changes and adjustments to the Index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission on November 17, 2006.

typically adjusted for shares issued or repurchased between quarterly reviews.

In the event of a merger between two components, the share weight of the surviving entity may be adjusted to account for any shares issued in this acquisition. The Exchange may substitute components or change the number of issues included in the Index, based on changing conditions in the industry or in the event of certain types of corporate actions, such as mergers, acquisitions, spin-offs, and reorganizations. In the event of component or share weight changes to the Index portfolio, the payment of dividends other than ordinary cash dividends, spin-offs, rights offerings, re-capitalization, or other corporate actions affecting a component of the Index, the index divisor may be adjusted to ensure that such corporate actions do not affect the Index level.

The Exchange will apply the following maintenance standards for continued listing: (i) The number of securities in the Index may not drop by one-third or more from the number of components in the Index at the time of initial listing; [8] (ii) no more than 10% or more of the weight of the Index is represented by component securities having a market value of less than $75 million; (iii) no more than 10% or more of the weight of the Index is represented by component securities trading less than 15,000 shares per day; (iv) the largest component security in the Index accounts for no more than 15% of the weight of the Index, or the largest five components in the aggregate account for more than 50% of the weight of the Index on the first day of January and July each year; [9] or (v) the component securities will be listed and traded on the Amex, the NYSE, or NASDAQ.[10]

If the Index ceases to be maintained or calculated, or its values are not disseminated at least every 15 seconds by the Amex over the CTA (or another major market data vendor) or the above Index maintenance standards are not satisfied, the Exchange would not list any additional series for trading and would limit all transactions in options on the Index to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications. The Nuveen Municipal Fund Index is a broad stock index group as defined in Amex Rule 900C(b)(1). Options on the Index would be European-style and a.m. cash-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m. ET), as set forth in Commentary .02 to Amex Rule 1, will apply to options on the Nuveen Municipal Fund Index. Exchange rules that apply to the trading of options on broad-based indexes will also apply to options on the Index.[11] The trading of these options will also be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For options on the Nuveen Municipal Fund Index, the Exchange proposes to establish an aggregate position limit of 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in the nearest expiration month series.[12]

Commentary .01(c) to Rule 904C provides that position limits for hedged index options may not exceed twice the established position limits for broad stock index groups. The Exchange proposes that a hedge exemption of 37,500 be available for the Index.

Furthermore, proprietary accounts of member organizations could receive an exemption of up to three times the established position limit for the purpose of facilitating public customer orders, to the extent they comply with the procedures and criteria listed in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE.

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Nuveen Municipal Fund Index. Accordingly, purchases of put or call options with nine months or less until expiration would have to be paid for in full. Writers of uncovered put or call options would have to deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set a strike price interval of at least 2½ points, at a minimum, for a near-the-money series in a near-term expiration month when the level of the Index is below 200, a 5-point strike price interval, at a minimum, for any options series with an expiration up to one year, and at least a 10-point strike price interval for any longer-term option. The minimum tick size for series trading below $3 would be $0.05, and for series trading at or above $3 would be $0.10.

The Exchange proposes to list options on the Index in the three consecutive near-term expiration months, plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[13] In addition, long-term option series having up to 60 months to expiration will be traded.[14] The trading of long-term options on the Index will be subject to the same rules that govern all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity. The Exchange represents that it has an adequate surveillance program in place for options on the Nuveen Municipal Fund Index and intends to apply those same procedures that it applies to the Exchange's other index options. In addition, the Exchange is a member of the Intermarket Surveillance Group (''ISG''). The members of the ISG include all of the national securities exchanges, plus the NASD. The ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Nuveen Municipal Fund Index, including long-term options.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [15]

[8] The Exchange states that the Index currently has 86 components, and therefore, may not be comprised of less than 57 components. This representation replaces any prior representation to the effect that the Index could be comprised of no less than 10 components. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 17, 2006.

[9] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 21, 2006 to remove this footnote.

[10] These maintenance standards are adapted from Commentary .03 of Amex Rule 901C to address the unique characteristics of the closed-end fund Index components, which may not always satisfy Commentary .03(4) of Amex Rule 901C. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 23, 2006.

[11] *See* Amex Rules 900C through 980C.

[12] The same limits that apply to position limits would apply to exercise limits for these products.

[13] *See* Amex Rule 903C(a).

[14] *See* Amex Rule 903C(a)(iii).

[15] 15 U.S.C. 78f(b).

in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD 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.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–19 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–Amex–2006–19 and should be submitted on or before December 21, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20572 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(5).

[17] Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof, following the conclusion of a 15-day comment period. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission on November 21, 2006.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54839; File No. SR–Amex–2006–82]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to MACRO Tradeable Shares

November 29, 2006.

I. Introduction

On August 23, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] On October 20, 2006, Amex 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 November 2, 2006 for a 15-day comment period.[4] The Commission received no comments on the proposal, as amended. On November 22, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change on an accelerated basis, grants accelerated approval to Amendment No. 2 to the proposed rule change, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

The Exchange proposes to adopt rules that would provide for the listing and trading of Paired Trust Shares. As defined in proposed Amex Rule 1400, Paired Trust Shares consist of ''Holding Shares'' issued by a ''Holding Trust,'' and ''Tradeable Shares'' issued by a ''Tradeable Trust,'' whose values track changes in a designated ''Reference Price.'' [6] Under proposed Amex Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54658 (October 26, 2006), 71 FR 64573 (November 2, 2006) (''MACRO Notice'').

[5] In Amendment No. 2, the Exchange revised details included in the description of its proposal to reflect changes made to the issuer's Form S–1 Registration Statement since the publication of notice of the proposed rule change. The Exchange also makes clarifying changes to the rule text and description of the proposed rule change.

[6] Paired Trust Shares track changes in the Reference Price through a structure whereby the

1401, a Reference Price is an index or other numerical variable that may measure assets, prices or other economic interests. Proposed Amex Rule 1402 establishes listing and trading criteria for Paired Trust Shares. Pursuant to Commentary .01 to proposed Amex Rule 1402, the Exchange will submit a filing pursuant to Section 19(b) of the Act [7] subject to Commission review and approval for each new series of Paired Trust Shares.

Pursuant to these new rules, the Exchange proposes to list and trade: (1) Claymore MACROshares Oil Up Tradeable Shares (the ''Up-MACRO Tradeable Shares''), and (2) Claymore MACROshares Oil Down Tradeable Shares (the ''Down-MACRO Tradeable Shares''). The Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares (collectively, the ''MACRO Tradeable Shares'') are issued by and represent an undivided beneficial interest in (1) the Claymore MACROshares Oil Up Tradeable Trust (the ''Up-MACRO Tradeable Trust'') and (2) the Claymore MACROshares Oil Down Tradeable Trust (the ''Down-MACRO Tradeable Trust''), respectively. The assets of these trusts (collectively, the ''MACRO Tradeable Trusts'') each will consist exclusively of a majority of the Claymore MACROshares Oil Up Holding Shares (''Up-MACRO Holding Shares'') issued by the Claymore MACROshares Oil Up Holding Trust (''Up-MACRO Holding Trust'') and the Claymore MACROshares Oil Down Holding Shares (''Down-MACRO Holding Shares'') issued by the Claymore MACROshares Oil Down Holding Trust (''Down-MACRO Holding Trust'').[8]

In its proposal, the Exchange provided detailed description regarding the structure and operation of the MACRO Holding Trusts and MACRO Tradeable Trusts, as well as the listing and trading of MACRO Tradeable Shares. In particular, the Exchange addressed (i) the designation and calculation of the applicable Reference Price, (ii) the calculation of underlying value, (iii) the application of initial and continued listing criteria in proposed Amex Rule 1402, (iv) the creation and redemption process, (v) the dissemination of pricing information, including intraday indicative value, share price, changes in the applicable Reference Price, (vi) events triggering trading halts and/or delisting, (vii) applicable Exchange trading rules, (viii) the distribution of an information circular to Exchange members, and (ix) surveillance procedures. Key features of the proposal are noted below.

Product Description

Pursuant to proposed Amex Rules 1400 and 1401, the value of the MACRO Paired Trust Shares is based on a Reference Price, which is the settlement price as established by the NYMEX ''Settlement Price Committee'' [9] of the light sweet crude oil futures contract of ''Designated Maturity'',[10] traded on the NYMEX Division of the New York Mercantile Exchange, Inc. (''NYMEX'') as established and reported by NYMEX on a per barrel basis in U.S. dollars at the end of each ''Price Determination Day'' [11] (the ''Applicable Reference Price''). Both MACRO Holding Trusts will be holding bills, bonds and notes issued and guaranteed by the United States Treasury, and repurchase agreements fully collateralized by U.S. Treasury securities.[12]

The Up-MACRO Holding Trust will enter into an income distribution agreement and multiple settlement contracts with the Down-MACRO Holding Trust.[13] If the Applicable Reference Price rises above its starting level, the Up-MACRO Holding Trust's underlying value will increase proportionately to include all of its assets plus an obligation of the Down-MACRO Holding Trust to transfer a portion of its assets. The Down-MACRO Holding Trust's underlying value will decrease proportionately because an obligation to transfer a portion of the Down-MACRO Holding Trust's assets will be included in the calculation of the underlying value of the Up-MACRO Holding Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil falls below its starting level, the Up-MACRO Holding Trust's underlying value will decrease proportionately because an obligation to transfer a portion of the Up-MACRO Holding Trust's assets will be included in the calculation of the underlying value of the Down-MACRO Holding Trust. The Down-MACRO Holding Trust's underlying value will increase to include all of its assets plus an obligation of the Up-MACRO Holding Trust to transfer a portion of its assets.

Creation and Redemption of MACRO Tradeable Shares

Similar to other exchange-traded fund products, the MACRO Paired Trust Shares will be issued and redeemed on a continuous basis on any Price Determination Day at a price equal to their respective underlying values. Only certain qualified entities (''Authorized Participants'') may create or redeem MACRO Paired Trust Shares. The process by which Authorized Participants create and redeem MACRO Paired Trust Shares is detailed in Amex's proposal. Notably, MACRO Tradeable Shares may only be created and redeemed in paired aggregations of 50,000 Up-MACRO Tradeable Shares and 50,000 Down-MACRO Tradeable Shares.

To create MACRO Paired Trust Shares, the Authorized Participant deposits cash in an amount equal to the combined per share value of the shares to be created. The proceeds will be used to purchase the holdings of the MACRO Holding Trusts, which will be Treasuries maturing prior to the next

paired Holding Trusts enter into one or more reciprocal settlement contracts and earnings distribution agreements.

[7] 15 U.S.C. 78s(b).

[8] The Up-MACRO Holding Shares and Down-MACRO Holding Shares (collectively, MACRO Holding Shares'') will not be listed or traded on the Exchange.

[9] In the event that no settlement price is determined for the light sweet crude oil contract on the NYMEX on a given Price Determination Day and no substitute oil price provider can be utilized, then the settlement price on the prior Price Determination Day will be utilized as that day's settlement price on which to base the Applicable Reference Price of Crude Oil.

[10] A light sweet futures contract of Designated Maturity means the contract that matures (i) during the next succeeding calendar month if the date of determination is the first day of the current calendar month through and including the tenth business day of the current calendar month, and (ii) during the second succeeding calendar month if the date of determination is the eleventh business day through the last day of the current calendar month.

[11] A ''Price Determination Day'' for this purpose is each day on which trading of the light sweet crude oil futures contract of the Designated Maturity occurs by open outcry on the trading floor of the NYMEX (located in New York City, New York), rather than through electronic or other means. If a substitute reference oil price is being used, the ''Price Determination Day'' will be each day on which this price is determined by, or in accordance with the rules of, the substitute oil price provider. If a benchmark other than the light sweet crude oil futures contract traded on the NYMEX is used to determine the Applicable Reference Price of Crude Oil, the Exchange will file with the Commission a proposed rule change pursuant to Rule 19b–4, seeking approval to continue trading the MACRO Tradeable Shares, which must be approved by the Commission for continued trading of the shares.

[12] The repurchase agreements will be entered into with counterparties that are (i) banks with at least one billion U.S. dollars in assets or (ii) registered securities dealers that are deemed creditworthy by the administrative agent. Such repurchase agreements must terminate overnight, and the obligation of a counterparty to repurchase U.S. Treasury securities from a MACRO Holding Trust will be fully collateralized, as defined in Rule 5b–3 under the 1940 Act. None of the counterparties may be ''affiliated persons'' (as defined in the 1940 Act) with respect to the trustee, the administrative agent, the depositor, any of the MACRO Holding Trusts or MACRO Tradeable Trusts or any affiliated persons with respect to any of the foregoing entities.

[13] The assets in each of the MACRO Holding Trusts will serve the function, among others, of securing the contractual obligations between the two trusts.

quarterly distribution date (*e.g.*, three-month U.S. Treasury securities).

Depending upon whether the Authorized Participant(s) who placed the creation order requested holding shares,[14] the trustee for the MACRO Holding Trusts will then deliver all or a portion of the issued MACRO Holding Shares to the MACRO Tradeable Trusts any remainder of MACRO Holding Shares to the creating Authorized Participant(s). The trustee for the Up-MACRO Tradeable Trust will cause such trust to issue additional Up-MACRO Tradeable Shares and deliver such shares to the creating Authorized Participant(s).

A similar process governs redemption of MACRO Paired Trust Shares. In summary, the Authorized Participant must properly place a redemption order and deliver MACRO Holding Shares or MACRO Tradeable Shares that in the aggregate constitute the requisite number of MACRO Units being redeemed, plus the applicable ''redemption cash component'' [15] and applicable transaction fee. The trustee will effect the redemption by delivering cash and/or U.S. Treasury securities to the redeeming Authorized Participant.[16]

Distributions

As described more fully in the publication of notice of the proposed rule change,[17] the MACRO Holding Trusts will make periodic income distributions. Generally, each MACRO Holding Trust will make Quarterly Income Distributions on its MACRO Holding Shares using the income realized on the Treasuries held by the paired MACRO Holding Trusts that remains available after payment of applicable fees and expenses, and payment or receipt of income pursuant to the applicable income distribution agreement.[18] The MACRO Holding Trusts would also make Redemption Distributions in response to Authorized Participant orders (as described above), and a Final Distribution upon termination.

The Up-MACRO Tradeable Trust will then pass through to the holders of its Up-MACRO Tradeable Shares all Quarterly Income Distributions (and Redemption Distributions and Final Distributions) that it receives on the Up-MACRO Holding Shares that it holds, and the Down-MACRO Tradeable Trust will do likewise to holders of its Down-MACRO Tradeable Shares with respect to all distributions that it receives on the Down-MACRO Holding Shares that it holds.

Underlying Value

The underlying value of each MACRO Holding Trust is the aggregate amount of the assets in the paired MACRO Holding Trusts to which that MACRO Holding Trust would be entitled if the settlement contracts between the MACRO Holding Trusts were settled on that day.[19] Information about the calculation of the underlying value of the MACRO Paired Trust Shares was included in the Exchange's proposal.[20] Importantly, if the Applicable Reference Price doubles from its starting level, any further upside gains for holders of Up-MACRO Tradeable Shares and Up-MACRO Holding Shares would be capped, and Down-MACRO Tradeable Shares and Down-MACRO Holding Shares would be valueless. Similarly, if the Applicable Reference Price decreases 100 percent from its starting level, further downside gains for holders of Down-MACRO Tradeable Shares and Down-MACRO Holding Shares would be capped, and the Up-MACRO Tradeable Shares and Up-MACRO Holding Shares would be valueless.[21]

Arbitrage

In its proposal, the Exchange stated that market fluctuations in the price of a MACRO Tradeable Share are expected to mirror fluctuations in its per share underlying value (*i.e.*, changes in the Applicable Reference Price), similar to the manner in which an exchange traded fund (''ETF'') share mirrors its net asset value,[22] because, as is the case with ETF shares, arbitrage opportunities would arise if these values were to move out of line.

Periodic Dissemination of Intraday Per Share Values for MACRO Tradeable Shares

During each trading day, the Amex, acting as the calculation agent, will publish to the Consolidated Tape System (''CTS''), at least every 15 seconds during the entire time that the MACRO Tradeable Shares trade on the Amex (normally 9:30 a.m. to 4:15 p.m. each Price Determination Day), an indicative value, referred to as an Indicative Intraday Value (''IIV''), representing the estimated underlying value per share of both the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares. The Amex will also publish these values on its Web site. To enable this calculation, the Amex will receive real time price data from the NYMEX for the light sweet crude oil futures contract that trades on the NYMEX from two major market data vendors, from the opening of trading of the light sweet crude oil futures contract on NYMEX at 10 a.m. to the close of trading of the MACRO Tradeable Shares on the Amex at 4:15 p.m. (New York City time).

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the Amex trading day, the IIV calculated values will become fixed at such time as the NYMEX contract stops trading in the regular trading session.[23] During such time periods, however, if trading in the NYMEX light sweet crude oil futures contract is occurring on the NYMEX electronic aftermarket system, then those trades will be used to update IIV values.

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[14] Concurrently with any Paired Issuance, an Authorized Participant will be deemed to have directed the deposit of the MACRO Holding Shares into the respective MACRO Tradeable Trusts and the issuance by each MACRO Tradeable Trust of MACRO Tradeable Shares in exchange for the deposited MACRO Holding Shares. If an Authorized Participant wishes instead to receive MACRO Holding Shares, it must specify this preference in its creation order.

[15] The ''redemption cash component'' is the cash that must be delivered to a MACRO Holding Trust in connection with a paired optional redemption by the redeeming Authorized Participant to compensate the trust for the excess value that will be delivered to such redeeming Authorized Participant in the form of U.S. Treasury securities delivered to it as a Redemption Distribution.

[16] The amount of cash and/or U.S. Treasury securities delivered on the redemption date in a paired optional redemption by Authorized Participants will always be equal to the aggregate per share underlying values of the MACRO Holding Shares being redeemed, calculated as of the redemption order date.

[17] *See* MACRO Notice, 71 FR at 64580.

[18] If a MACRO Holding Trust fails to make either (i) a payment under the income distribution agreement or (ii) a Quarterly Income Distribution to its shareholders on any Quarterly Income Distribution date because it does not have any funds available for distribution, it will not be required to make up that payment or Quarterly Income Distribution on subsequent Quarterly Income Distribution dates, even if it has funds available to do so.

[19] Conceptually, the ''underlying value'' per share of MACRO Holding Shares and MACRO Tradeable Shares is similar to the ''net asset value'' that is calculated for many other securities. For MACRO securities, however, net asset value is not meaningful because the respective per share values are not determined by the total value of the assets held by each MACRO Holding Trust at any point in time. This is because assets are not transferred daily between the MACRO Holding Trusts to settle the contractual transfer obligations between them.

[20] *See* MACRO Notice, 71 FR at 64583.

[21] Among other termination triggers, if the Applicable Reference Price rises or falls to a level at which the underlying value of either MACRO Holding Trust is equal to 15% or less of the assets it holds on deposit for three consecutive Price Determination Days, the Trust shall be terminated at the end of the quarter during which this occurs. *See* Amendment No. 2 *supra* at footnote 5.

[22] *See id.*

[23] The IIV calculated value between the opening of trading of the MACRO Tradeable Shares on the Amex at 9:30 a.m. and the opening of trading of the light sweet crude oil futures contract on NYMEX at 10 a.m. (New York City time) will be based on the final price from the prior trading day.

Dissemination of Other Information on Price Determination Days

Pursuant to a separate calculation agency agreement with MACRO Securities Depositor, LLC, MacroMarkets and the trusts, the calculation agent (Amex) will perform a number of duties for the Up-MACRO Tradeable Trust, the Up-MACRO Holding Trust, the Down-MACRO Tradeable Trust and the Down-MACRO Holding Trust. On each Price Determination Day, the calculation agent will periodically (at least every 15 seconds [24]) calculate and disseminate an IIV for the Up-MACRO Tradeable Shares and Down-MACRO Tradeable Shares and will also post this information on its Web site at *http://www.amex.com*. As with all other Amex-listed securities, the closing price of the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares on the Amex will be available on the Amex Web site.

