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

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

WHEN: Tuesday, February 13, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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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 ENERGY

10 CFR Part 300

RIN 1901–AB23

Corrections and Updates to Technical Guidelines for Voluntary Greenhouse Gas Reporting

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Interim final rule and request for comment.

SUMMARY: The Department of Energy (DOE) today publishes an interim final rule that corrects, updates, and makes clarifying changes to Technical Guidelines used for reporting under the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992. The Technical Guidelines were incorporated by reference in final program guidelines that were published on April 21, 2006, and placed in the Code of Federal Regulations (CFR). In accordance with the rules governing incorporation by reference in the CFR, DOE is amending its program regulations to reflect the update of the Technical Guidelines.

DATES: *Effective Date:* This interim final rule is effective March 2, 2007, unless comments received warrant or necessitate a later effective date. The incorporation by reference of the updated Technical Guidelines is approved by the Director of the Federal Register as of March 2, 2007.

Comment Date: Written comments must be received by February 20, 2007. Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to: *1605bguidelines.comments@hq.doe.gov*. We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESSES: You may submit written comments, identified by RIN 1901–AB23, by any of the following methods:

1. E-mail to *1605bguidelines.comments@hq.doe.gov*. Include RIN 1901–AB23 and ''Interim Final Rule Comments'' in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.

2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

3. *Mail:* Address the comments to Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. DOE requires, in hard copy, a signed original and three copies of all comments. Due to potential delays in the DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or e-mail: *1605bguidelines.comments@hq.doe.gov*. Phone: (202) 586–0124.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Interim Final Rule
II. Regulatory Review
III. Approval of the Office of Secretary

I. Background and Discussion of Interim Final Rule

Section 1605(b) of the Energy Policy Act of 1992 directed DOE to issue guidelines establishing a voluntary greenhouse gas reporting program (42 U.S.C. 13385(b)). On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance the Voluntary Reporting of Greenhouse Gases Program established by DOE in 1994. On April 21, 2006, following a lengthy public review process, DOE published revised final General Guidelines for Voluntary Greenhouse Gas Reporting (71 FR 20784). Those guidelines incorporated by reference detailed Technical Guidelines, dated March 2006, that are needed to fully implement the revised Voluntary Reporting of Greenhouse Gases Program.

Subsequent to the April 21, 2006 publication of the revised final General Guidelines and during preparation of new forms and instructions for reporting, DOE identified a number of errors and inconsistencies in the Technical Guidelines that warrant correction or clarification. To ensure that any revision of the March 2006 Technical Guidelines addressed as many of these problems as possible, on August 3, 2006, DOE sent a message by electronic mail to all persons who had previously expressed an interest in the guidelines and requested that they identify any needed technical corrections, clarifications, interpretations or other changes to the guidelines. Subsequently, DOE received communications that recommended additional corrections and other changes for consideration.

Following a careful review of the recommended corrections and other suggested changes, DOE made those modifications to the Technical Guidelines that it believed were necessary to correct all the identified errors and inconsistencies or other ambiguities, while adhering to the essential language and intent of the March 2006 version of the Technical Guidelines. The updated version of the Technical Guidelines is dated January 2007.

The regulations of the Administrative Committee of the Federal Register provide that an agency that seeks to change a document approved for incorporation by reference in a regulation must: (1) Publish notice of the change in the Federal Register and amend the Code of Federal Regulations; (2) ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and (3) notify the Director of the Federal Register in writing that the changes are being made. 1 CFR 51.11(a). Accordingly, DOE sent the January 2007 update of the Technical Guidelines to the Director of the Federal Register and obtained his approval of the incorporation by reference of the January 2007 Technical Guidelines in the regulations for the section 1605(b) program that are published in the **Federal Register** and the Code of Federal Regulations. By today's interim final rule, DOE changes the date of the Technical Guidelines

from March 2006 to January 2007 in 10 CFR 300.13.

DOE believes that all of the modifications in the January 2007 version of the Technical Guidelines are fully consistent with the section 1605(b) program's General Guidelines and DOE's original intent regarding the methods and other guidance provided in the Technical Guidelines. Before these changes are made final, however, DOE is providing an opportunity for public review and comment on the specific changes that DOE has made. DOE is specifically soliciting public comment on whether any of the changes DOE has made are inconsistent with the General Guidelines. The revised January 2007 Technical Guidelines are available on the web at: *http://www.pi.energy.gov/enhancingGHGregistry/*. DOE is making two versions of the updated Technical Guidelines available on the Web site. One version shows all of the changes made since the March 2006 Technical Guidelines were issued, with the new text underscored and the deleted text marked as deleted. The second version includes all the changes, but does not highlight them.

The changes and clarifications included in the updated Technical Guidelines fall into the following categories:

Corrections of factual and drafting errors. The updated Technical Guidelines correct a number of clerical or typographical errors that appeared in the March 2006 Technical Guidelines. The errors include inaccurate physical values, repeated text, misplaced definitions, and incorrect citations or Web site links.