The administrative agent, Claymore Securities, will maintain a Web site (*http://www.ClaymoreMacroShares.com*) that is publicly accessible at no charge and will contain the following information posted by the trustee on each Price Determination Day:[25]

- The daily Price Level Percentage Change of the Applicable Reference Price of Crude Oil;
- The daily underlying value [26] of the Up-MACRO Holding Trust and the per share underlying value of the Up-MACRO Holding Shares and the Up-MACRO Tradeable Shares; and
- The daily underlying value of the Down-MACRO Holding Trust and the per share underlying value of the Down-MACRO Holding Shares and the Down-MACRO Tradeable Shares.

Pricing and other information for NYMEX light sweet crude oil futures contracts, including those designated to be the Applicable Reference Price, is available through major market data vendors such as Reuters and Bloomberg.

Criteria for Initial and Continued Listing

The MACRO Tradeable Shares will be subject to the criteria in proposed Amex Rule 1402 for initial and continued listing of Paired Trust Shares. Notably, the Exchange states that it will receive a representation on behalf of the MACRO Holding Trusts and MACRO Tradeable Trusts that the underlying value per share of each MACRO Holding Share and each MACRO Tradeable Share will be calculated daily and will be made available to all market participants at the same time. Such value will be available daily on the administrative agent's publicly accessible Web site. The proposed continued listing criteria provides for the delisting of the Up-MACRO Tradeable Shares or Down-MACRO Tradeable Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Up-MACRO Tradeable Shares or Down-MACRO Tradeable Shares: (i) if the corresponding MACRO Tradeable Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Up-MACRO Tradeable Shares or Down-MACRO Tradeable Shares for 30 or more consecutive trading days; (ii) if the corresponding MACRO Tradeable Trust has fewer than 50,000 Up-MACRO Tradeable Shares or Down-MACRO Tradeable Shares issued and outstanding; or (iii) if the combined market value of all Up-MACRO Tradeable Shares and Down-MACRO Tradeable Shares together is less than $1,000,000;
- If the intraday level of the Applicable Reference Price is no longer calculated or available on at least a 15-second delayed basis from a major market data vendor such as Reuters or Bloomberg during the time the MACRO Tradeable Shares trade on the Amex from a source unaffiliated with the depositor, the custodian, MacroMarkets, a MACRO Holding Trust, a MACRO Tradeable Trust, or the Exchange that is a major market data vendor (*e.g.*, Reuters or Bloomberg);
- If the IIV of each Up-MACRO Tradeable Share or Down-MACRO Tradeable Share, as the case may be, is no longer made available on at least a 15-second delayed basis by a major market vendor during the time the MACRO Tradeable Shares trade on the Amex;
- If a benchmark other than the light sweet crude oil futures contract traded on the NYMEX is selected for the determination of the Applicable Reference Price, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b–4 seeking approval to continue trading the MACRO Tradeable Shares, and such rule change is approved by the Commission; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

A minimum of 150,000 Up-MACRO Tradeable Shares and 150,000 Down-MACRO Tradeable Shares will be required to be outstanding at the start of trading. The initial price of an Up-MACRO Tradeable Share and a Down-MACRO Tradeable Share will each be approximately $60 per share, or the price of a barrel of light sweet crude oil on the last Price Determination Day prior to the closing date. The Exchange believes that the anticipated minimum number of MACRO Tradeable Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objective of providing a simple and cost effective means of making an investment that is similar to an investment in light sweet crude oil.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[27]

Trading Rules

The Exchange represents that MACRO Tradeable Shares will be deemed to be equity securities and will be subject to various Amex Rules governing the trading of equity securities. MACRO Tradeable Shares will trade on the Amex from 9:30 a.m. until 4:15 p.m. (New York City time) each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127.[28] Importantly, specialist trading of MACRO Paired Trust Shares will be subject to proposed Amex Rules 1403 and 1404 regarding conflicts of interest, and the maintenance and production of books and records, respectively. Unless exemptive or no-action relief is available, MACRO Tradeable Shares will be subject to the short sale rules, and other rules, under the Act. If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in MACRO Tradeable Shares. First, the Information

[24] Telephone conference among Bill Love, Associate General Counsel, Amex, Brian Trackman, Special Counsel, Division of Market Regulation (''Division''), Commission, and Michou Nguyen, Special Counsel, Division, Commission on November 27, 2006 (clarifying timing of dissemination).

[25] The Exchange states that the issuer has represented that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

[26] *See supra* note 19.

[27] *See* Rule 10A–3(c)(7).

[28] *See* MACRO Notice, 71 FR at 64588.

Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

In the event that: (a) The underlying value of each MACRO Holding Trust or the per share underlying values of each of the Up-MACRO Holding Shares, the Up-MACRO Tradeable Shares, the Down-MACRO Holding Shares or the Down-MACRO Tradeable Shares are not disseminated daily to all market participants at the same time; (b) the IIV, updated at least every fifteen (15) seconds on the CTS, for the underlying value per share of both the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares is no longer calculated or available from a major market data vendor (*e.g.*, Reuters or Bloomberg) during the time the MACRO Tradeable Shares trade on the Amex; or (c) the price of the NYMEX light sweet crude oil futures contract is no longer available at least every fifteen (15) seconds from a major market data vendor on the Amex Web site during the time the MACRO Tradeable Shares trade on the Amex,[29] then the Exchange will halt trading. However, in the case of (b) or (c) involving interruption to the required dissemination of IIVs or futures contract prices, the Exchange may consider relevant factors and exercise its discretion regarding the halt or suspension of trading during the day in which the interruption to the dissemination of the IIVs or the futures contract prices occurs. If the interruption to the dissemination of the IIVs or the futures contract prices persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of MACRO Tradeable Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the MACRO Tradeable Shares are, how they are created and exchanged for MACRO Holding Shares by Authorized Participants, the requirement that members and member firms deliver a prospectus to investors purchasing newly issued MACRO Holding Shares and MACRO Tradeable Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the underlying value of each paired MACRO Holding Trust and the share of that underlying value allocable to one Up-MACRO Holding Share, one Up-MACRO Tradeable Share, one Down-MACRO Holding Share and one Down-MACRO Tradeable Share, trading information, and applicable suitability rules. The Information Circular will also explain that the MACRO Holding Trusts and the MACRO Tradeable Trusts are subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference the fact that the Commission has no jurisdiction over the trading of the NYMEX light sweet crude oil futures contract.

The Information Circular will also notify members and member organizations about the procedures for purchases and paired optional redemptions of the MACRO Holding Shares held in the MACRO Tradeable Trusts, which may only be effected in MACRO Units by Authorized Participants. The Information Circular will advise members that the upside gains to investors are capped if the Applicable Reference Price increases or decreases greater than 100 percent. Members should take this feature of MACRO Paired Trust Shares into consideration in discharging their suitability obligations. Additionally, the Information Circular will discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the MACRO Tradeable Shares listed pursuant to the proposed new listing standards. Exchange surveillance procedures applicable to trading in the proposed MACRO Tradeable Shares will be similar to those applicable to trust issued receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. The Amex surveillance systems use data published over CTS (*e.g.*, the IIVs) in its normal course of business. In the event the Exchange needs additional information to audit transactions in MACRO Tradeable Shares, the NYMEX and Amex have executed a comprehensive information sharing agreement (''CSSA'') to support the surveillance responsibilities of the two exchanges.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[31] which requires, among other things, that the Exchange's 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 a national market system and, in general, to protect investors and the public interest.

A. Surveillance

The Commission notes that the Exchange has represented that its surveillance procedures are adequate to monitor the trading of MACRO Paired Trust Shares. The Exchange's CSSA with the NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX that will serve as the Reference Price creates the basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Paired Trust Shares.

Moreover, adoption of proposed Amex Rule 1404 should facilitate surveillance because it will require Exchange specialists, upon Amex's request, to provide the Exchange with information that the specialist uses in connection with pricing and trading the Paired Trust Shares, including proprietary or other information relating to trading in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives by the specialist or an affiliated entity.[32]

[29] Trading in the MACRO Tradeable Shares will not be halted on the Amex, however, simply because price data from the NYMEX based on current trading is not available outside the normal open outcry trading hours of light sweet crude oil futures contracts on the NYMEX from 10 a.m. to 2:30 p.m. (New York City time).

[30] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] Proposed Amex Rule 1404 requires that the specialist handling the Paired Trust Shares provide the Exchange with information relating to its trading in the shares and the accounts of the member organization acting as specialist, member organization, or approved person of such member organization in the futures underlying the

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the MACRO Paired Trust Shares can monitor the Applicable Reference Price relative to the IIV of their MACRO Tradeable Shares.

Real-time information about the trading of futures contracts on NYMEX, including futures on light sweet crude oil, is available through major market data vendors by subscription. Delayed information is often publicly available from futures exchanges. The Exchange stated that daily settlement prices for the oil futures contract designated as the Applicable Reference Price for the MACRO Paired Trust Shares is publicly available on NYMEX's Internet Web site.

Additionally, the Exchange has represented that it will calculate and publish to the CTS and its Web site the IIV for both the Up-MACRO Tradeable Shares and Down-MACRO Tradeable Shares, at least every 15 seconds during the time that the MACRO Tradeable Shares trade on the Amex, representing their estimated underlying value on a per share basis. The Commission believes that publication of such information should promote price transparency with regard to the MACRO Tradeable Shares.

The Commission notes that the Exchange will receive a representation on behalf of the MACRO Holding Trusts and MACRO Tradeable Trusts that the underlying value per share of each MACRO Holding Share and each MACRO Tradeable Share will be calculated daily and will be made available to all market participants at the same time. Furthermore, if the IIV or Applicable Reference Price is not disseminated as described in its proposal, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIVs or the futures contract prices occurs. If the interruption to the dissemination of the IIVs or the futures contract prices persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Commission believes that these trading halt rules, together with the NAV dissemination requirements and Exchange's proposed delisting criteria, will help ensure that an appropriate level of transparency exists with respect to the MACRO Tradeable Shares to allow for the maintenance of fair and orderly markets.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Paired Trust Shares are consistent with the Act. The Paired Trust Shares will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission finds that proposed Amex Rule 1403 relating to certain specialist prohibitions is reasonably designed to address potential conflicts of interest in connection with acting as a specialist in Paired Trust Shares.[33]

The Commission believes that the listing and delisting criteria for the Paired Trust Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Paired Trust Shares. Additionally, the Commission finds that proposed Amex Rule 1404 is reasonably designed to help ensure that specialists handling the Paired Trust Shares provide the Exchange with all the necessary information relating to their trading in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives.

Finally, the Commission notes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Paired Trust Shares, including their prospectus delivery obligations.

D. Accelerated Approval

The Commission finds good cause to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[34] Accelerating approval of this proposed rule change should benefit investors who desire to participate, through the MACRO Paired Trust Shares, in an investment based on the value light sweet crude oil as reflected in designated NYMEX futures contracts.

The Commission also finds good cause to approve Amendment No. 2 to the proposed rule change prior to the 30th day after the amendment is published for comment in the **Federal Register**. Amendment No. 2 makes certain changes to the filing to reflect minor changes made to the issuer's Form S–1 Registration Statement since the filing of this proposed rule change. Amendment No. 2 also makes certain clarifying changes to the rule text and description of the proposed rule change. The Commission believes that, as a whole, these proposed changes strengthen the proposed rule change and do not raise any new regulatory issues.

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 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–Amex–2006–82 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–Amex–2006–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All

Applicable Reference Price, related futures or related options on futures, or any other related derivatives.

[33] Proposed Amex Rule 1403 provides that the prohibitions in Amex Rule 175(c) apply to a specialist in Paired Trust Shares so that the specialist or affiliated person may not act or function as a market maker in an asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives.

[34] 15 U.S.C. 78s(b)(2).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–82 and should be submitted on or before December 27, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2006–82), as amended by Amendments No. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20657 Filed 12–5–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54827; File No. SR–CBOE–2006–81]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Minor Rule Violations in Connection With Trade Reporting

November 29, 2006.

On October 4, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 17.50, ''Imposition of Fines for Minor Rule Violations,'' (the ''MRVP''), particularly the provisions of CBOE Rule 17.50(g)(4), in order to: (a) Increase the fines for failures to submit trade information in accordance with CBOE Rule 6.51, and (b) extend the ''look-back'' period for assessing such rule violations. On October 17, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 27, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[5] because a proposed rule change that is reasonably designed to require Exchange members to comply with its trade reporting rules should help protect investors and the public interest.

The Commission also believes that handling violations of trade reporting rules pursuant to the MRVP is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[6] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because existing CBOE Rule 17.50 provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the Commission believes that the MRVP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[7]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[8] which governs minor rule violation plans. The Commission believes that the proposed change to the MRVP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action under CBOE Rules 17.1–17.10.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] and Rule 19d–1(c)(2) under the Act,[10] that the proposed rule change (SR–CBOE–2006–81), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. 06–9544 Filed 12–5–06; 8:45am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54823; File No. SR–CBOE–2005–111]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Multiple Representation Exception Procedures

November 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2005, 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. On October 17, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54631 (October 20, 2006), 71 FR 63057.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[7] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[8] 17 CFR 240.19d–1(c)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 240.19d–1(c)(2).

[11] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.55, ''Multiple Representation Prohibited,'' to establish certain exceptions to the rule requirements prohibiting multiple representation by Market-Makers and to update other procedures in the rule that have become outdated. The Exchange also proposes to make a corresponding change to CBOE Rule 6.74, ''Crossing Orders.'' The text of the proposed rule change appears below. Additions are *italicized;* deletions are [bracketed].

Chicago Board Options Exchange, Incorporated

Rules

Rule 6.55 Multiple Representation Prohibited

(a) No member, for any account in which the member has an interest or on behalf of a customer, shall maintain with more than one broker orders for the purchase or sale of the same option contract or other security, or the same combination of option contracts or other securities, with the knowledge that such orders are for the account of the same principal.

(b) Except in accordance with procedures established by the appropriate Procedure Committee or with such Committee's permission in individual cases, no Market-Maker shall enter or be present in a trading crowd while a Floor Broker present in the trading crowd is holding an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest.

* * * Interpretations and Policies:

.01 A Market-Maker may permissibly enter a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest if one of the following [three] procedures is followed:

(a) The Market-Maker makes the Floor Broker aware of the Market-Maker's intention to enter the trading crowd and the Floor Broker *cancels the order*[time stamps the order ticket for the order and writes the notation ''Cancel'' or ''CXL'' next to the time stamp]. If the Market-Maker wishes to re-enter the order upon the Market-Maker's exit from the trading crowd, *a new order must be entered* [Floor Broker must at that time again time stamp the order ticket and write the notation ''Reentry'' or ''RNTRY'' next to such subsequent time stamp].

(b) The Market-Maker cancels the order [by giving the Floor Broker a written cancellation of the order which is time-stamped by the Market-Maker immediately] prior to [its transmission to the Floor Broker]*the Market-Maker's entry into the trading crowd.* If the Market-Maker wishes to re-enter the order upon the Market-Maker's exit from the trading crowd, a new order [ticket] must be [used]*entered.*

[(c) The Market-Maker cancels the order by taking the order ticket for the order back from the Floor Broker, provided that the Market-Maker allows the Floor Broker to retain a copy of the order ticket (which copy the Floor Broker must time-stamp at the time of cancellation and retain for the Floor Broker's records). If the Market-Maker wishes to re-enter the order upon the Market-Maker's exit from the trading crowd, a new order ticket must be used.].02 Exchange regulatory circulars concerning joint accounts should be consulted in connection with procedures governing the simultaneous presence in a trading crowd of participants in and orders for the same joint account.

.03 Subject to the requirements of Rule 6.9 or 6.74, as applicable, a Market-Maker may permissibly enter or be present in a trading crowd in which a Floor Broker is present who holds (a) a solicited order on behalf of the Market-Maker's individual or joint account or (b) a solicited order initiated by the Market-Maker for an account in which the Market-Maker has an interest, provided that the Market-Maker makes the Floor Broker aware of the Market-Maker's intention to enter or to be present in the trading crowd and the Market-Maker refrains from trading in-person on the same trade as the original order. It is the responsibility of the Market-Maker utilizing these procedures to ascertain whether solicited orders for the Market-Maker's joint account have been entered in a trading crowd prior to the Market-Maker trading the joint account in-person.

.04 A Market-Maker may permissibly enter or be present in a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest, provided that the Market-Maker makes the Floor Broker aware of the Market-Maker's intention to enter or to be present in the trading crowd and the Market-Maker refrains from trading in-person on the same trade as the order being represented by the Floor Broker.

* * * * *

Rule 6.74 ''Crossing'' Orders

(a)–(f) No change.

* * * Interpretations and Policies:

.01—.06 No change.

.07 [A Floor Broker, pursuant to paragraph (d) of this Rule, may not cross an order that he is holding with an order from a market-maker that is then in the trading crowd.]*Reserved.*

.08 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 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

Currently, CBOE Rule 6.55 provides in relevant part that, except in accordance with procedures established by the appropriate Procedure Committee or with such Procedure Committee's permission in individual cases, no Market-Maker shall enter or be present in a trading crowd while a Floor Broker present in the trading crowd is holding an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest. As discussed below, this principle against multiple representation of a Market-Maker account has also been extended to cover joint account activity in certain circumstances.

Exceptions to the multiple presentation prohibition are noted in the Interpretations and Policies to CBOE Rule 6.55. For example, Interpretation and Policy .01 provides procedures under which a Market-Maker may enter a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which

the Market-Maker has an interest.[4] In addition, Interpretation and Policy .02 advises CBOE members to consult Exchange regulatory circulars for procedures governing the simultaneous presence in a trading crowd of participants in and orders for the same joint account.[5] CBOE Rule 6.55, and the exceptions thereto, are designed to prevent persons such as Market-Makers from being disproportionately represented in the trading crowd.[6]

The Exchange is now proposing to adopt additional exception procedures for the handling of solicited orders, as well as for the handling of a Market-Maker's orders generally. These new exception procedures are intended to be in addition to, and not a limitation of, the existing exception procedures identified in CBOE Rule 6.55, its Interpretations and Policies, and related regulatory circulars concerning joint accounts. In addition, the Exchange is proposing to amend the text of Interpretation and Policy .01 to CBOE Rule 6.55, which has become outdated.

First, with respect to solicitations, under the Exchange's rules, a member representing an order (the ''original order'') may solicit customers, non-member broker-dealers, members and member firms, and Market-Makers to transact in-person or by order with the original order. When the solicitation and crossing procedures in CBOE Rules 6.9, ''Solicited Transactions,'' [7] and 6.74, ''Crossing Orders'',[8] as applicable, are read in conjunction with the current multiple representation prohibitions of CBOE Rule 6.55, the result is that a Market-Maker present in the trading crowd is generally able to represent a solicited order in-person for his individual account or for an account in which he has an interest (including a joint account). However, unless otherwise excepted, a Market-Maker is generally prohibited from being present in the trading crowd at the same time a Floor Broker is representing (i) a solicited order on behalf of the Market-Maker's individual account or a joint account in which the Market-Maker is a participant while the Market-Maker is trading on behalf of that account, or (ii) a solicited order initiated by the Market-Maker for an account in which he has an interest, and is crossing that solicited order pursuant to CBOE Rule 6.74(d).[9]

The Exchange believes that, if certain procedures are followed to ensure that a Market-Maker present in the trading crowd is not disproportionately represented, it is not necessary to limit crossing transactions in this manner. Therefore, the Exchange is proposing to adopt Interpretation and Policy .03 to CBOE Rule 6.55 to specify additional procedures that would permit representation of solicited orders when a Market-Maker is present in the trading crowd. These procedures will be applicable for solicited orders represented by a Floor Broker while the Market-Maker is present in the crowd in essentially three scenarios: first, instances where the solicited order is for the Market-Maker's individual account; [10] second, instances where the solicited order is for the Market-Maker's joint account, whether initiated by the Market-Maker or another joint account participant; [11] and, third, instances where the solicited order is initiated by a Market-Maker for an account in which he has an interest.[12]

The new procedures would provide that a Market-Maker may permissibly

[4] These procedures generally require the cancellation of the order resting with the Floor Broker upon the Market-Maker's entry into the trading crowd and allow the Market-Maker to re-enter the order with the Floor Broker upon the Market-Maker's exit from the crowd.

[5] Exchange Regulatory Circulars RG01–60 and RG01–128 set forth Exchange procedures and requirements for trading in joint accounts in equity options, index options, and options on exchange-traded funds (''ETFs''). See Securities Exchange Act Release No. 44152 (April 5, 2001), 66 FR 19262 (April 13, 2001) (order approving Regulatory Circular RG01–60 governing joint account trading in equity options) and Securities Exchange Act Release No. 44433 (June 15, 2001), 66 FR 33589 (June 22, 2001) (order approving Regulatory Circular RG01–128 governing joint account trading in certain index options and options on ETFs).

[6] An account using multiple orders or quotes could be represented disproportionately because, when an execution is divided among competing brokers, an account using multiple orders or quotes would receive a larger share of the execution than an account using a single order or quote.

[7] An original order and the solicited person or order are subject to the procedures and priority provisions of CBOE Rule 6.9, which generally provide that a solicited person or order gains priority over the trading crowd only if the terms of the original order are disclosed to the crowd prior to solicitation, the original order is continuously represented, and the solicited person or order betters the market and matches the original order bid or offer. If these requirements are not satisfied, non-solicited Market-Makers and Floor Brokers with non-solicited discretionary orders in the trading crowd have priority over the solicited person or order.

[8] CBOE Rule 6.74 describes the manner in which a Floor Broker may cross orders, including solicitation orders. Crossing procedures in the Rule provide the solicited person or order generally with priority over all other parties (other than public customer orders) for a certain percentage of contracts of the original order. For example, paragraph (d) of CBOE Rule 6.74, which supercedes the priority provisions of paragraph (d) of CBOE Rule 6.9, provides procedures pursuant to which a Floor Broker is entitled to cross 40% (or 20%, as applicable) of an original order with a solicited order (after public customer orders are satisfied).

[9] Interpretation and Policy .07 to CBOE Rule 6.74 provides that a Floor Broker, pursuant to paragraph (d), may not cross an order he is holding with an order from a Market-Maker that is then present in the trading crowd. The clarification was added to CBOE Rule 6.74 because this type of multiple representation had generally been prohibited by CBOE Rule 6.55(b). *See* Securities Exchange Act Release No. 44394 (June 6, 2001), 66 FR 31726 (June 12, 2001) (SR–CBOE–00–43) (order approving a rule change that, among other things, adopted Interpretation and Policy .07 to CBOE Rule 6.74). Conversely, a Floor Broker can cross an order he is holding with an order from a Market-Maker that is not present in the trading crowd.

As discussed below, CBOE is proposing to eliminate the restriction in CBOE Rule 6.74, Interpretation and Policy .07 in light of the revisions being proposed to CBOE Rule 6.55. In this regard, the Exchange also notes that an exception to this prohibition currently applies in the case of joint accounts involving certain broad-based index options and options on ETFs. In those classes, joint account participants who are not trading in-person in the crowd may enter orders for the joint account with Floor Brokers even if other participants are trading in their individual accounts or the same joint account in-person. In such instances, there are no restrictions on the other joint account participants' ability to be present in the trading crowd or on the number of joint account participants that may participate on the same trade. Additionally, for equity options classes, it is currently permissible for a joint account participant to be trading in a crowd for his individual account or acting as a Floor Broker for accounts unrelated to his joint account while another participant of the joint account enters a solicited order for the joint account with other Floor Brokers. *See* Regulatory Circulars RG01–60 and RG01–128.

[10] Only a Market-Maker may initiate an order for his individual account, either in-person or by order with a Floor Broker.

[11] Depending on the circumstance, any joint account participant can initiate an order for a joint account, either in-person or by order with a Floor Broker. The new procedure would therefore apply to solicited orders that the Market-Maker in the trading crowd initiates for the joint account himself and to solicited orders that other joint account participants initiate for the joint account. In this regard, the Exchange notes that certain exception procedures already exist that relate to instances where one participant in a joint account is present in the trading crowd while another participant is trading in-person or by order. For example, in the case of certain index options and options on ETFs, joint accounts may be simultaneously represented in a crowd by participants trading in-person for the joint account. In addition, joint account participants who are not trading in-person in a crowd may enter orders for the joint account with Floor Brokers even if other participants are trading the same joint account in-person. *See* Regulatory Circular RG01–128. In the case of equity options, currently a joint account may be simultaneously represented in a trading crowd only by participants trading in-person and orders for a joint account may not be entered in a crowd where a participant of the joint account is trading in-person for the joint account. However, if no participant is trading in-person for the joint account, orders may be entered via Floor Broker so long as the same option series is not represented by more than one Floor Broker. In addition, when a Market-Maker is trading in a crowd for his individual account or acting as a Floor Broker for accounts unrelated to his joint account, another participant of the joint account may either trade in-person for the joint account or enter orders for the joint account with other Floor Brokers. *See* Regulatory Circular RG01–60.

[12] The procedures in proposed Interpretation and Policy .03 to CBOE Rule 6.55 relate only to the ''solicited order'' in a solicitation transaction. Instances where a Market-Maker order is the ''original order'' in a solicitation transaction may qualify for another one of the exception procedures described in Interpretations and Policies .01, .02, and proposed .04 of CBOE Rule 6.55.

enter or be present in a trading crowd in which a Floor Broker is present who holds either a solicited order on behalf of the Market-Maker's individual or joint account or a solicited order initiated by the Market-Maker for an account in which he has an interest, provided that the Market-Maker advises the Floor Broker of the Market-Maker's intention to enter or be present in the trading crowd. The Market-Maker must also refrain from trading in-person on the same trade as the original order. In the case of joint accounts, the proposal also provides that it is the responsibility of the Market-Maker to ascertain whether solicited orders for his joint account have been entered with a Floor Broker in a trading crowd prior to the Market-Maker trading for the joint account in-person.

In light of the new procedures in proposed Interpretation and Policy .03 to CBOE Rule 6.55, the Exchange is proposing a corresponding amendment to eliminate Interpretation and Policy .07 to CBOE Rule 6.74.[13] A corresponding amendment to the text of CBOE Rule 6.9 is not necessary.

On the one hand, the Exchange believes these procedures will provide members with additional flexibility in determining how to handle crossing transactions. The Exchange also believes these changes will ensure that a Market-Maker in the trading crowd is not disadvantaged when participating in solicited trades compared to other solicited persons that are not present in the trading crowd, and will thus promote liquidity in the marketplace by encouraging the Market-Maker to be present in the crowd. This is because a Market-Maker will now be permitted to have a solicited order represented by a Floor Broker pursuant to CBOE Rule 6.74(d) while he is present in the trading crowd if the required procedures are followed.[14] This would be permissible whether the solicited order is initiated by the Market-Maker himself (in the case of an individual account or an account in which he has an interest) or the solicited order is initiated by another joint account participant (in the case of the Market-Maker's joint account(s)).

On the other hand, the changes are also consistent with the purpose of CBOE Rule 6.55 because the new procedures would only allow a Market-Maker present in the trading crowd to have a solicited order represented by a Floor Broker if the requirements of CBOE Rules 6.9 or 6.74, as applicable, are satisfied and the Market-Maker refrains from trading in-person on the same trade as the original order. As a result, the new procedures will continue to ensure that a Market-Maker participating in a solicitation (whether in-person or by order) is not disproportionately represented in the trading crowd. For the foregoing reasons, the Exchange believes the proposed changes are reasonable and appropriate, and should help CBOE maintain a fair and orderly market.

As for the second aspect of this proposal, the Exchange is also seeking to adopt procedures for an exception pertaining to the handling of orders initiated by a Market-Maker. In particular, these new procedures will provide that a Market-Maker may permissibly enter or be present in a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest provided that the Market-Maker advises the Floor Broker of the Market-Maker's intention to enter or be present. The Market-Maker must also refrain from trading in-person on the same trade as the order being represented by the Floor Broker.

In comparison to proposed Interpretation and Policy .03 to CBOE Rule 6.55 (which pertains to solicited orders on behalf of a Market-Maker's individual or joint account, or solicited orders initiated by a Market-Maker for an account in which he has an interest), the procedures in proposed Interpretation and Policy .04 to CBOE Rule 6.55 will be applicable only for orders that the Market-Maker himself has placed with the Floor Broker. These procedures will not apply to instances where a joint account participant other than the Market-Maker present in the crowd is initiating an order. Rather, other joint account participants' activity via Floor Broker will continue to be subject to CBOE Rule 6.55 and the exception procedures as provided in Interpretations and Policies .02 and proposed .03 thereto.

As with the exception procedures for solicited orders, these general procedures for handling orders from a Market-Maker that is then in the trading crowd will provide members with additional flexibility in executing orders. By requiring that a Market-Maker's presence be made known to the Floor Broker and by prohibiting the Market-Maker from trading in-person in the same trade as the order represented,[15] these procedures are designed to prevent a Market-Maker from being disproportionately represented in the trading crowd and have no detrimental effect on other market participants. As such, the Exchange believes that these changes are consistent with the purpose of CBOE Rule 6.55.

Finally, the Exchange is proposing to make various revisions to the text of CBOE Rule 6.55 to remove outdated references to manual processes. In particular, the Exchange is proposing to delete references in Interpretation and Policy .01 to CBOE Rule 6.55 relating to time stamping and written notations on order tickets. Due to technological advancements, these processes are now generally done electronically. In light of these changes, the Exchange is proposing to update this text by consolidating and simplifying these procedures. Whereas the procedures currently describe three different ways for a Market-Maker entering a trading crowd to manually cancel an order pending with a Floor Broker, the revised procedures under the proposal simply provide that a Market-Maker entering a crowd may either request that the Floor Broker cancel his order or the Market-Maker can cancel the order himself. If the Market-Maker wishes to re-enter the order upon his exit from the crowd, a new order must be entered.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[13] *See supra* note 9.

[14] By comparison, unless another exception procedure were applicable, the existing procedures would require that the Market-Maker not be present in the trading crowd to participate in a CBOE Rule 6.74(d) crossing transaction.

[15] Because the Market-Maker would initiate such orders himself, he would know at all times whether a Floor Broker is concurrently representing an order on his behalf.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–111 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2005–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–111 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20621 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54831; File No. SR–CBOE–2006–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Appointment of CBSX DPMs

November 29, 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 27, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt rules to appoint CBOE Stock Exchange DPMs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In September 2006, the Commission approved Exchange Chapters 50–55 governing the trading of non-option securities on the Exchange.[5] The Exchange, via a separate rule filing, will be proposing to further modify Chapters 50–55 in connection with the establishment of the CBOE Stock Exchange (''CBSX''). CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. CBSX is a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange separately has submitted a rule filing governing the allocation of securities to CBSX DPMs,[6] and will shortly submit a rule filing proposing to establish CBSX as a facility of the Exchange.

The purpose of this filing is to adopt rules that will allow for the appointment of CBSX DPMs. Any such appointments would be contingent on Commission approval of rules governing CBSX DPM trading procedures and obligations. The Exchange hopes to

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (''STOC Approval Order'') (approving SR–CBOE–2004–21).

[6] *See* Securities Exchange Act Release No. 54792 (November 20, 2006), 71 FR 68659 (November 27, 2006) (notice of filing of SR–CBOE–2006–96).

launch CBSX on February 5, 2007. Establishing rules to allow for appointment of CBSX DPMs ahead of the anticipated launch of CBSX will allow the CBSX DPM firms to immediately market CBSX as a destination marketplace.

The Exchange expects CBSX will appoint a limited number of CBSX DPMs. In accordance with the proposed revisions to Rule 53.53, CBSX will select the firms that would be designated as CBSX DPMs. Factors to be considered in making such a selection are essentially identical to the factors set forth in the current rule applicable to STOC DPMs. Such factors may include, but are not limited to, any one or more of the following: (1) Adequacy of capital; (2) operational capacity; (3) trading experience and observance of generally accepted standards of conduct by the applicant; (4) number and experience of support personnel of the applicant; (5) regulatory history of adherence to Exchange rules by the applicant; (6) willingness and ability of the applicant to promote CBSX as a marketplace; (7) performance evaluations conducted pursuant to Exchange/CBSX rules; and (8) in the event that one or more shareholders, directors, officers, partners, managers, members, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, or other principal in another CBSX DPM, adherence by such CBSX DPM to the requirements set forth in CBSX rules regarding CBSX DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the CBSX DPM.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would 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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule is substantially similar to the previous version of the rule approved for the Exchange's STOC system.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2006–100 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–2006–100. 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 Commissions 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] Rule 19b–4(f)(6)(iii) also requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

[12] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] *See* STOC Approval Order, *supra* note 5.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–100 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20656 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54821; File No. SR–FICC–2006–13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Federal Reserve's National Settlement System

November 28, 2006.

I. Introduction

On July 11, 2006, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on August 6, 2006 amended proposed rule change SR–FICC–2006–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 26, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division (''MBSD'') to require clearing participants to satisfy their cash settlement amounts ultimately through the Federal Reserve's National Settlement Service (''NSS'').[3] The MBSD cash settlement process is set forth in Rule 8 of Article II of the MBSD's rules. On a daily basis, FICC computes a cash balance, which is either a debit amount or a credit amount, per participant account and nets the cash balances across aggregated accounts. Unlike at GSD where cash settlement occurs on a daily basis, at MBSD there are specific dates on which debits and credits are required to be made. Settlement dates at MBSD are based upon the settlement dates of the different classes of MBSD-eligible securities. There is a time deadline for the payment of debits to FICC as announced by the MBSD from time to time. All payments of cash settlement amounts by a MBSD clearing participant to FICC and all collections of cash settlement amounts by a MBSD clearing participant from FICC are done through depository institutions that are designated by MBSD participants and by FICC to act on their behalf with regard to such payments and collections. All payments are made by fund wires from one depository institution to the other.

Under the proposed rule change, the required payment mechanism for the satisfaction of cash settlement amounts will be the NSS. FICC will appoint DTC as its settlement agent for purposes of interfacing with the NSS.[4] In order to satisfy its cash settlement obligations through the NSS process, each MBSD clearing participant will appoint a ''cash settling bank.'' An MBSD clearing participant that qualifies may act as its own cash settling bank.

The MBSD will establish a limited membership category for cash settling banks. Banks or trust companies that are DTC settling banks (as defined in DTC's rules and procedures), GSD funds-only settling bank members (as defined in the GSD's rules), or clearing participants with direct access to a Federal Reserve Bank and NSS will be eligible to become MBSD cash settling bank participants by executing the requisite membership agreements for this purpose. Banks or trust companies that do not fall into these categories and that desire to become MBSD cash settling bank participants will need to apply to FICC. Such banks or trust companies will also need to have direct access to a Federal Reserve Bank and the NSS as well as satisfy the financial responsibility standards and operational capability imposed by FICC from time to time. Initially, these applicants will be required to meet and to maintain a Tier 1 capital ratio of 6 percent.[5]

In addition to the membership agreement, each MBSD clearing participant and the cash settling bank it has selected will be required to execute an agreement whereby the participant will appoint the bank to act on its behalf for cash settlement purposes. The bank will also be required to execute any agreements that may be required by the Federal Reserve Bank for participation in the NSS for FICC's cash settlement process. The cash settling banks will be required to follow the procedures for cash settlement payment processing set forth in the proposed rule change. This includes, for example, providing FICC or its settlement agent with the requisite acknowledgement of the bank's intention to settle the cash settlement amounts of the MBSD clearing participants it represents on a timely basis and to participate in the NSS process. Cash settling banks will have the right to refuse to settle for a particular MBSD clearing participant and will also be able to opt out of NSS for one business day if they are experiencing extenuating circumstances.[6] In such a situation, the clearing participant would be responsible for ensuring that its cash settlement debit was wired to the depository institution designated by FICC to receive such payments by the payment deadline. The proposed rule change makes clear that the obligation of a MBSD clearing participant to fulfill its cash settlement would remain at all times with the MBSD clearing participant.

As FICC's settlement agent, DTC will submit instructions to have the Federal Reserve Bank accounts of the cash settlement banks charged for the debit amounts and credited for the credit amounts. Utilization of NSS will eliminate the need for the initiation of wire transfers in satisfaction of MBSD settlement amounts, and FICC believes that it will therefore reduce the risk that the MBSD clearing participant that designated the bank would incur a late payment fine due to delay in wiring funds. The proposed rule change should also reduce operational burden for the operations staff of FICC and of the MBSD clearing participants.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54622, (October 18, 2006), 71 FR 62632.

[3] For a description of NSS, refer to *http://www.frbservices.org/Wholesale/natsettle.html.*

The Commission previously approved a proposed rule change filed by FICC to make a similar amendment to the rules of its Government Securities Division (''GSD''). Securities Exchange Act Release No. 52853 (November 29, 2005), 70 FR 72682 (December 6, 2005) [File No. SR–FICC–2005–14]. FICC's affiliates, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC'') also use NSS in their funds settlement processes. However, DTC and NSCC do not currently use NSS for the payment of credit. MBSD will process both the debits and credits of its cash settlement process through the NSS, as is the case for the GSD.

[4] DTC currently performs this service for the GSD and NSCC.

[5] This is the same financial requirement for GSD funds-only settling banks that fall into a similar category. As with the GSD, FICC would retain the authority and discretion to change this financial criterion by providing advanced notice to the settling banks and the netting members through an important notice.

[6] These procedures are consistent with the GSD, NSCC, and DTC procedures in this respect.

The NSS is governed by the Federal Reserve's Operating Circular No. 12 (''Circular''). Under the Circular, DTC, as FICC's settlement agent, has certain responsibilities with respect to an indemnity claim made by a relevant Federal Reserve Bank as a result of the NSS process. FICC will apportion the entirety of any such liability to the MBSD clearing participant or clearing participants for whom the cash settling bank to which the indemnity claim relates is acting. This allocation will be done in proportion to the amount of each MBSD clearing participant's cash settlement amount on the business day in question. If for any reason such allocation is not sufficient to fully satisfy the Federal Reserve Bank's indemnity claim, then the remaining loss will be allocated among all MBSD clearing participants in proportion to their relative usage of the facilities of the MBSD based on fees for services during the period in which loss is incurred.

The proposed rule change also amends the GSD's rules regarding the use of the NSS. An additional category for eligible funds-only settling banks is added to include MBSD cash settling banks. This means that an MBSD cash settling bank would be able to become a GSD funds-only settling bank by signing the requisite agreements.

III. Discussion

The Commission previously approved a proposed rule change to FICC's GSD's rules to require funds-only settlement at GSD to be made through the NSS.[7] In the order granting approval of the GSD proposal, the Commission found that the rule change was designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities in FICC's possession or control or for which FICC is responsible under Section 17A(b)(3)(F) of the Act because the rule was designed to improve the efficiency of GSD's funds-only settlement process without affecting the responsibility of GSD's members to make their funds-only settlement payments on time.

The proposed rule change to Article II, Rule 8 of FICC's MBSD's Rules is essentially the same as the previously approved proposed rule change to GSD Rule 13. The new provisions to MBSD Rule 8 regarding the NSS, the new limited membership category for ''cash settling banks,'' and the procedures for processing payments through NSS are virtually identical to the provisions that are currently in GSD Rule 13. Accordingly, for the same reason we approved GSD Rule 13 we are approving MBSD Rule 8. Namely, that the NSS offered by the Federal Reserve System is a reliable and proven service that should promote the efficiency of cash settlement at MBSD and that the changes to MBSD Rule 8 with respect to membership financial requirements, transaction processing, and loss allocation are designed to prevent any risk of loss to MBSD or to its members. As a result, we find that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Act and should not affect FICC's obligation under Section 17A(b)(3)(F) to assure the safeguarding of securities and funds in its possession or under its control or for which it is responsible.[8]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2006–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20626 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54819; File No. SR–FICC–2006–17]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Clearing Fund Deficiency Calls

November 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adjust the deadline for satisfying a clearing fund deficiency call from 10:30 a.m. to 9:30 a.m. in the Schedule of Timeframes in FICC's Government Securities Division (''GSD'') rulebook.

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 such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to amend GSD's rules to change the time when clearing fund deficiency calls are due from netting members. In 2005, the Commission approved a FICC rule filing that established the Federal Reserve's National Settlement System (''NSS'') as the method by which GSD netting members could satisfy their funds-only settlement amounts.[3] FICC believes that this rule filing improved GSD's funds-only settlement process because it created a more automated and centralized payment system for the satisfaction of funds-only settlement debits and credits. Through NSS, the GSD funds-only settlement debit and credit process is run by 10 a.m.[4] each business day.

Currently, clearing fund deficiency call payments are due from GSD netting members at 10:30 a.m. In addition, clearing fund deficiencies due to FICC from netting members must be satisfied prior to the release of funds-only

[7] Securities Exchange Act Release No. 52853 (November 29, 2005), 70 FR 72682 (December 6, 2005) [File No. SR–FICC–2005–14].

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 52853 (Nov. 29, 2005), 70 FR 72682 (Dec. 6, 2005) [SR–FICC–2005–14].

[4] All times referenced herein are New York times.

settlement credits. When a netting member has not satisfied its clearing fund deficiency payment by approximately 9:50 a.m., GSD must remove that member from the automated NSS process and settle with them manually outside the NSS system. Such manual processing results in administrative burdens for FICC staff and undermines the efficiencies FICC sought to achieve by using the NSS system.

For this reason, FICC proposes to change the timing of GSD clearing fund deficiency calls to 9:30 a.m. from 10:30 a.m.[5] Doing so would enable GSD to resolve any unsatisfied deficiencies with netting members well in advance of the 10 a.m. funds-only settlement process that takes place through NSS and would allow GSD to better utilize the automated NSS process. GSD intends to implement the new timeframe for clearing fund deficiency calls on January 1, 2007.

As is currently the case in its rules, FICC will reserve the right to extend this deadline on days on which there are operational or systems difficulties that would reasonably prevent members from satisfying a deficiency call by 9:30 a.m.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it will improve the efficiency of FICC's margining and settlement processes and therefore will help FICC to safeguard securities and funds in its possession or for which it is responsible.

A. 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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2006–17 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–FICC–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR–FICC–2006–17 and should be submitted on or before December 27, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20658 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

[5] This rule filing does not affect a netting member's obligation to make its funds-only settlement payment to FICC on time.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54825; File No. SR–NASDAQ–2006–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Clarify the Process Surrounding a Reverse Merger

November 28, 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 13, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to clarify the process an issuer must follow when applying for initial listing in connection with a transaction that is a reverse merger. Nasdaq would implement the proposed rule immediately upon approval. The text of the proposed rule change is below. Proposed new language is in *italic;* proposed deletions are in [brackets].[3]

* * * * *

4340. Application for Re-Listing by Listed Issuers

(a) Reverse Mergers. An issuer must apply for initial listing [following] *in*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq*.

connection with a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity. *The issuer must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the issuer's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Determination Letter as set forth in Rule 4804 and begin delisting proceedings pursuant to the Rule 4800 Series.*

(b) No change.

* * * * *

IM–4350–1. Interpretive Material Regarding Future Priced Securities

Summary

No change.

How the Rules Apply

Shareholder Approval

No change.

Voting Rights

No change.

The Bid Price Requirement

No change.

Listing of Additional Shares

No change.

Public Interest Concerns

No change.

Reverse Merger

Rule 4340(a) provides:

An issuer must apply for initial listing [following] *in connection with* a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity. *The issuer must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the issuer's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Determination Letter as set forth in Rule 4804 and begin delisting proceedings pursuant to the Rule 4800 Series.*

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial listing standards [following] in connection with a Reverse Merger.[4] It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a Reverse Merger with the holders of the Future Priced Securities. In such event, an issuer may be required to re-apply for initial listing and satisfy all initial listing requirements.

Footnotes to IM–4350–1: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Rule 4340(a) requires that an issuer must apply for initial listing following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of the rule, such a transaction is referred to as a ''Reverse Merger''). Nasdaq originally adopted this rule in 1993 to address concerns associated with non-Nasdaq entities seeking a ''backdoor listing'' on Nasdaq through a business combination involving a Nasdaq issuer.[4] In these combinations, a non-Nasdaq entity purchased a Nasdaq issuer in a transaction that resulted in the non-Nasdaq entity obtaining a Nasdaq listing without qualifying for initial listing or being subject to the background checks and scrutiny normally applied to issuers seeking initial listing. The rule was amended in 2001 to define ''Reverse Merger'' and to provide clarification regarding the factors used by Nasdaq staff to determine if a transaction should be considered a Reverse Merger.[5]

Among other things, the Reverse Merger rule is intended to allow Nasdaq staff to review the post-transaction entity before the Reverse Merger transaction is consummated, thereby allowing staff to confirm that the post-transaction entity will meet all initial criteria at the time it begins trading. While Nasdaq has historically taken the position that the rule requires companies to comply with the initial listing requirements prior to the consummation of a Reverse Merger, the rule is not clear in that regard. To avoid issuer confusion, simplify compliance, and provide additional transparency, Nasdaq proposes to amend Nasdaq Rule 4340(a) to state that an issuer must apply for initial listing prior to consummating a Reverse Merger transaction. Nasdaq also proposes to make conforming changes to Nasdaq IM–4350–1, which discusses the Reverse Merger rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[6] in general and with Sections 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The

[4] *See* Securities Exchange Act Release No. 32264 (May 4, 1993), 58 FR 27760 (May 11, 2006) (SR–NASD–93–7).

[5] *See* Securities Exchange Act Release No. 44067 (March 13, 2001), 66 FR 15515 (March 19, 2001) (SR–NASD–01–01).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

proposed rule change would clarify Nasdaq's listing requirements related to Reverse Mergers and thereby provide additional transparency to the rules. This proposed clarification is designed to protect investors and the public interest by allowing Nasdaq to confirm that the post-transaction entity will meet all initial criteria at the time it begins trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve 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–NASDAQ–2006–047 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–NASDAQ–2006–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–047 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20574 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54822; File No. SR–NSCC–2006–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend its Rules and Procedures Wth Respect to Clearing Fund Collateral

November 28, 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 3, 2006, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. 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 proposed rule change seeks to modify NSCC's Rules with respect to Clearing Fund collateral in order to improve liquidity and to minimize risk for NSCC and its members. NSCC has also made certain technical corrections to the text of Rule 4 to conform the rule to actual practice.[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, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under NSCC's Rules,[5] members are required to make deposits to the Clearing Fund. The amount of each member's required deposit (''Required Deposit'') is fixed by NSCC in accordance with one or more formulas. A member's Required Deposit may be satisfied with a cash deposit, and a portion of a member's Required Deposit may be evidenced by an open account indebtedness secured by Qualifying Bonds and/or one or more irrevocable letters of credit issued under certain guidelines established within NSCC's Rules.[6] NSCC haircuts the value that Qualifying Bonds receive when used to

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, the reference in Rule 4, Section 1 to the ''market value'' of Qualifying Bonds has been corrected to accurately reference the ''collateral value'' of Eligible Clearing Fund Securities.

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Rule 4 (Clearing Fund), Procedure XV (Clearing Fund Formula and Other Matters), and Annex 1 (Version 2 of Procedure XV—Limited Applicability).

[6] Mutual Fund/Insurance Service Members are not permitted to use Qualifying Bonds or irrevocable letters of credit to satisfy their Required Deposits.

meet a member's Clearing Fund requirement and will not allow a letter of credit to be used if by doing so more than twenty percent of NSCC's total Clearing Fund would consist of letters of credit issued by that approved letter of credit issuing bank. Each member is entitled to any Clearing Fund interest earned or paid on Qualifying Bonds and cash deposits.

NSCC proposes to modify its Rules to: (1) Expand the types of instruments which NSCC may accept as Qualifying Bonds (''Eligible Clearing Fund Securities'') securing a member's open account Clearing Fund indebtedness and establish concentration requirements with regard to their use; (2) create a correlating range of haircuts to be applied to these expanded types of Eligible Clearing Fund Securities; and (3) eliminate letters of credit as a generally acceptable form of collateral securing the member's open account Clearing Fund indebtedness.

1. Revised Clearing Fund Components

(a) Cash. The current Clearing Fund minimum cash deposit requirement will remain unchanged: each member must contribute a minimum of $10,000 with the first forty percent but no less than $10,000 of a member's Required Deposit being in cash.[7]

(b) Securities. NSCC proposes to replace the term Qualifying Bonds [8] with a new set of definitions for Eligible Clearing Fund Securities. These securities will be unmatured bonds which are either an Eligible Clearing Fund Agency Security, Eligible Clearing Fund Mortgage-Backed Security, or Eligible Clearing Fund Treasury Security. An Eligible Clearing Fund Agency Security will be defined as a direct obligation of those U.S. agencies or government sponsored enterprises as NSCC may designate from time to time that satisfies such criteria set forth in notices issued by NSCC from time to time. An Eligible Clearing Fund Mortgage-Backed Security will be defined as a mortgage-backed pass through obligation issued by those U.S. agencies or government sponsored enterprises as NSCC may designate from time to time that satisfies such criteria set forth in notices issued by NSCC from time to time. An Eligible Clearing Fund Treasury Security will be defined as a direct obligation of the U.S. Government that satisfies the criteria set forth in notices issued by NSCC from time to time.

Initial eligibility criteria for each type of Eligible Clearing Fund Security will be announced to members in an Important Notice prior to the effective date of these proposed rule changes. Any future changes to the eligibility criteria will also be announced to members in Important Notices in advance of such changes becoming effective.

(c) Security Concentration Provisions. NSCC also proposes to establish security concentration provisions for Clearing Fund deposits. As is currently required, each member must contribute a minimum of $10,000 with the first forty percent but no less than $10,000 of a member's Required Deposit being in cash.[9] The remainder of a member's deposit may be secured by the pledge of Eligible Clearing Fund Securities in any combination of Eligible Clearing Fund Treasury Securities, Eligible Clearing Fund Agency Securities, and/or Eligible Clearing Fund Mortgage-Backed Securities, subject to the following two limitations. First, any deposits of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities in excess of twenty-five percent of the member's Required Deposit will be subject to an additional haircut equal to twice the percentage noted in the haircut schedule. Second, no more than twenty percent of a member's Required Deposit secured by pledged Eligible Clearing Fund Agency Securities may be of a single issuer.[10]

(d) Letters of Credit and Other Adequate Assurances. Because letters of credit will no longer be accepted by NSCC as a form of Clearing Fund collateral,[11] the current requirements within NSCC's Rules that pertain to Letter of Credit Issuers will be modified to reflect this. For those members who currently have letters of credit posted as collateral (other than members, if any, that have been required to post letters of credit for legal risk), effective April 1, 2007, (which date corresponds with the regular expiration date of letters of credit) members will be required to replace that portion of their Clearing Fund deposit with either cash or Eligible Clearing Fund Securities.

(e) Implementation Timeframes. The foregoing rule changes will become effective thirty days after an Important Notice is issued to members informing them that NSCC's systems are ready to accommodate such changes with the corresponding changes to NSCC's rules being made at that time.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [12] and the rules and regulations thereunder because it will enable NSCC to diversify Clearing Fund collateral in order to improve liquidity and to minimize risk for NSCC and its members. As such, NSCC believes it will better enable NSCC to safeguard securities and funds in its possession or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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. NSCC will notify the Commission of any written comments received by NSCC.

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

[7] *See supra* note 6.

[8] ''Qualifying Bonds'' is defined in Rule 4 as unmatured bonds that are either direct obligations of, or obligations guaranteed as to principal and interest by, the United States or its agencies.

[9] *See supra* note 6.

[10] No member may post as collateral Eligible Clearing Fund Agency Securities for which it is the issuer. However, a member may pledge Eligible Clearing Fund Mortgage-Backed Securities for which it is the issuer subject to a premium haircut. That haircut shall be fourteen percent as an initial matter, and if the member also exceeds the twenty-five percent concentration limit, the haircut shall be twenty-one percent.

[11] NSCC has found that in practice letters of credit are not as liquid as cash and securities, and therefore potentially pose more risk to NSCC and its members when accepted by NSCC as Clearing Fund collateral. NSCC will, however, reserve the right to require letters of credit from members in those instances where a particular member has been found, by NSCC in its discretion, to present legal risk.

[12] 15 U.S.C. 78q—1.

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–NSCC–2006–11 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–NSCC–2006–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 NSCC and on NSCC's Web site at *http://www.nscc.com/legal/2006/2006–11.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–NSCC–2006–11 and should be submitted on or before December 27, 2006.

[13] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20623 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54829; File No. SR–NSX–2006–13]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Implement a Fee Schedule Under NSX Rule 16.1(a) and 16.1(c) for Transactions Executed Through NSX BLADE

November 29, 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 23, 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, II, and III below, which Items have been substantially prepared by the Exchange. On November 17, 2006, NSX submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[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, 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 implement a fee schedule pursuant to the newly approved Chapter XVI of the Exchange Rules. The Fee Schedule would apply to executions through NSX's new trading system, NSX BLADE. The fees for executions through the Exchange's current trading system, National Securities Trading System (''NSTS''), during the phase-in period of NSX BLADE are the fees contained in old Exchange Rule 11.10. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics.*

NATIONAL STOCK EXCHANGE, INC. FEE SCHEDULE

For Executions via NSX BLADE℠ as of October, 2006

The following reflects the Schedule of Fees (pursuant to Rule 16.1(a) and Rule 16.1(c)) for all transactions executed via the National Stock Exchange System known as NSX BLADE℠ (the ''System''):

1. Order Matching. Orders in Tape C securities that are matched in the System will be subject to the following rebates and execution fees (computed on a monthly basis):

A. Rebate for adding liquidity (per share executed):

Average Daily Shares of Liquidity Provided	*Rebate for Adding Liquidity (Per Share Executed)*
Greater than 30 million	.....
30 million or less	*$0.0027*

B. Execution fee for removing liquidity: $0.0030 per share executed.

2. Order Routing. Orders that are routed through the System and executed in another market center shall be charged $0.0040 per share executed.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

In anticipation of the approval of the new trading rules,[5] the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (order approving File No. SR–NSX–2006–08).

recently amended its rules to add a Chapter XVI to set forth, in its own chapter, rules relating to fees, dues, assessments, and the tape rebate program. The rule change, SR–NSX–2006–10, was filed pursuant to Section 19(b)(3)(A) of the Act,[6] which rendered it effective upon filing.[7]

As part of the instant rule change, the Exchange is filing a Fee Schedule under NSX Rule 16.1(a) and 16.1(c) for executions through NSX BLADE.[8] This Fee Schedule provides for, in connection with NSX BLADE transactions in Nasdaq-listed securities, an execution fee for removing liquidity from NSX BLADE (*i.e.*, charging ETP Holders for taking liquidity against an order in the NSX BLADE System) of $0.0030 per share executed on NSX BLADE and a rebate for adding liquidity in NSX BLADE (*i.e.*, providing a rebate to any ETP Holder that adds liquidity to the NSX BLADE System). The rebate for adding liquidity would depend upon the amount of liquidity added by the ETP Holder as set forth in the Fee Schedule. If the ETP Holder provides 30 million shares or less of added liquidity, the Exchange would provide a rebate of $0.0027 per share for all shares of liquidity provided that were executed on NSX BLADE. For those ETP Holders who provide, on an average daily basis, liquidity in excess of 30 million shares, the Exchange would rebate $0.0028 per share for all shares (including the first 30 million) of liquidity provided that were executed on NSX BLADE. The Fee Schedule also provides for an order routing fee of $0.0040 per share executed.

While SR–NSX–2006–10 was effective upon filing, NSX Rule 16.3 allows the Exchange to delay the effectiveness of the Rule until it gives written notice to its ETP Holders. This was done to allow the Exchange to file its rules while awaiting the launch of NSX BLADE. It is anticipated that NSX BLADE will be phased in gradually—first with a small group of Nasdaq-listed securities over several weeks until all Nasdaq-listed securities have been transitioned to the new system. Once all Nasdaq-listed securities have been transitioned to NSX BLADE, the Exchange will then transition all non-Nasdaq-listed securities.[9] The phase-in of NSX BLADE commenced on October 23, 2006 with the trading of one security.[10]

During this transitional period of phasing in various securities to the NSX BLADE System, the Exchange will be operating both NSTS and the NSX BLADE Systems. Accordingly, the Exchange will be operating under two sets of rules during the phase-in period. All transactions in the NSTS System will still operate under the rules pertaining to NSTS (old NSX Rule 11.9 (National Securities Trading System) and old NSX Rule 11.10 (National Securities Trading System Fees)) while all transactions in NSX BLADE will operate under the new trading rules approved in SR–NSX–2006–08 and the new fee rules in Chapter XVI.[11] When the phase-in period has expired and NSTS is no longer operational, old NSX Rules 11.9 and 11.10 will be extinguished. The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and rules and fees applicable to each,[12] and will issue a Notice advising them of the new Fee Schedule and rule change.

Since NSX will first begin transitioning Nasdaq-listed securities, the fees contained in the NSX BLADE Fee Schedule apply only to Nasdaq-listed securities. Until transitioned to NSX BLADE, any transaction in Nasdaq-listed securities and non-Nasdaq-listed securities through the NSTS System will be charged the fees contained in old Exchange Rule 11.10.

Pursuant to newly approved NSX Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.'' ETP Holders using the Exchange will be advised of these fees through the Exchange's Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular of the new NSX BLADE Fee Schedule.

NSX states the fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) of the Act[16] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its ETP Holders with the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and Rule 19b–4(f)(2)[18] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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,

[6] 15 U.S.C. 78s(b)(3)(A).

[7] *See* Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (notice of filing and immediate effectiveness of File No. SR–NSX–2006–10). SR–NSX–2006–10 was effective upon filing on July 13, 2006. NSX Rule 16.3 provides that the new Chapter XVI would become effective upon written notice by the Exchange to the ETP Holders. Notice was provided declaring Chapter XVI effective on October 2 and 19, 2006 respecting ITS transactions and transactions in NSX BLADE, respectively.

[8] As set forth in SR–NSX–2006–10, the Exchange proposed to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues, and charges in the text of its rules, as it formerly did prior to the adoption of Chapter XVI.

[9] The NSX BLADE Fee Schedule will be amended to reflect fees for executions for Tape A and B (non-NASDAQ) securities prior to the time those securities are transitioned to NSX BLADE.

[10] NSX plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition.

[11] The Fee Schedule filed in SR–NSX–2006–12 is applicable to any transaction through an ITS Plan, regardless of whether the transaction was done through NSTS or NSX BLADE.

[12] Regulatory Circular 06–011 issued on October 19, 2006.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(1).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2006–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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–NSX–2006–13 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20628 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 17, 2006, the date on which the Exchange submitted Amendment No. 1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54820; File No. SR–NYSE–2006–65]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 Thereto Relating to Exchange Rules Governing Certain Definitions, Systemic Processing of Certain Orders, and the Implementation Schedule of the NYSE Hybrid Market

November 27, 2006.

I. Introduction

On August 23, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] a proposed rule change to amend certain aspects of its Hybrid Market. On September 11, 2006, September 15, 2006, and September 26, 2006, the Exchange filed Amendment Nos. 1, 2, and 3 respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on September 29, 2006.[3] On November 2, 2006, the Exchange filed Amendment No. 5 to the proposed rule change.[4] The Commission received three comment letters from two commenters on the proposal.[5] On November 2, 2006, the Exchange filed a response to the comment letters.[6]

This order approves the proposed rule change, as amended by Amendment Nos. 1, 2 and 3, and grants accelerated approval to Amendment No. 5. The Commission is also providing notice and soliciting comments on Amendment No. 5.

II. Description of Proposal

On March 22, 2006, the Commission approved NYSE's proposal to establish a Hybrid Market.[7] In this proposed rule change, the Exchange proposes to amend certain Hybrid Market rules and other NYSE rules to reflect their operation in the Hybrid Market.

A. Order Types

1. Auto Ex Order

The Exchange proposes to amend its definition of Auto Ex Order to clarify that an Auto Ex Order is an order that initiates an automatic execution immediately upon entry into Exchange systems.[8] Accordingly, the Exchange also proposes to delete elected stop, stop limit orders, and CAP–DI orders from the Auto Ex Order definition as these orders do not initiate an automatic execution upon their entry on the Exchange. Further, the Exchange proposes to clarify that ''non-auto-ex'' orders, *i.e.*, those orders that do not initiate an automatic execution immediately upon entry into NYSE systems, would participate in automatic executions in accordance with the rules governing their operation. Finally, the Exchange proposes to amend NYSE Rules 1000–1004 to replace the term ''auto ex'' with the words ''automatically executing'' to reflect that such rules govern all automatic executions, not just those involving an Auto Ex Order.

2. Market Orders

The current definition of an Auto Ex Order in NYSE Rule 13 includes a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54520 (September 27, 2006), 71 FR 57590. On November 1, 2006, the Exchange filed Amendment No. 4 to the proposed rule change and subsequently withdrew Amendment No. 4 on November 2, 2006 due to inaccurate exhibits.

[4] *See* Partial Amendment dated November 2, 2006 (''Amendment No. 5''). In Amendment No. 5, the Exchange: (1) Removed from Amendment No. 3 an incorrect exhibit of the proposed rule text; (2) reconciled the current rule text of the definition of an IOC Order as modified by a prior proposed rule change that designated Regulation NMS-compliant IOC orders; (3) corrected typographical errors in proposed NYSE Rules 60(e) and NYSE Rule 123F(b)(ii); (4) replaced the term ''NYSE Bonds'' with the term ''Automated Bond System'' in its rules; and (5) specified in NYSE Rule 1000 that the liquidity replenishment point (''LRP'') value would be calculated every 30 seconds. *See also* Securities Exchange Act Release No. 54611 (October 16, 2006), 71 FR 62143 (October 23, 2006).

[5] *See* Letters from George Rutherfurd, Consultant, dated September 10, 2006 (''Rutherfurd Letter I'') and November 16, 2006 (''Rutherfurd Letter II''), and Junius W. Peake, Monfort Distinguished Professor Emeritus of Finance, Greeley, Colorado, dated October 3, 2006 (''Peake Letter'').

[6] *See* Letter from Mary Yeager, Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated November 2, 2006 (''Response to Comments'').

[7] *See* Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006) (''Hybrid Market Order'').

[8] *See* proposed NYSE Rule 13 (''Auto Ex Order'').

''market order designated for automatic execution.'' The Exchange proposes to treat all market orders as Auto Ex Orders unless specifically designated to be handled in the auction market as Auction Market Orders. A market order, therefore, would no longer need to be designated for automatic execution.

3. Maximum Size

In the Hybrid Market, NYSE eliminated the size limitation for Auto Ex Orders. NYSE systems, however, have a maximum order capacity of 3,000,000 shares. Therefore, NYSE proposes to gradually increase the size of orders that may be entered for automatic execution to a maximum of 3,000,000 shares.[9] The Exchange proposes to phase in the maximum order size eligibility for automatic executions, beginning with a maximum size of 1,000,000 shares. The Exchange also proposes to move the maximum order size limitation for automatic executions to NYSE Rule 1000.[10]

4. Immediate or Cancel (''IOC'') Order

In the Hybrid Market, the Exchange created two types of IOC orders.[11] The first type is an IOC order that complies with Regulation NMS (''Reg. NMS'').[12] A Reg. NMS IOC order would *not* be routed during an Exchange execution to satisfy better priced protected bids or offers [13] displayed by other market centers; rather, a Reg. NMS IOC order would be cancelled, as soon as its ability to receive an execution on the Exchange ends. The second type of IOC order, an NYSE IOC order, would route during a sweep to other markets to satisfy better priced protected bids or offers and would cancel only when it is no longer able to receive an execution.

The Exchange proposes to amend the definition of an NYSE IOC order to clarify that Exchange systems would accept NYSE IOC orders for participation in the re-opening trade after a trading halt.[14] Specifically, NYSE IOC orders received during a trading halt would be systemically maintained in order of their receipt for execution upon the re-opening of the halted security. If an NYSE IOC order is not executed as part of the re-opening trade, the order would be cancelled.

B. Sweeps

As approved in the Hybrid Market Order, an incoming Auto Ex Order of a size larger than the Exchange best bid or offer (''BBO'') would receive an execution at two prices—the BBO price and the ''clean-up'' price.[15] The Exchange proposes to allow an automatically executing order to trade with all interest in the Display Book system at each successive price outside of the Exchange BBO.[16] As proposed, an automatically executing order would trade with the Exchange BBO and at each successive price until the order is filled, its limit price (if any) is reached, an LRP is reached, or, in the case of a Reg. NMS IOC order, trading at a particular price on the Exchange would require cancellation because the order cannot be routed to another market center.[17]

During a sweep, floor broker e-Quotes trade on parity with orders in the Book at the clean-up price, but only to the extent of the size the floor broker designated as displayable should the price become the NYSE BBO.[18] The size that would have been placed in reserve would yield to orders in the Book.[19] The Exchange proposes to eliminate this distinction and allow all floor broker agency interest to trade on parity, once the order with priority has been satisfied, with orders in the Book at each successive price during a sweep.

The Exchange also proposes to clarify how and when CAP–DI orders would participate in sweeps. Specifically, CAP–DI orders on the same side as an automatically executing order would be elected at each execution price that is part of the sweep.[20] To the extent that the sweeping order has volume remaining to be executed, the elected CAP–DI orders would not participate in a transaction and would automatically and systemically be unelected.[21] If, at the last execution price during a sweep, the sweeping order is filled or is otherwise unable to continue executing, and there is contra side volume remaining on the Display Book system or from contra-side elected CAP–DI orders, then the same-side CAP–DI orders may participate in the final transaction.[22]

CAP–DI orders on the contra side of the sweeping order are also elected at each execution price that is part of the sweep and would participate at the electing price, if there is volume available from the sweeping order on the Display Book system or from CAP–DI orders on the same side of the market as the sweeping order.[23]

C. Liquidity Replenishment Points

The Exchange proposes to delete the two types of LRPs it proposed to implement, and replace them with a single LRP. The proposed LRP would be calculated by adding and subtracting a value (determined by the Exchange) to the last sale price.[24] The LRP value would not change during the day, and the Exchange would disseminate the LRP value.[25] According to the Exchange, the LRP value would be based on an examination of trading data and would vary based on the security's NYSE average daily volume (''ADV''), price, and volatility. The Exchange proposes a range of LRP values for securities with preset characteristics of ADV, price, and volatility.[26] The LRP would not be calculated until there is a trade on the Exchange in a particular security.[27] If a security opens on a quote, and there are no trades on the Exchange, the LRP value would not be set until there is a trade.

The LRP value would be calculated automatically throughout the day, as follows: (1) Every 30 seconds throughout the day; (2) after a manual trade by the specialist; and (3) when automatic executions resume after an LRP has been reached.[28]

Further, the Exchange proposes to change when automatic executions and Autoquote would resume after an LRP has been reached. The Exchange proposes that automatic executions and Autoquote would resume as soon as possible after an LRP has been reached, but in no more than five to ten seconds, unless the residual is able to trade at a price beyond the LRP, and the price creates a locked or crossed market.[29] In such case, automatic executions would resume with a manual transaction.[30] Finally, the Exchange proposes to make

[9] *See* proposed NYSE Rule 1000.

[10] The Exchange had implemented similar language as part of an extended auto-ex pilot in Lucent. *See* Securities Exchange Act Release No. 53791 (May 11, 2006), 71 FR 28732 (May 17, 2006) (''Lucent Pilot'').

[11] *See* NYSE Rule 13.

[12] *See* Rule 600(b)(3), 17 CFR 242.600(b)(3).

[13] A protected bid and offer is defined in Rule 600(b)(57) of Reg. NMS. *See* 17 CFR 242.600(b)(57).

[14] *See* proposed NYSE Rule 13.

[15] The ''clean-up'' price is the best price at which interest in the Display Book system can trade with an Auto Ex Order outside of the Exchange BBO. *See* NYSE Rule 1000(d)(iii).

[16] *See* proposed NYSE Rule 1000(d)(iii).

[17] *See* proposed NYSE Rule 1000(d)(ii)(C).

[18] *See* NYSE Rule 70.20(d)(i).

[19] *See* NYSE Rule 70.20(d)(ii).

[20] *See* proposed NYSE Rule 123A.30(a)(ii).

[21] *See* proposed NYSE Rule 123A.30(a)(ii).

[22] *See* proposed NYSE Rule 123A.30(a)(ii).

[23] *See* proposed NYSE Rule 123A.30(a)(iv).

[24] *See* proposed NYSE Rule 1000(a)(iv).

[25] *See* proposed NYSE Rule 1000(a)(iv).

[26] *See* proposed NYSE Rule 1000(a)(iv).

[27] *See* proposed NYSE Rule 1000(a)(iv).

[28] *See* proposed NYSE Rule 1000(a)(iv).

[29] *See* NYSE Rules 60(e)(ii) and 1000(b).

[30] *See* NYSE Rules 60(e)(ii) and 1000(b).

conforming changes to other Exchange rules.[31]

D. Stop Order and Stop Limit Order

The Exchange proposes to modify how stop orders are handled and processed on the Exchange. Specifically, the Exchange proposes that specialists would no longer have access to information about stop orders. In addition, the Exchange proposes to no longer accept stop limit orders.

1. Processing of Stop Orders

Currently, stop orders are entered on the Exchange primarily through SuperDOT [32] and routed directly to the Display Book system, where they reside awaiting election. The specialist assigned to each security knows the prices at which stop orders would be elected and their sizes. Because the specialist has access to this information that is not available to other market participants, NYSE Rule 123A.40 requires that, in certain circumstances described below, the specialist must guarantee the execution of elected stop orders at the electing price.

The Exchange proposes to restrict the ability of specialists and their systems employing algorithms (''specialist algorithms'') to view information regarding stop orders. Specialists would no longer view the electing price and size of stop orders, nor possess any unique information regarding stop orders. Stop orders would be maintained in a ''blind file'' in the sequence of their receipt. When a transaction on the Exchange results in the election of a stop order, the elected stop order would be sent as a market order to the Display Book system and the specialist algorithms, and would be handled in the same way as any other market order.

The Exchange also proposes to modify its opening and closing procedures to reflect that specialists would no longer have access to stop order volume that would be elected by the opening or closing transaction. Currently, the specialist calculates the opening price based in part on the stop order volume that would be elected by the opening trade.[33] On the close, the specialist calculates the closing price based in part on the stop order volume that would be elected and the volume of buy and sell market-at-the-close/limit-at-the-close (''MOC/LOC'') [34] orders that would be executed as a result of the closing price.[35]

The Exchange proposes that at the open, the specialist or his or her trading assistants would indicate to Exchange system the price at which the specialist contemplates opening the stock. The Exchange system then would calculate the volume of shares available for execution on the open at that price, including stop orders that would be elected by an execution at such price. There would be no indication what, if any, portion of the total volume accounts for stop orders. There would only be one opening print and would include stop orders that are elected by the opening trade.

Similarly, prior to the close, the Exchange proposes that the specialist or his or her trading assistants would indicate to Exchange system the price at which the specialist is contemplating closing the stock. In turn, Exchange system would calculate the volume of shares executable on the close at that price, including stop order volume that would be elected by an execution at that price. There would be no indication what, if any, portion of the total volume accounts for stop orders. The unelected stop orders would only be included in the total volume of shares available to trade on the close five minutes prior to the close.

The Exchange proposes to add NYSE Rule 115A.10 and NYSE Rule 116.50 to prohibit specialists, trading assistants, and anyone on their behalf from using the opening and closing process in a manner designed to inappropriately discover information about unelected stop orders.[36]

2. Elimination of Specialist's Guarantee and Floor Official Approval

Currently, NYSE Rule 123A.40 prohibits a specialist from making a transaction for his own account in a stock in which he is registered that would result in putting into effect any stop orders he may have on his book. However, a specialist may be party to the election of a stop order only: (i) When his bid or offer has the effect of bettering the market, when he guarantees that the stop order will be executed at the same price as the electing sale, and with Floor Official approval if the transaction is more than 0.10 point away from the prior transaction; or (ii) when the specialist purchases or sells stock for his own account solely for the purpose of facilitating completion of a member's order at a single price, where the depth of the current bid or offer is not sufficient to do so. When the specialist is acting in this manner, he shall not be required to guarantee that the stop order will be executed at the same price as the electing sale. In addition, current NYSE Rule 13.30, which applies to stop orders in Investment Company units, requires a specialist to obtain Floor Official approval prior to making a bid or offer for its proprietary account that would elect a stop order and is more than 0.10 point away from the last sale.

Because specialists will no longer be privy to information about stop orders, the Exchange proposes to eliminate the requirement that specialists guarantee the execution price of stop orders elected by their trades and the requirement that they receive Floor Official approval for certain proprietary quotes and trades.

3. Floor Broker Stop Order Processing

Under the proposal, floor brokers would continue to be permitted to represent stop orders. However, the Exchange proposes that stop orders represented by floor brokers in the Crowd may not be included in e-Quote.[37]

4. Elimination of Stop Limit Orders

Finally, the Exchange proposes to eliminate stop limit orders as an acceptable order type. The Exchange proposes to make conforming changes to other Exchange rules to reflect the elimination of stop limit orders.[38]

E. Other Changes

1. Autoquote

Currently, when Autoquote is suspended due to a gap quote, NYSE Rule 60(e)(iv)(C) provides that Autoquote would continue to update the NYSE BBO in certain situations.[39] According to the Exchange, however, Autoquote does not continue to update

[31] *See* proposed NYSE Rules 60(e)(C)(iii), 60(e)(C)(iv), 60(d)(i) and (ii), 72(j)(i) and (j)(ii), and 1000(c).

[32] SuperDot is an electronic order-routing system used by NYSE member firms to send market and limit orders to the NYSE.

[33] *See, e.g.,* NYSE Rule 123D.

[34] MOC order is a market order, which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled. A LOC order is a limit order, which may or may not receive execution on the close depending on the closing price and depth of contra side interest. The term ''at the close order'' also includes a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order, pursuant to such procedures as the Exchange may from time to time establish.

[35] *See, e.g.,* NYSE Rule 116.40.

[36] The proposed opening and closing processes for stop order handling are not available intraday; therefore, during the trading day, it is not possible for these processes to be employed in a manner designed to inappropriately discover information about unelected stop orders.

[37] *See* proposed NYSE Rule 70.20(a)(i).

[38] *See* proposed NYSE Rules 13, 118(2), 123(e)(7), 123(f), 132B(a)(9), 132B(b)(9), and 476A.

[39] *See* NYSE Rule 60(e)(iv)(c).

the BBO when NYSE has a gapped quote. Thus, the Exchange proposes to amend its rule to provide that when the NYSE quote is gapped, Autoquote would be suspended on both sides of the market.[40]

2. Exchange Crossing Rule

The Exchange proposes to amend its Rule 76 to provide that it would not apply to automatic executions.[41] Currently, when a member has an order to buy and an order to sell the same security, NYSE Rule 76 requires that the member offer such security at a price which is higher than his bid by the minimum variation before making a transaction with himself to enable the Crowd to trade with the order at such price. Since automatic executions cannot accommodate verbal Crowd participation, the Exchange proposes to specify that NYSE Rule 76 only applies to manual transactions.

3. High Priced Securities

The Exchange proposes to amend the definition of the price of high-priced securities, which are not eligible for automatic executions, as the closing price of a security, or if the security did not trade, the closing bid price of the security on the Exchange on the immediate previous trading day, that is $1,000 or more.[42] Currently, the Exchange considers securities with a closing price, or a closing bid price if the security did not trade, of $300 or more as high-priced.

F. Hybrid Market Implementation Schedule

The Exchange is in the process of implementing Phase 3 of the Hybrid Market. The Exchange proposes to amend the Phase 3 implementation schedule[43] to add the following additional features:

- Elimination of Direct+ suspension when a better bid or offer is displayed by another market center;
- Implementation of sweeps (as redefined herein);
- Implementation of the LRP (as redefined herein); and
- Implementation of new stop order processing (as discussed herein).

Exchange Rule 1002 (''Availability of Automatic Execution Feature'') would be available for all stocks through the close upon implementation of Phase 3 of the Hybrid Market.

[40] *See* proposed NYSE Rule 60(e)(iii)(c).

[41] *See* proposed NYSE Rule 76.

[42] *See* proposed NYSE Rule 1000(a)(vi).

[43] *See* Hybrid Market Order, *supra* note 7.

IV. Summary of Comments and NYSE's Response

The Commission received three comment letters from two commenters on the proposed rule change,[44] and the Exchange filed the Response to Comments.[45] One commenter continued to reiterate his objections to the NYSE's Hybrid Market,[46] many of which relate to aspects of the Hybrid Market that the Commission has already approved.[47] In the recent letters, the commenter raised objections to two aspects of the current proposal—the processing of stop orders and the proposed sweep methodology.

With regard to the proposed stop order processing, the commenter noted that the proposal to remove a specialist's ability to see stop orders minimizes the specialist's ability to improperly elect and then trade with stop orders. The commenter, however, believes that specialists have an exclusive ability to trade with elected stops in the Hybrid Market. The commenter believes that because the specialist algorithms will receive information about elected stops, which will be routed to the Display Book system as market orders, the specialists would also be provided with an opportunity to trade with these orders before other market participants. The commenter argues that the specialist's ability to algorithmically trade with elected stop orders before other market participants would violate the specialist's negative obligation. NYSE noted that the commenter's belief was erroneous and that specialists do not have an exclusive ability to trade with elected stops.

The commenter also argues that the Exchange needs to discuss the proposed stop order processing with the elimination of the specialist guarantee in the context of the affirmative and negative obligations of the specialists. The commenter argues that the specialist guarantee provides a benefit to the market by minimizing price dislocation that may result from an influx of elected stop orders into the market. Absent the specialist guarantee, the elected stop orders may trade at a price away from the last sale that may be precluded under current Exchange rules, which could add to market volatility. NYSE responded that the reason the specialist is required to guarantee the price of execution for certain elected stops is due to its access to information about the stop orders that would be executed by its proprietary trade. Since the specialists would no longer have access to electing price and size information for stop orders, the reason for the price guarantee would no longer exist and thus should be eliminated. The Exchange argued that eliminating the specialist's knowledge of information about these orders would create a more even playing field for market participants in the Hybrid Market, and as the commenter has acknowledged, would reduce the possibility of the specialists having a trading advantage or a conflict of interest.

With respect to the sweeps, the commenter raises several issues. First, the commenter argues that the proposed sweep methodology is fundamentally unfair to orders in the Book because they must split executions with undisplayed e-Quotes. The commenter states that floor brokers are given a competitive advantage because they can enter their automated orders with full knowledge of limit orders in the Book, while public customers do not have similar knowledge about floor brokers' agency interest outside the BBO. The commenter believes that this is unfair, as public customers are not provided an opportunity to set their limit orders taking into account interest in the floor broker agency interest files.

Second, the commenter argues that the Exchange's parity rules are unfair to the Book because the commenter believes that each individual order represented in the floor broker agency interest file is entitled to a split.[48] Third, the commenter argues that the Book should be executed in price and time priority, and that non-displayed floor broker agency interest should be executed after displayed orders in the Book. The commenter argues that orders in the Book attract liquidity, and they should be executed ahead of non-displayed orders.[49]

[44] *See supra* note 5. One commenter raised concerns with respect to floor brokers' ability to enter discretionary instructions with regard to orders they represent. *See* Peake Letter. The Commission considered the issues raised by the commenter in its order approving the floor broker's ability to enter discretionary instructions. *See* Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (''d-Quote Order'').

[45] *See supra* note 6.

[46] *See* Rutherfurd Letters I and II, *supra* note 5.

[47] For example, the commenter continues to object to specialists' ability to trade in the Hybrid Market.

[48] The Commission notes that the commenter is unclear as to whether he believes that each individual order that is represented by a floor broker and placed in the agency interest file gets a split, or if the commenter believes that each individual floor broker agency interest file, that may include multiple customers, gets a split. Under NYSE's Hybrid Market rules, the latter is the correct way parity splits are determined.

[49] The Commission notes that the commenter also argued that specialist interest should not be able to

Continued

V. Discussion

After careful review and consideration of the comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[50] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act [51] in that the proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The adoption of the Hybrid Market has fundamentally altered NYSE's market structure to a predominately electronic market. As the Exchange continues to roll out the implementation phases of the Hybrid Market, it has also proposed changes to certain aspects of the Hybrid Market based on its experience and the various needs of its customers and members. As discussed more fully below, the Commission believes that the proposed changes to the Hybrid Market are consistent with the Act.

A. Changes to Order Types

The Exchange proposes to amend the following order types: (1) Auto Ex Orders; (2) market orders; (3) Auction Market Orders; and (4) IOC Orders. First, with respect to Auto Ex Orders, the Exchange proposes to clarify that Auto Ex Orders are orders that initiate automatic executions immediately upon arrival into Exchange systems. The Commission finds that this change clarifies NYSE's rule by specifying how the orders NYSE accepts will be handled. Second, the Exchange proposes to consider all market orders as Auto Ex Orders and therefore would no longer need to require that they be specifically designated for automatic execution. The Commission finds this change could enhance automated access to liquidity on the Exchange, and facilitate the efficient execution of market orders on the Exchange. As a result of the change to market orders, NYSE also proposes to add a definition for Auction Market Orders for those market orders that are to be handled in the auction market. The Commission finds that this change is consistent with the Act because it provides investors with the option to seek price improvement through these orders. Third, the Exchange proposes to amend the definitions of IOC orders to identify Reg. NMS-compliant IOC orders and to amend the definition of an NYSE IOC order to clarify that Exchange systems will accept NYSE IOC orders for participation in the re-opening trade after a trading halt. The Commission finds that these changes are consistent with the Act because they clarify how these orders will be handled. Finally, the Exchange proposes to gradually increase its order size eligibility for automatic executions to a maximum size of 3,000,000 shares. The Commission finds that this proposal is consistent with the Act and reflects in NYSE's rules its systems limitations.

B. Sweeps

The Exchange proposes to allow an Auto Ex Order to trade with all interest in the Display Book system at each successive price outside of the Exchange BBO instead of receiving an execution at the BBO price and the clean up price. The Exchange also proposes to allow all floor broker agency interest to trade on parity with orders in the Book at each successive price during a sweep. Further, the Exchange clarified the participation of CAP–DI orders during a sweep.

One commenter objected to the floor broker's ability to trade on parity with the orders in the Book.[52] Specifically, this commenter believed that non-displayed interest, such as the floor broker agency interest file, should yield to displayed orders in the Book. The commenter also believed that floor brokers have a competitive advantage over public customers because they can enter their agency interest with knowledge of orders in the Book, while public customers would not be aware of floor broker agency interest outside of the BBO.

The Commission notes that it has previously approved the Exchange's proposal to allow Auto Ex Orders to sweep the Display Book system in the Hybrid Market Order. In the Hybrid Market Order, the Commission noted that NYSE's proposal to allow Auto Ex Orders to sweep the Display Book system was a significant expansion of the availability and speed of automatic executions on the Exchange and should facilitate more efficient transactions on the Exchange. The Commission continues to believe that these execution efficiencies could result in the Hybrid Market. The Exchange stated that its customers indicated that they would not utilize the sweep functionality as originally approved.[53] Accordingly, NYSE made the decision to amend its rule to allow incoming orders to trade at each price in the Display Book system. The Commission believes that the decision to make this change is consistent with the Act, and within the realm of business judgment typically left to individual markets.

With respect to a floor broker's ability to maintain non-displayed interest that is available for execution, the Commission notes that it has not required complete disclosure of all trading interest, and that it has previously permitted the use of undisplayed order types. For example, in the auction market, floor brokers may hold significant trading interest that is not broadly disclosed but is available for execution and participation in a transaction on the Exchange. The Commission found in the Hybrid Market Order that e-Quotes could trade on parity with orders in the Book consistent with the requirements of the Act.[54] While the Exchange now proposes, under the amended sweep functionality, to permit the full size of an e-Quote to trade on parity with orders in the Book at each successive price, the Commission continues to believe that NYSE's rules provide floor brokers with incentives to place liquidity in the Display Book system and effectively represent their customers' orders, and are consistent with the Act.[55]

The commenter believes that e-Quotes should not be entitled to parity because floor brokers have the ability to change

trade on parity with floor broker agency interest. The commenter continues to argue that this is inconsistent with Section 11A of the Act and the specialist's negative obligation. The Commission approved this aspect of the Hybrid Market, and NYSE has not proposed to change the approved parity rule in the instant proposed rule change. *See* Hybrid Market Order, *supra* note 7.

[50] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78f(b)(5).

[52] *See* Rutherfurd Letters I and II, *supra* note 5.

[53] The Commission notes that commenters to the original Hybrid Market proposal raised this issue. *See* Hybrid Market Order, *supra* note 7.

[54] During a sweep in the current Hybrid Market, only e-Quotes that would be displayed if the price becomes the Exchange BBO would trade on parity with orders in the Book.

[55] Like in the auction market, each floor broker's e-Quote, which may reflect several customers' orders, would be considered one bidder/offerer, and the Book would likewise be considered one bidder/offerer. This aspect of NYSE's parity rule remains unchanged, and the Commission believes it continues to be consistent with the requirements of the Act.

the prices of their e-Quotes in response to information about orders in the Book, while public customers are not provided information about the floor brokers' interest outside the BBO. The Commission, however, notes that NYSE's proposal does not alter the information that is currently available to floor brokers or investors. Public customers entering limit orders have access to the same information as floor brokers regarding the Book, and can change their orders in response to that information. Floor brokers have information about their own customers' orders, as they always have had, but do not have information about other floor broker interest. Accordingly, the Commission does not believe that floor brokers have an inappropriate informational advantage.

The Commission believes that exchanges have a certain degree of flexibility to determine the methods of order interaction on their markets so long as the requirements of the Act are met. Floor brokers represent customers that are also providing liquidity for execution. Floor brokers' customers often do not want their orders disclosed and rely on floor brokers to use their judgment to represent their interest. As noted above, the Commission has not required disclosure of this liquidity outside the BBO, and, in the auction market, orders represented by floor brokers have been entitled to parity with orders in the Book. Accordingly, the Commission finds that NYSE's proposal to allow floor broker agency interest to trade on parity at each successive price with orders in the Book during a sweep is consistent with the requirements of the Act.

C. Stop Orders

Currently, the specialist acts as agent for stop orders and, as agent, has exclusive access to information about the election price and size of the stop orders. Because the specialist has exclusive access to this information, the Exchange requires the specialist, in certain situations, to guarantee the price of an elected stop order. The Exchange now proposes to modify the manner in which stop orders are handled and processed on NYSE by removing the specialist's access to information about stop orders, and eliminating the requirement that the specialist guarantee the stop order's election price in certain situations. In addition, NYSE proposes to eliminate the requirement that the specialist receive Floor Official approval of certain specialist proprietary trades that would elect stop orders. NYSE also proposes to modify its opening and closing procedures and eliminate stop limit orders as an order type on the Exchange.

One commenter believed that, under the proposal, the specialist would have an exclusive ability to trade with elected stop orders since it would receive information about elected stop orders through the specialist algorithm prior to other market participants.[56] This belief is incorrect. Specialists in the Hybrid Market can only trade algorithmically in certain specified instances that are set forth in NYSE Rule 104. Under the proposal, specialists and the specialist algorithm would be restricted from viewing information regarding the stop orders. Stop orders would instead be maintained in a ''blind file'' in the sequence of their receipt, and, once elected, the elected stop order would be sent by the Exchange system as a market order to the Display Book system. Information about the market order also would be sent to the specialist algorithm. The market order would be handled in the same manner as previously approved for market orders in the Hybrid Market. Accordingly, in order to trade against an incoming market order, the specialist algorithm would have to: (1) Provide ''additional specialist volume'' to partially or completely fill the market order at the Exchange BBO; (2) match better bids and offers published by other market centers where automatic executions are immediately available; or (3) provide price improvement to the market order.[57]

The commenter also argued that eliminating the guarantee implicates the specialist's affirmation obligation in that, without the specialist guarantee, elected stop orders could trade at a price away from the last sale and add to market volatility. The Commission finds it reasonable and appropriate that NYSE eliminate the specialist price guarantee when the specialist is a party to the election of stop orders, since specialists would no longer have information regarding the electing price and size of stop orders. With respect to the commenter's concern that removing the specialist price guarantee would necessarily impact the specialist's affirmative obligations, NYSE explained that the specialist price guarantee was a requirement originally put in place due to the specialist's ability to view the electing price and sizes of all stop orders in a stock, information that is not available to other market participants. Requiring the specialist to guarantee the price at which these orders are executed removed any incentives for the specialist to effect proprietary trades that would inappropriately elect stop orders. Accordingly, the Exchange believes that, since the specialists would no longer have access to electing price and size information for stop orders under this proposal, the reason for the price guarantee would no longer exist and thus should be eliminated. The Commission notes that a specialist in the Hybrid Market remains obligated to comply with NYSE Rule 104.10, which includes the maintenance, in so far as reasonably practicable, of a fair and orderly market. Under NYSE Rule 104.10(2), in connection with the maintenance of a fair and orderly market, a specialist should engage to a reasonable degree under existing circumstances in dealings for its own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. The elimination of the specialist guarantee for executing certain elected stops at the electing price would not alter this affirmation obligation.

The Commission also believes that eliminating the specialist's ability to view the prices at which stop orders would be elected and their sizes would minimize the specialist's unique informational advantage over other market participants with respect to stop orders. The Commission finds that the proposal would create a more level playing field for market participants in the Hybrid Market.

The Exchange has proposed a reasonable method by which specialists can continue to effectively open and close the market by allowing specialists to query the system, at discrete times, to determine the total number of shares available for execution (including stop orders) at a proposed opening or closing price. NYSE has proposed to specifically prohibit in its rules specialists, trading assistants, and anyone on their behalf from using the amended opening and closing process

[56] *See* Rutherfurd Letters I and II, *supra* note 5. In his second letter, the commenter stated that floor broker d-Quotes would not be able to trade against incoming market orders and that NYSE's rules provide that d-Quotes can only trade against published NYSE interest. The Commission notes that this statement is erroneous. NYSE Rule 70.25(b)(i) specifically states that ''[a] [f]loor broker may set a discretionary price range *within* the Exchange best bid and offer that specifies the prices at which they are willing to trade. This discretion will be used, as necessary, to initiate or participate in a trade with an *incoming* order capable of trading at a price within the discretionary price range'' (emphasis added). Accordingly, d-Quotes are capable of trading with incoming market orders, and specialists do not maintain an exclusive trading ability with incoming market orders.

[57] In order to provide price improvement, the specialist would have to be represented in the BBO in a significant size and would be required to provide a minimum amount of price improvement. *See* NYSE Rule 104(b).

in a manner designed to inappropriately discover information about unelected stop orders. The Commission believes that the Exchange's enforcement of this provision and surveillance for its compliance will provide investors with additional protection against any remaining potential trading abuses related to the election and execution of stop orders.

Similarly, because the specialist would no longer have access to information about stop orders, the Commission believes it is appropriate for NYSE to remove the requirement that the specialist obtain Floor Official approval prior to trading or making a bid or offer[58] for its proprietary account that would elect a stop order and is more than 0.10 point away from the last sale.

Finally, the Commission believes it is reasonable for NYSE to no longer accept the stop limit order type in Exchange systems given their infrequent use. Accordingly, the Commission finds it appropriate for NYSE to eliminate the definition and all references to stop limit orders from its rules.

D. Liquidity Replenishment Point

The Exchange proposes to replace the two types of LRPs approved in the Hybrid Market Order—the sweep LRP and the momentum LRP—with a single LRP that would be calculated by adding and subtracting a value to the security's last sale price. NYSE proposes that the value would not change intraday and would be disseminated by the Exchange. The Exchange also proposes to change when Autoquote and automatic executions would resume after an LRP has been reached.

The Commission believes that the proposed LRP changes are within the realm of business judgments generally left to the discretion of individual markets. The Commission has previously approved the Exchange's use of LRPs in its Hybrid Market model.[59] The Commission believes that the proposal to change the calculation of the LRP is consistent with the requirements of the Act. By providing for a single LRP and simplifying its calculation, the Commission believes that the proposal may assist market participants in determining when automatic executions and Autoquote may be halted on the Exchange. The Commission also notes that the specific value ranges used to calculate the LRP have been incorporated into proposed NYSE Rule 1000(a)(iv) and that the LRP values will be disseminated by the Exchange.

E. Other Changes

Finally, the Exchange proposes to amend NYSE Rule 60 to indicate that Autoquote will not update the BBO when the quote has been gapped in accordance with Exchange procedures. The Commission notes that this proposed change to NYSE Rule 60 is consistent with NYSE Rule 79A.15 regarding gapped quotes. The purpose of a gapped quote is to provide public notice of an order imbalance and to minimize short-term price dislocation associated with such imbalance by allowing for entry of offsetting orders or the cancellation of orders on the side of the imbalance. The Commission has previously found that NYSE rules do not have to require that both sides of its quote be updated to reflect better priced limit orders when the quote is gapped.[60] The Commission continues to believe that it is consistent with the Act to disengage Autoquote when the quote is gapped to allow the specialist to disseminate an order imbalance.

The Exchange also proposes to make clear that the crossing requirements in NYSE Rule 76 would only apply to manual transactions. The Commission finds it appropriate for NYSE to amend this rule to exclude automatic executions since they cannot accommodate verbal Crowd participation.

Finally, the Exchange proposes to increase the dollar threshold for high-priced securities, which are not eligible for automatic executions, from $300 to $1,000. The Commission believes that increasing the dollar threshold for high-priced securities is consistent with the Act and could expand the eligibility of orders for automatic executions on the Exchange.

F. Hybrid Market Implementation Plan

The Exchange proposes to alter the Hybrid Market implementation plan to add additional features to Phase 3. Specifically, NYSE proposes to implement the amended sweeps and LRP, original planned for Phase 4, earlier in Phase 3. In addition, the Exchange proposes to implement in Phase 3 the new stop order processing and eliminate Direct+ suspension when a better bid or offer is displayed by another market center. NYSE also proposes that Exchange Rule 1002 be available for all stocks through the close upon implementation of Phase 3.

The Commission finds that the proposed changes to the Hybrid Market implementation plan are consistent with the Act. The Commission notes that it approved on a pilot basis for a limited number of securities the changes to the implementation plan, including the changes to NYSE rules proposed herein.[61] The Exchange has represented that the implementation of Phase 3 has not incurred any significant problems to date.

VI. Accelerated Approval of Amendment No. 5

The Commission finds good cause to accelerate approval of the changes in Amendment No. 5. prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act[62] for the reasons discussed below. In Amendment No. 5, NYSE proposes to: (1) Remove from Amendment No. 3 an incorrect exhibit of the proposed rule text; (2) reconcile the current rule text of the definition of an IOC Order as modified by a prior proposed rule change that designated Reg. NMS-compliant IOC orders;[63] (3) correct typographical errors in proposed NYSE Rules 60(e) and 123F(b)(ii); (4) correct the term ''NYSE Bonds'' that was used in the prior amendments to designate the automated system in which bonds trade and replace it with ''Automated Bond System'' in order to reflect the current name of the system and existing NYSE rule text;[64] and (5) incorporate in NYSE Rule 1000 that the LRP value would be calculated every 30 seconds.

The Commission finds good cause to accelerate approval of NYSE's proposal to correct its exhibit of proposed rule text and the definition of an IOC Order, to make technical corrections in proposed NYSE Rules 60(e) and 123F(b)(ii), and to replace the term ''NYSE Bonds'' with ''Automated Bond System'' prior to the thirtieth day after publication in the **Federal Register** because it would accurately reflect NYSE's existing rule text and raises no new regulatory issues. In addition, the Commission finds good cause to accelerate approval of NYSE's proposal to incorporate in NYSE Rule 1000 the 30-second time period in which the LRP

[58] Stop orders in ETFs may be elected by a quote. *See* NYSE Rule 13.30.

[59] *See* Hybrid Market Order, *supra* note 7.

[60] *See* Securities Exchange Act Release No. 39129 (September 25, 1997), 62 FR 51497 (October 1, 1997).

[61] *See* Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) and 54675 (October 31, 2006), 71 FR 65019 (November 6, 2006).

[62] 15 U.S.C. 78s(b)(2).

[63] *See* Securities Exchange Act Release No. 54611, *supra* note 4.

[64] *See* Securities Exchange Act Release No. 54615 (October 17, 2006), 71 FR 62338 (October 24, 2006) (pending proposed rule change to rename the automated system in which bonds would trade as ''NYSE Bonds'').

would be calculated because it would codify into NYSE's rules the manner in which the LRP would be determined and provide clarity and specificity to its operation.

VII. Solicitation of Comments on Amendment No. 5

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 5, including whether such amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–65 and should be submitted on or before December 27, 2006.

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR–NYSE–2006–65) and Amendment Nos. 1, 2, and 3, are approved and that Amendment No. 5 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[66]

Nancy M. Morris,

Secretary.

[FR Doc. E6–20619 Filed 12–5–06; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Emergence Capital Partners SBIC, L.P. License No. 09/79–0454; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Ketera Technologies, Inc. (''Ketera''), 3965 Freedom Circle, 16th Floor, Santa Clara, CA 95054. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Ketera, and therefore Ketera is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 9, 2006.

Harry S. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E6–20613 Filed 12–5–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Emergence Capital Partners SBIC, L.P.; License No. 09/79–0454; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Intacct Corporation. (''Intacct''), 125 S. Market Street, Suite 600, San Jose, CA 95113. The financing is contemplated to bridge the company's operations until either the round of equity is raised or a sale occurs.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Intacct, and therefore Intacct is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 9, 2006.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–20614 Filed 12–5–06; 8:45 am]

BILLING CODE 8025–01–P

[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 17, 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–2006–26398.
Date Filed: 11–17–2006.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North & Central Pacific, Expedited Areawide Resolution 015v, (Memo 0386),
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26399.
Date Filed: 11–17–2006.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Japan-North America, Caribbean, Expedited Resolution 002r, (Memo 0387),
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26404.
Date Filed: 11–17–2006.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 1/2006-Board of Governors Amendment to, the ''Provisions for the Conduct of the IATA Traffic Conferences'',
Intended effective date: 1 December 2006.

Docket Number: OST–2006–26391.
Date Filed: 11–16–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Middle East—South Asian Subcontinent Expedited Resolution 002at, (Memo 0306),
Intended effective date: 1 November 2006.

Docket Number: OST–2006–26389.
Date Filed: 11–16–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23 Africa—South Asian Subcontinent, Expedited Resolution 002at, (Memo 0310),
Intended effective date: 1 November 2006.

Docket Number: OST–2006–26390.
Date Filed: 11–16–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Middle East—South West Pacific, Expedited Resolution 002ca (Memo 0303),
Intended effective date: 1 November 2006.

Docket Number: OST–2006–26392.
Date Filed: 11–16–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23 Middle East—South East Asia, Expedited Resolution 002bd (Memo 0307),
Intended effective date: 1 November 2006.

Docket Number: OST–2006–26373
Date Filed: 11–15–2006
Parties: Members of the International Air Transport Association.
Subject: TC123 North Atlantic, (except between USA and Korea (Rep. of) (KR), Malaysia (MY), Expedited Resolution 002h (Memo 0339),
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26376.
Date Filed: 11–15–2006.
Parties: Members of the International Air Transport Association.
Subject: TC123 North Atlantic, Between USA and Korea (Rep. of), Malaysia, Expedited Resolution 002ii, (Memo 0343).
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26374.
Date Filed: 11–15–2006.
Parties: Members of the International Air Transport Association.
Subject: TC123 Mid Atlantic, Expedited Resolution 002i, (Memo 0340).
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26375.
Date Filed: 11–15–2006.
Parties: Members of the International Air Transport Association.
Subject: PTC123 South Atlantic, Expedited Resolution 002j, (Memo 0341).
Intended effective date: 15 December 2006.

Docket Number: OST–2006–26348.
Date Filed: 11–13–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Passenger Tariff Coordinating Conference, TC23/123 Africa-Japan/Korea Resolutions and Fares, Tables (Memo 0319), Technical Correction: TC23/123 Passenger Tariff Coordinating Conference, TC23/123 Africa-Japan/Korea Resolutions (Memo 0320).
Intended effective date: 1 April 2007

Docket Number: OST–2006–26349.
Date Filed: 11–13–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/TC123 Passenger Tariff Coordinating Conference, TC23/123 Middle East-Japan/Korea Resolutions and, Fares Tables (Memo 0312).
Intended effective date: 1 April 2007.

Docket Number: OST–2006–26350.
Date Filed: 11–13–2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Passenger Tariff Coordinating Conference, TC23/123 Europe-Japan/Korea Resolutions and Fares, Tables (Memo 0143).
Intended effective date: 1 April 2007.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–20651 Filed 12–5–06; 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 17, 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–2006–26387.
Date Filed: November 15, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 6, 2006.
Description: Application of American Airlines, Inc. requesting an exemption and a certificate of, public convenience and necessity authorizing scheduled foreign air transportation of, persons, property and mail between Miami, Florida and Valencia, Venezuela.

Docket Number: OST–1995–546.
Date Filed: November 15, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 6, 2006.

Description: Application of Bahamasair Holdings Limited further amending its pending application, for renewal and amendment of its foreign air carrier permit specifically requesting to, engage in scheduled foreign air transportation of persons, property and mail between, a point or points in The Bahamas and a point or points in the United States, rather than, between The Bahamas and specific U.S. points.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–20653 Filed 12–5–06; 8:45 am]

BILLING CODE 4910–9X–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. NHTSA–2006–26486]

RIN 2127–AH13

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Review: Redesigned Air Bags; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 208, Occupant Crash Protection. The report's title is: An Evaluation of the 1998–1999 Redesign of Frontal Air Bags.

DATES: Comments must be received no later than April 5, 2007.

ADDRESSES: *Report:* The report is available for viewing on line in PDF format at the Docket Management System (DMS) Web page of the Department of Transportation, *http://dms.dot.gov*. Click on ''Simple Search''; type in the five-digit Docket number shown at the beginning of this Notice (26486) and click on ''Search''; that brings up a list of every item in the docket, starting with a copy of this **Federal Register** notice (item NHTSA–2006–26486–1) and a copy of the report in PDF format (item NHTSA–2006–26486–2).

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2006–26486] by any of the following methods:

- Web Site: *http://dms.dot.gov.* 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 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Kahane, Chief, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. Fax: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION: The first generation of frontal air bags saved the lives of thousands of drivers and adult or teenage right-front passengers. But they harmed occupants positioned close to the air bag at the time of deployment, especially infants and children. In 1998–1999, air bags were redesigned by depowering—by removing some of the gas-generating propellant or stored gas from their inflators—and/or by reducing the volume or rearward extent of air bags, positioning them further from occupants, tethering and hybrid inflators. NHTSA facilitated the redesign by a 1997 amendment to Safety Standard 208 (49 CFR 571.208) that permits ''sled certification'': a sled test in lieu of a barrier impact to certify that air bags would protect an unrestrained occupant (62 FR 12960). Statistical analyses of crash data through 2004 from NHTSA's Fatality Analysis Reporting System (FARS) and the Special Crash Investigations (SCI) compare fatality risk with sled-certified and first-generation air bags.

The overall fatality risk in frontal crashes of 0–12 year-old child passengers in the front seat is a statistically significant 45 percent lower with sled-certified air bags than with first-generation air bags; fatalities caused by air bags in low-speed crashes were reduced by 83 percent.

The overall fatality risk of drivers and of right-front passengers age 13 and older in frontal crashes is not significantly different with sled-certified air bags than with first-generation air bags; sled-certified air bags preserved the life-saving benefits of first-generation air bags.

How Can I Influence NHTSA's Thinking on This Subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2006–26486) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, or fax them. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251.

We also request, but do not require you to send a copy to Charles Kahane, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, fax to 202–366–2559 or e-mail to *ckahane@nhtsa.dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete

submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (26486). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E6–20611 Filed 12–5–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Harkins Cunningham on behalf of Canadian National Railway Company (WB525—11–11/15/2006), for permission to use certain data from the Board's Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–20633 Filed 12–5–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from The Research and Traffic Group (WB984 –11/21/2006), for permission to use certain data from the Board's Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–20635 Filed 12–5–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 30, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2023.

Type of Review: Extension.

Title: Revenue Procedure 97–33, EFTPS (Electronic Federal Tax Payment System).

Description: Service will contact those taxpayers who file paper income tax returns to determine if these taxpayers should have filed electronic returns under the Mandate, Treasury Regulation Section 301.6011–5T.

Respondents: Businesses, farms, and not-for-profit institutions.

Estimated Total Burden Hours: 2,080 hours.

OMB Number: 1545–0946.

Type of Review: Extension.

Title: Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

Form: 8554.

DESCRIPTION: This information relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Total Burden Hours: 47,400 hours.

OMB Number: 1545–0951.

Title: Form 5434, Application for Enrollment; and Form 5434–A, Application for Renewal of Enrollment.

Type of Review: Extension.

Form: 5434, 5434–A.

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Respondents: Individuals or households.

Estimated Total Burden Hours: 3,800 hours.

OMB Number: 1545–2026.

Title: Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

Form: 13797.

Type of Review: Extension.

Description: This form will be provided to tribes who elect to perform a self compliance check on any or all of their entities. This is a *Voluntary* program and the entry is not penalized for non-completion of forms and withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Respondents: Tribal Governments.

Estimated Total Burden Hours: 447 hours.

OMB Number: 1545–2024.

Title: This form is used by taxpayers for completing a claim against the United States for the proceeds of an Internal Revenue refund check.

Type of Review: Extension.

Description: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or employee plan excise tax return (Form 5330). The data supplied on Form 5558 is used to determine if such extension of time is warranted.

Respondents: Individuals or households.

Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1545–1034.

Title: Passive Activity Credit Limitations.

Type of Review: Extension.

Form: 8582–CR.

Description: Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,370,600 hours.

OMB Number: 1545–1855.

Title: Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).

Type of Review: Extension.

Description: The regulations provide four safe harbor nonaccrual-experience methods that will be presumed to clearly reflect a taxpayer's nonaccrual experience, and for taxpayers who wish to compute their nonaccrual experience using a computation or formula other than the one of the four safe harbors provided, the requirements that must be met in order to use an alternative computation or formula to compute their nonaccrual experience.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 24,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–20660 Filed 12–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Correction to Submission for OMB Review

December 1, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Public Debt (BPD)

OMB Number: 1535–0089.

Type of Review: Revision.

Title: Implementing Regulations: Government Securities Act of 1986, as amended.

Correction: In the **Federal Register** Notice published November 30, 2006, page 69221, make the following correction: Change bureau name from ''Internal Revenue Service'', should read ''Bureau of Public Debt.''

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–20675 Filed 12–5–06; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

New Markets Tax Credit Program

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2007 Allocation Round of the New Markets Tax Credit Program.

Announcement Type: Initial announcement of tax credit allocation availability.

DATES: Electronic applications must be received by 5 p.m. ET on February 28, 2007. Paper applications must be postmarked on or before February 28, 2007 (see Section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Allocation applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for certification as a CDE that is postmarked on or before January 12, 2007 (see Section III. of this NOAA for more details).

Executive Summary: This NOAA is issued in connection with the calendar year 2007 tax credit allocation round of the New Markets Tax Credit (NMTC) Program, as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act). Through the NMTC Program, the Community Development Financial Institutions Fund (the Fund) provides authority to CDEs to offer an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the Fund announces the availability of $3.9 billion of NMTC authority, which includes $3.5 billion authorized by the Act and $400 million authorized by the Gulf Opportunity Zone (GO Zone) Act of 2005 (Pub. L. 109–135) for allocation

to CDEs seeking to finance redevelopment and recovery in the Hurricane Katrina GO Zone.

In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. *Programmatic changes:* As noted above, this NOAA contains application information related to the allocation of NMTCs pursuant to both the Act and the GO Zone Act. Accordingly, this NOAA is different from the CY 2006 NOAA in that this NOAA contains GO Zone application information that was used for the allocation of CY 2006 GO Zone NMTC authority, as set forth in the Amendment of Notice of Allocation Availability for the CY 2006 Allocation Round of the NMTC Program, published in the **Federal Register** on March 10, 2006 (71 FR 12423), herein updated for the CY 2007 allocation round.

B. *Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for the fifth round of the NMTC Program and should be read in conjunction with: (i) guidance published by the Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004) and related guidance, notices and other publications; and (iii) the application and related materials for this fifth NMTC Program allocation round. All such materials may be found on the Fund's Web site at *http://www.cdfifund.gov.* The Fund encourages applicants to review these documents. Capitalized terms used but not defined in this NOAA shall have the respective meanings assigned to them in the allocation application, the Act or the IRS regulations.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, the Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $3.5 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). The Fund anticipates that, under this NOAA, it will not issue more than $150 million in tax credit allocation authority per applicant for the $3.5 billion. In addition, pursuant to the GO Zone Act, the Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $400 million in equity as to which NMTCs may be claimed for investments made in the GO Zone. The Fund anticipates that, under this NOAA, it will not issue more than $100 million in tax credit allocation authority per GO Zone allocation applicant. The Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount if the Fund deems it appropriate. In order to receive an allocation in excess of the $150 million cap (or $100 million cap, in the case of a GO Zone allocation), an applicant will likely need to demonstrate, for example, that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; or (ii) its strategy will produce extraordinary community impact. The Fund reserves the right to allocate tax credit authority to any, all or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of tax credit authority.

C. *Notice of Allocation and Allocation Agreement:* Each Allocatee under this NOAA must sign a Notice of Allocation and an Allocation Agreement before the NMTC Allocation is effective. The Notice of Allocation and the Allocation Agreement contain the terms and conditions of the allocation. For further information, see Section VI. of this NOAA.

III. Eligibility

A. *Eligible applicants:* IRC § 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for both the $3.5 billion in general NMTC allocation authority and the $400 million in GO Zone allocation authority (see Section V.(C) for additional information regarding GO Zone eligibility). Applicants must indicate in the application materials whether they are applying for general NMTC allocation authority, GO Zone allocation authority, or both.

1. *CDE certification:* For purposes of this NOAA, the Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is postmarked on or before January 12, 2007. Applicants for certification may obtain a CDE certification application through the Fund's Web site at *http://www.cdfifund.gov.* Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a community development financial institution (CDFI) or a specialized small business investment company (SSBIC) does not need to submit a CDE certification application, but must register as a CDE on the Fund's website on or before 5 p.m. ET on January 12, 2007. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs. See Section IV.D.1.(c) of this NOAA for further requirements relating to postmarks.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change to the Fund; and said request must be received by the Fund by 5 p.m. ET on February 28, 2007. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754.

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOAA. Prior awardees of any component of the Fund's Community Development Financial Institutions (CDFI) Program, Bank Enterprise Award (BEA) Program, the Native Initiatives, or any other Fund program and prior Allocatees under the NMTC Program are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment issuance requirements:* A prior Allocatee in the first round of the NMTC Program (CY 2001–2002) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on February 15, 2007, it has: (i) Issued and received funds in-hand (the term ''funds in-hand'' does not include committed funding) from its investors for at least 80 percent of its Qualified Equity Investments relating to its CY 2001–2002 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 60 percent of its Qualified Equity Investments and that

100 percent of its total CY 2001–2002 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee in the second round of the NMTC Program (CY 2003–2004) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on February 15, 2007, it has: (i) Issued and received funds in-hand from its investors for at least 60 percent of its Qualified Equity Investments relating to its CY 2003–2004 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 50 percent of its Qualified Equity Investments and that at least 80 percent of its total CY 2003–2004 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee in the third round of the NMTC Program (CY 2005) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on February 15, 2007, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its Qualified Equity Investments relating to its CY 2005 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 40 percent of its Qualified Equity Investments and that at least 80 percent of its total CY 2005 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee in the fourth round of the NMTC Program (CY 2006) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on February 15, 2007, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its Qualified Equity Investments relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 20 percent of its Qualified Equity Investments and that at least 60 percent of its total CY 2006 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. Fourth round Allocatees that received GO Zone allocations are not required to meet the above Qualified Equity Investment issuance and commitment thresholds with regard to the GO Zone NMTCs. Further, an entity is not eligible to receive a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Allocatee and has not met the requirements for the issuance and/or commitment of Qualified Equity Investments as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received an allocation in multiple allocation rounds of the NMTC Program, the applicant shall be deemed to be eligible to apply for a NMTC Allocation pursuant to this NOAA if the applicant can demonstrate that, as of 11:59 p.m. ET on February 15, 2007, it has issued and received funds in-hand from its investors for at least 70 percent of its Qualified Equity Investments relating to its cumulative allocation amounts from prior NMTC Program rounds (CY 2002–2006), exclusive of GO Zone allocations received by allocatees under the CY 2006 allocation round.

For purposes of this section of the NOAA, the Fund will only count as ''issued'' those Qualified Equity Investments that have been finalized in the Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary transferees, if any, are advised to access ATS to record each Qualified Equity Investment that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, ''committed'' Qualified Equity Investments are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make an investment in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a Qualified Equity Investment; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than February 15, 2009. The applicant will be required, upon notification from the Fund, to submit adequate documentation to substantiate the required issuances of and commitments for Qualified Equity Investments.

(b) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an applicant if the applicant, or an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(c) *Pending resolution of noncompliance:* If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance.

(d) *Default status:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if, as of the application deadline of this NOAA, the Fund has made a final determination that such applicant is in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination to such applicant. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if, as of the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund): (i) Is a prior Fund awardee or Allocatee under any Fund program; (ii) has been determined by the Fund to be in default of a previously executed assistance,

allocation or award agreement(s); and (iii) the Fund has provided written notification of such determination to the defaulting entity.

(e) *Termination in default:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that such applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to such applicant; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in such applicant's 2005 or 2006 fiscal year. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in the defaulting entity's 2005 or 2006 fiscal year.

(f) *Undisbursed balances:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program if the applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOAA. Further, an entity is not eligible to apply for an award pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOAA. In a case where another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s) as of the application deadline of this NOAA, the Fund will include the combined awards of the applicant and such affiliated entities when calculating the amount of undisbursed funds.

For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior BEA Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the awardee. ''Undisbursed funds'' does not include (i) tax credit allocation authority made available through the NMTC Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the awardee by the application deadline of this NOAA; and (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund. For the purpose of calculating ''undisbursed funds'', the Fund will only take into consideration Fund awards for which there is an Assistance Agreement or Award Agreement between the awardee and the Fund that has not been closed out or terminated by the Fund.

(g) *Contact the Fund:* Accordingly, applicants that are prior awardees and/or Allocatees under any other Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Compliance Manager by e-mail at *cme@cdfi.treas.gov* and all disbursement questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov.* Both the Compliance Manager and the Grants Manager can be reached by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of publication of this NOAA through February 26, 2007 (2 days before the application deadline). The Fund will not respond to applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. ET on February 26, 2007 until after the funding application deadline of February 28, 2007.

3. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply to the Fund for allocations of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary(s). The Subsidiary transferee(s) should: (i) Submit a CDE certification application to the Fund within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; and (ii) must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. The NMTC Allocation transfer must be pre-approved by the Fund, in its sole discretion, and will be a condition of the Allocation Agreement. A for-profit applicant that receives a NMTC Allocation may transfer such NMTC Allocation to its for-profit Subsidiary or Subsidiaries, provided that said Subsidiary transferees have been certified as CDEs and such transfer is pre-approved by the Fund, in its sole discretion. Any transfer will be a condition of the Allocation Agreement.

An applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the Fund. Rather, the Fund will require each applicant to indicate, in its NMTC allocation application, whether it intends to transfer all or a portion of its NMTC Allocation to a Subsidiary and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until the Fund has certified the Subsidiary transferee as a CDE.

4. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to

submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only one that will be considered for an allocation.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term ''Affiliate'' found in the allocation application, the Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated or managed as a common enterprise that, in fact or effect, could be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related that, in fact or effect, they could be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities or to select a single application as the only one that will be considered for an allocation.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by Qualified Equity Investment investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B. of this NOAA and additional application guidance materials on the Fund's Web site at *http://www.cdfifund.gov* for more details).

5. *Entities created as a series of funds:* An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it may submit a single CDE certification application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund, in its sole discretion, which will be a condition of the Allocation Agreement.

6. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may submit applications under this NOAA either electronically or in paper form. Shortly following the publication of this NOAA, the Fund will make available the electronic allocation application on its Web site at *http://www.cdfifund.gov*. The Fund will send application materials to applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6355; by e-mail at *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–7754. These are not toll free numbers.

B. Application Content Requirements

Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the Fund's Web site. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service and assigned to the applicant and, if applicable, its Controlling Entity; electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund; paper applications submitted without a valid EIN will be rejected as incomplete and returned to the sender. For more information on obtaining an EIN, please contact the Internal Revenue Service at (800) 829–4933 or *http://www.irs.gov*. An applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. Form of Application Submission

Applicants may submit applications under this NOAA either electronically or in paper form. Applications sent by facsimile or by e-mail will not be accepted. In order to expedite application review, the Fund expects applicants to submit applications electronically (via an Internet-based application) in accordance with the instructions provided on the Fund's Web site. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further it will assist the Fund in the implementation of electronic reporting requirements.

1. Electronic Applications

Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. Applicants need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions

relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

2. Paper Applications

If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the NMTC Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on February 14, 2007. The NMTC Program Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed NMTC Program Paper Application Submission Form should be directed to the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754.

D. Application Submission Dates and Times

1. Application Deadlines

(a) Electronic applications must be received by 5 p.m. ET on February 28, 2007. Electronic applications cannot be transmitted or received after 5 p.m. ET on February 28, 2007. In addition, applicants that submit electronic applications must separately submit (by mail or other courier delivery service) an original signature page, and all other required paper attachments. The original signature page and additional documents must be postmarked on or before March 5, 2007. See application instructions, provided in the electronic application, for further detail. Applications and other required documents and other attachments postmarked or received after these dates and times will be rejected and returned to the sender. If the original signature page is not postmarked by the deadlines specified above, the application will be rejected and returned to the sender. See Section IV.D.1(c) of this NOAA for further requirements relating to postmarks. Additional deadlines (if any) relating to the submission of general supporting documentation will be further detailed in the electronic application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) Paper applications, including the requisite original signature page, and all other required paper attachments must be postmarked on or before February 28, 2007. Paper applications postmarked after this deadline will not be accepted for consideration and will be returned to the sender.

(c) For purposes of this NOAA, the term '' postmark'' is defined by 26 CFR 301.7502–1. In general, the Fund will require that the postmarked document bear a postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002–62, 2002–2 C.B. 574.

E. Intergovernmental Review

Not applicable.

F. Funding Restrictions

For allowable uses of investment proceeds related to a NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004) and related guidance. Please see Section I., above, for the Programmatic Improvements of this NOAA.

G. Other Submission Requirements

Addresses: Paper applications and the signature page and attachments for electronic applications must be sent as directed in the application materials to the Bureau of Public Debt, the application intake coordinator for the Fund. Paper applications and the signature page or attachments will not be accepted at the Fund's offices in Washington, DC. Paper applications and signature pages or attachments received in the Fund's offices will be rejected and returned to the sender. Except for the signature page and attachments, electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

V. Application Review Information

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the Fund will evaluate each application, assigning points and numeric scores with respect to the criteria described below. In Phase 2, the Fund will rank applicants in accordance with the procedures set forth below.

A. Criteria

1. Business Strategy (25-Point Maximum)

(a) In assessing an applicant's business strategy, reviewers will consider, among other things: the applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of Qualified Equity Investments; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; and the extent to which the applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (i) Are designed to meet the needs of underserved markets; (ii) are flexible or non-traditional in form and on better terms than available in the marketplace; and (iii) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of Qualified Equity Investments; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing Qualified Equity Investments and making the related Qualified Low-Income Community Investments in a time period that is significantly shorter than the 5-year period permitted under IRC § 45D(b)(1); and (iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) Priority Points. In addition, as provided by IRC § 45D(f)(2), the Fund will ascribe additional points to entities that meet either or both of the statutory priorities. First, the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the Fund will give five (5) additional points

to any applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to an applicant (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) hold the majority equity interest. Applicants may earn points for either or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its Qualified Equity Investments in unrelated businesses. The Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

2. Community Impact (25-Point Maximum)

In assessing the impact on communities expected to result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to achieve significant and measurable community development and economic impacts in its Low-Income Communities, and whether the applicant is working in particularly economically distressed markets and/or in concert with Federal, state or local government or community economic development initiatives (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities). An applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development and economic impacts that would not be achieved without NMTCs; and (b) it is working in particularly economically distressed or otherwise underserved communities and/or in concert with other Federal, state or local government or community economic development initiatives.

3. Management Capacity (25-Point Maximum)

In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; experience in raising capital; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements, and the level of involvement of community representatives and other stakeholders in the design, implementation or monitoring of an applicant's business plan and strategy. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that has received a NMTC Allocation from the Fund under a prior allocation round, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of Qualified Equity Investments; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements, and to the extent that Low-Income Community stakeholders play an active role in designing or implementing its business plan. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that has received a NMTC Allocation from the Fund under a prior allocation round, the applicant will score well to the extent it can: (a) Demonstrate that substantial activities have occurred through its prior allocation(s); and (b) substantiate a need for additional allocation authority.

4. Capitalization Strategy (25-Point Maximum)

In assessing an applicant's capitalization strategy, reviewers will consider, among other things: The extent to which the applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the extent to which the applicant identifies how existing investors will leverage their investments in Low-Income Communities or how new investors will be brought into such investments; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC § 45D(b)(1)(B), including the extent to which the applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and the applicant's timeline for utilizing an NMTC Allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of Qualified Equity Investments it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to end users; (d) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (e) it intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC § 45D(b)(1)(B). In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by the investor and/or

will target its activities to areas of greater economic distress than those currently targeted by the investor.

B. Review and Selection Process

All allocation applications will be reviewed for eligibility and completeness. The Fund may consult with the IRS on the eligibility requirements under IRC § 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected and returned to the sender. Once the application has been determined to be eligible and complete, the Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application. *Phase 1:* Fund reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold and exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Impact, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application sections), varies significantly from the median of the reviewers' total base scores or section scores for such application, the Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

Phase 2: Once the Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Impact sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores in Phase 2 as in Phase 1. The Fund will award allocations in the order of this ranking, subject to applicants' meeting all other eligibility requirements; provided, however, that the Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process.

In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that has previously received an award or allocation from the Fund through any Fund program, the Fund will consider and will deduct points for the applicant's (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the Fund during the applicant's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2004 and 2005).

C. GO Zone Review and Selection Process

The GO Zone is defined in the Gulf Opportunity Zone Act of 2005 as ''that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina'' (Pub. L. 109–135, Section 101). The Hurricane Katrina Disaster Area is defined as ''an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of such Act by reason of Hurricane Katrina'' (Pub. L. 109–135, Section 101).

In order to be considered for any portion of the $400 million of special GO Zone allocation authority, an Applicant (GO Zone Applicant) must: (i) Meet the minimum threshold scoring criteria outlined under Phase I in Section B above; (ii) indicate its intent to apply as a GO Zone Applicant in the designated section of the CY 2007 NMTC application; and (iii) have a significant mission of recovery and development in the GO Zone. In order to demonstrate a ''significant mission of recovery and development in the GO Zone,'' a CDE must, at a minimum: (i) Include the GO Zone within its particular geographic service area; and (ii) demonstrate to the satisfaction of the Fund that it has significant resources in the GO Zone to support its recovery and redevelopment efforts and that it has a significant track record of providing financing and related services in the GO Zone. GO Zone Applicants must answer specified application questions pertaining to, among other things: (i) The extent to which the applicant has significant resources in the GO Zone to support its recovery and redevelopment efforts; (ii) the applicant's track record of providing financing and related services in the GO Zone; and (iii) the extent to which the applicant will commit to dedicating a significant percentage of a NMTC allocation to areas designated by FEMA as having suffered flooding and/or severe or catastrophic damage as a result of Hurricane Katrina.

After the Fund has made its final allocation determinations for the $3.5 billion allocation authority, it will make final allocation determinations for the GO Zone allocation authority, with first priority given to organizations that were not selected to receive an allocation under the initial $3.5 billion of allocation authority. Within the category of GO Zone Applicants, awards will be provided in rank order of score, with priority given to those applicants that demonstrate the strongest significant mission of recovery and redevelopment of the GO Zone and commit to dedicating a significant percentage of their allocations to serve those areas designated by FEMA as having suffered flooding and/or severe or catastrophic damage in the wake of Hurricane Katrina. If GO Zone allocation authority is still available, the Fund may provide additional GO Zone allocation authority to eligible applicants that were selected to receive an allocation from the initial $3.5 billion, provided the Fund determines that they have the capacity to administer additional allocation authority in the GO Zone. Unallocated GO Zone allocation authority, if any, may be carried over into future NMTC allocation rounds, pursuant to IRC 45D(f)(3).

D. All outstanding reports or compliance questions should be directed to the Compliance Manager by e-mail at *cme@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOAA through February 26, 2007. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on February 26, 2007 until after the funding application deadline of February 28, 2007.

E. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund awardee, if such applicant has failed to comply with the terms, conditions, and other

requirements of the prior or existing assistance or award agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the Fund.

The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings and markets served) set forth in the allocation application(s) related to such prior allocation(s). The Fund also reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The Fund also reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the Fund that adversely affects an applicant's eligibility for an award, adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the Fund may permit reviewer(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. Reviewers will not contact applicants without the prior approval of the Fund. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that are regulated by the Federal government or a State agency (or comparable entity), the Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the Fund, in its sole discretion, related to the applicant and its officers, directors, owners, partners and key employees.

Each applicant will be informed of the Fund's award decision either through a Notice of Allocation if selected for an allocation (see Section VI.A. of this NOAA) or a declination letter, if not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate. If said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's allocation decisions. The Fund's allocation decisions are final.

VI. Award Administration Information

A. Notice of Allocation

The Fund will signify its selection of an applicant as an Allocatee by delivering a signed Notice of Allocation to the applicant. The Notice of Allocation will contain the general terms and conditions underlying the Fund's provision of an NMTC Allocation including, but not limited to, the requirement that an Allocatee and the Fund enter into an Allocation Agreement. The applicant must execute the Notice of Allocation and return it to the Fund. By executing a Notice of Allocation, the Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, information (including administrative errors) comes to the attention of the Fund that adversely affects the Allocatee's eligibility for an award, adversely affects the Fund's evaluation or scoring of the Allocatee's application, or indicates fraud or mismanagement on the part of the Allocatee, the Fund may, in its discretion and without advance notice to the Allocatee, terminate the Notice of Allocation or take such other actions as it deems appropriate. Moreover, by executing a Notice of Allocation, an Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, the Fund determines that the Allocatee is not in compliance with the terms of any prior assistance agreement, award agreement, and/or Allocation Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Allocatee, either terminate the Notice of Allocation or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind the allocation and the Notice of Allocation if the Allocatee fails to return the Notice of Allocation, signed by the authorized representative of the Allocatee, along with any other requested documentation, by the deadline set by the Fund.

1. Failure To Meet Reporting Requirements

If an Allocatee, or an entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund) is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the

previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Allocation, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on an Allocatee's ability to issue Qualified Equity Investments to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

2. Pending Resolution of Noncompliance

If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

3. Default Status

If, at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the applicant or shares common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior awardee or Allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. Termination in Default

If (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to such organization; and (iii) the final reporting period end date for the applicable terminated agreement falls in such organization's 2005 or 2006 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors. Further, if (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated agreement falls in such defaulting entity's 2005 or 2006 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors.

B. Allocation Agreement

Each applicant that is selected to receive a NMTC Allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but not be limited to, the following: (i) The amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (e.g., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of Qualified Equity Investments may be used; (iv) the time period by which the applicant may obtain Qualified Equity Investments from investors; (v) reporting requirements for all applicants receiving NMTC Allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which

persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

GO Zone Allocation Agreement Terms: All CDEs that are awarded GO Zone allocation authority are required, as a condition of their Allocation Agreements with the CDFI Fund, to invest 100 percent of the QLICIs from the GO Zone allocation in the GO Zone. In addition, GO Zone CDEs are required to maintain accountability to the GO Zone through their advisory or governing board representation. Additional terms and conditions for GO Zone allocation authority will be set forth in the Allocation Agreements.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC Allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The Fund reserves the right, in its sole discretion, to rescind its Notice of Allocation if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

C. Fees

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

D. Reporting

The Fund will collect information, on at least an annual basis, from all applicants that are awarded NMTC Allocations and/or are recipients of Qualified Low-Income Community Investments, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each Qualified Equity Investment raised through its NMTC Allocation to make Qualified Low-Income Community Investments. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through February 26, 2007. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on February 26, 2007 until after the allocation application deadline of February 28, 2007. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Administrative Support

If you have any questions regarding the administrative requirements of this NOAA, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. IRS Support

For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW, Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

E. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov*.

VIII. Information Sessions

In connection with this NOAA, the Fund intends to broadcast one or more no fee, interactive video teleconference information sessions. Registration will be required, as the video teleconference information sessions will be broadcast to secured federal facilities. The video teleconference information sessions will be produced in Washington, DC, and will be downlinked via satellite to local federal venues in certain cities. For further information on the video teleconference information session, locations, or to register, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: November 24, 2006.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E6–20669 Filed 12–5–06; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 5, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0335'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0335.''

SUPPLEMENTARY INFORMATION:

Title: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–2570d is essential to the proper administration of VA outpatient fee dental program. The associated instructions make it possible to communicate with clarity the required procedures, peculiarities, and precautions associated with VA authorizations for contracting with private dentists for the provision of dental treatment for eligible veteran beneficiaries. Since most of the veterans who are authorized fee dental care are geographically inaccessible to VA dental clinics, it is necessary to request information as to the veteran's oral condition, treatment needs and the usual customary fees for these services from the private fee dentist whom the veteran has selected. The form lists the dental treatment needs of the veteran patient, the cost to VA to provide such services, and serves as an invoice for payment. VA uses the data collected to verify the veteran's eligibility to receive dental benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 13, 2006 at page 54115.

Affected Public: Business and other for profit.

Estimated Total Annual Burden: 4,153 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,460.

Dated: November 22, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–20667 Filed 12–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 5, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (22–0803)].''

SUPPLEMENTARY INFORMATION:

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Existing collection in use without an OMB control number.

Abstract: On-the-job trainers use VA Form 28–1905c to maintain accurate records on a trainee's progress toward his/her rehabilitation goals as well as recording the trainee's on-the-job training monthly wages. Trainers report these wages on the form at the beginning of the program and at any time the trainee's wage rate changes. Following a trainee's completion of a vocational rehabilitation program, the form is submitted to the trainee's case manager to monitor the trainee's training and to ensure that the trainee is progressing and learning the skills necessary to carry out the duties of his or her occupational goal.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 22, 2006, at pages 48974–48975.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, farms, and state, local or tribal government.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Three times a year.

Estimated Number of Respondents: 4,800.

Dated: November 22, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–20668 Filed 12–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0689]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the quality of care provided to the returning war veterans with loss of limbs and other severe injuries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 5, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Ann Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *ann.bickoff@va.gov.* Please refer to ''OMB Control No. 2900–0689'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Satisfaction of Operation Iraqi Freedom/Operation Enduring Freedom (OIF/OEF) Amputees, VA Form 10–21082(NR).

OMB Control Number: 2900–0689.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected to determine whether the health care needs of amputee and severely injured veterans returning from Iraqi Freedom and Operation Enduring Freedom are being met and to identify areas where improvement is needed.

Affected Public: Individuals or households.

Estimated Annual Burden: 60 hours.

Estimated Average Burden Per Respondent: 18 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 200.

Dated: November 22, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E6–20682 Filed 12–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0376]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to maintain an up-to-date Agent Orange Registry.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 5, 2007.

ADDRESSES: Submit written comments on the collection of information through http://www.Regulations.gov; or to Ann Bickoff, Veterans Health Administration (193E1, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *ann.bickoff@va.gov*. Please refer to ''OMB Control No. 2900–0376'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Agent Orange Registry Code Sheet, VA Form 10–9009.

OMB Control Number: 2900–0376.

Type of Review: Extension of a currently approved collection.

Abstract: VA, in an on-going effort to maintain an Agent Orange Registry (AOR), developed a reporting format to facilitate the collection of information

obtained from veterans during the Agent Orange registry examination process. VA is required to organize and update the information contained in the AOR to be able to notify Vietnam era veterans who served in the Republic of Vietnam of any increased health risks resulting from exposure to dioxin or other toxic agents. VA may also provide, upon request, a health examination, consultation, and counseling for veterans who are eligible for listing or inclusion in any health-related registry administrated by VA that is similar to the Persian Gulf War Veterans Health Registry. Registry examinations are provided to veterans who served in Korea in 1968 or 1969, and/or any U.S. veteran who may have been exposed to dioxin, or other toxic substance in a herbicide or defoliant, during the conduct of, or as a result of, the testing, transporting, or spraying of herbicides, and who requests an Agent Orange Registry examination. VA will enter the information obtained from the veteran during the interview on VA Form 10–9009, Agent Orange Registry Code Sheet. The registry will provide a mechanism that will catalogue prominent symptoms, reproductive health, and diagnoses and to communicate with Agent Orange veterans. VA will inform the veterans on research findings or new compensation policies through periodic newsletters. The registry is not designed or intended to be a research tool and therefore the results cannot be generalized to represent all Agent Orange veterans.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 7,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Dated: November 22, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–20683 Filed 12–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (22–0803)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 5, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (22–0803)]–'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (22–0803)].''

SUPPLEMENTARY INFORMATION: Title: Application for Reimbursement of Licensing or Certification Test Fees.

OMB Control Number: 2900–New (22–0803)].

Type of Review: Existing collection in use without an OMB control number.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 15, 2006 at page 46981.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,590 hours.

Frequency of Response: On occasion.

Estimated Average Burden Per Respondents: 15 minutes.

Estimated Annual Responses: 6,361.

Dated: November 22, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–20684 Filed 12–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 5, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0571'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0571'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for NCA and IG Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VA will use the data collected

to maintain ongoing measures of performance and to determine how well customer service standards are met.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 14, 2006 at pages 54339–54342.

Affected Public: Individuals or households, Business or Other For-Profit and State, Local or Tribal Government.

Listing of Survey Activities: The following list of activities is a compendium of customer satisfaction survey plans by the NCA and IG. The actual conduct of any particular activity listed could be affected by circumstances. A change in, or refinement of, our focus in a specific area, as well as resource constraints could require deletion or substitution of any listed item. If these organizations substitute or propose to add a new activity that falls under the umbrella of this generic approval, including those activities that are currently in a planning stage, OMB will be notified and will be furnished a copy of pertinent materials, a description of the activity and number of burden hours involved. NCA and IG will conduct periodic reviews of ongoing survey activities to ensure that they comply with the PRA.

I. National Cemetery Administration

Focus Groups with Next of Kin (10 Participants Per Group/3 Hours Each Session).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	50	150	5 Groups Annually.
2008	50	150	5 Groups Annually.
2009	50	150	5 Groups Annually.

Focus Groups with Funeral Directors (10 participants per group/3 hours each session).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	50	150	5 Groups Annually.
2008	50	150	5 Groups Annually.
2009	50	150	5 Groups Annually.

Focus Groups with Veterans Service Organizations (10 participants per group/3 hours each session).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	50	150	5 Groups Annually.
2008	50	150	5 Groups Annually.
2009	50	150	5 Groups Annually.

Visitor Comments Cards (Local Use) (2,500 respondents/5 minutes per card).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	2,500	208	Annually.
2008	2,500	208	Annually.
2009	2,500	208	Annually.

Next of Kin National Customer Satisfaction Survey (Mail to 15,000 respondents/30 minutes per survey).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	15,000	7,500	Annually.
2008	15,000	7,500	Annually.
2009	15,000	7,500	Annually.

Funeral Directors National Customer Satisfaction Survey (Mail to 4,000 respondents/30 minutes per survey).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	4,000	2,000	Annually.
2008	4,000	2,000	Annually.
2009	4,000	2,000	Annually.

Veterans-At-Large National Customer Satisfaction Survey (Mail to 5,000 respondents/30 minutes per survey).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	5,000	2,500	Annually.
2008	5,000	2,500	Annually.
2009	5,000	2,500	Annually.

Program/Specialized Service Survey (Mail to 2,000 respondents/15 minutes per each).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	2,000	500	Annually.
2008	2,000	500	Annually.
2009	2,000	500	Annually.

II. Office of Inspector General

Community Based Outpatient Clinic Patient Survey (1,000 respondents/10 minutes per response).

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2007	1,000	167	Annually.
2008	1,000	167	Annually.
2009	1,000	167	Annually.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–20685 Filed 12–5–06; 8:45 am]

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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.

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LIST OF PUBLIC LAWS

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Sierra National Forest Land Exchange Act of 2006 (Dec. 1, 2006; 120 Stat. 2656)

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To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District, El Paso County, Texas. (Dec. 1, 2006; 120 Stat. 2659)

H.R. 1129/P.L. 109–377

Pitkin County Land Exchange Act of 2006 (Dec. 1, 2006; 120 Stat. 2660)

H.R. 3085/P.L. 109–378

To amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes. (Dec. 1, 2006; 120 Stat. 2664)

H.R. 5842/P.L. 109–379

Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006 (Dec. 1, 2006; 120 Stat. 2666)

S. 101/P.L. 109–380

To convey to the town of Frannie, Wyoming, certain land withdrawn by the Commissioner of Reclamation. (Dec. 1, 2006; 120 Stat. 2671)

S. 1140/P.L. 109–381

To designate the State Route 1 Bridge in the State of Delaware as the ''Senator William V. Roth, Jr. Bridge''. (Dec. 1, 2006; 120 Stat. 2672)

S. 4001/P.L. 109–382

New England Wilderness Act of 2006 (Dec. 1, 2006; 120 Stat. 2673)

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