Elimination of inconsistencies. There were instances where language in the March 2006 Technical Guidelines was not entirely consistent with the General Guidelines or with language in other parts of the Technical Guidelines. DOE has revised the Technical Guidelines to eliminate this inconsistency. In cases where the Technical Guidelines were internally inconsistent, DOE endeavored to remove this inconsistency by retaining the language it determined was most consistent with DOE's original intent, as explained in the preambles to the interim final General Guidelines published on March 24, 2005 (70 FR 15171–81) and the final General Guidelines published on April 21, 2006 (71 FR 20785–803).

Updated references. In some cases, the March 2006 Technical Guidelines do not refer to the most current versions of documents referenced in the guidelines, even though some of those documents were in the public domain before the issuance of the final guidelines. The updated Technical Guidelines include a number of updates to referenced documents. During the development of the updated Technical Guidelines, consideration was given to referencing the 2006 emission inventory guidelines of the Intergovernmental Panel on Climate Change (IPCC). While these guidelines are generally viewed as the best available inventory guidelines, they have yet to be officially adopted by the UN Framework Convention on Climate Change. Since DOE's Energy Information Administration has authority under the Technical Guidelines to update the factors and methodologies based on the IPCC guidelines as soon as it is appropriate to do so, no change to the Technical Guidelines is necessary at this time.

Clarifications of intent. In some instances the language used in the March 2006 Technical Guidelines was confusing or vague. In the updated version, DOE added clarifying words or text where a modification was likely to significantly enhance reader comprehension.

Modification or elimination of inappropriate calculation methods. In a few cases, commenters or DOE identified certain calculation methods as inappropriate for the purposes stated in the Technical Guidelines. For example, DOE eliminated the action-specific method for calculating the reductions associated with the recovery of methane from anaerobic digesters of animal waste because DOE concluded that this method is not needed to calculate reductions associated with these sources of emissions and is inconsistent with other guidance in both the General Guidelines and other parts of the Technical Guidelines. In other cases, formulas or factors were modified to ensure the applicability of the methods to the sources identified.

DOE did not adopt in the January 2007 Technical Guidelines some clarifications or other changes recommended by stakeholders. In some cases, the stakeholders sought modifications that would be inconsistent with the General Guidelines or outside the scope of the guidelines under section 1605(b). DOE may consider additional changes to the Technical Guidelines when it conducts the periodic reviews provided for in 10 CFR 300.1(f).

II. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to not be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (February 26, 2002). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation when a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule makes corrections, updates and clarifying changes to Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program incorporated by reference in General Guidelines published on April 21, 2006. These changes do not affect the burden on the entities that report emissions under the section 1605(b) program. Moreover, as stated in the April 2006 notice of final guidelines, the reporting program is voluntary and DOE anticipates that small entities will weigh the benefits and costs when deciding to participate. On the basis of the foregoing, DOE certifies that these amendments to the Technical Guidelines will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will provide this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

The Energy Information Administration (EIA) on November 9, 2006 (71 FR 65786) submitted the new forms and associated instructions for reporting under the April 2006 revised guidelines to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The changes to the Technical Guidelines made by today's interim final rule do not include any additional information collection requirements.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into the class of actions

that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the interim final rule is covered under the categorical exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under the Unfunded Mandates Reform Act of 1969

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the rule published today does not contain any Federal mandates affecting states, tribal, or local governments, so these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4779 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this interim final rule and has determined that it would not preempt State law and would 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 responsibility among the various levels of government. No further action is required by the Executive Order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the rule published today is not a significant regulatory action and will not have a significant adverse effect on the supply, distribution, or use of energy and, thus, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's interim final rule under the OMB and DOE guidelines, and concluded that it is consistent with applicable policies in those guidelines.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

III. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this interim final rule.

List of Subjects in 10 CFR Part 300

Administrative practice and procedure, Energy, Gases, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC on January 25, 2007.

Karen A. Harbert,

Assistant Secretary for Policy and International Affairs.

■ For the reasons set forth in the preamble, the Department of Energy amends part 300 of title 10, chapter II, subchapter B of the Code of Federal Regulations as set forth below.

PART 300—VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*, and 42 U.S.C. 13385(b).

■ 2. The first sentence of § 300.13 is revised to read as follows:

§ 300.13 Incorporation by reference.

The Technical Guidelines for the Voluntary Reporting of Greenhouse

Gases (1605(b)) Program (January 2007), referred to throughout this part as the ''Technical Guidelines,'' have been approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

[FR Doc. E7–1436 Filed 1–30–07; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AC19

Disclosure to Shareholders; Correction

AGENCY: Farm Credit Administration.

ACTION: Correcting amendment.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (71 FR 5740, February 2, 2006) that amended the regulations affecting the governance of the Farm Credit System. This document corrects a nonsubstantive error in the final rule.

EFFECTIVE DATE: April 5, 2006.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: In revising § 620.5(i)(2)(i), we inadvertently omitted the last two paragraphs in the final rule as published at 71 FR 5740, February 2, 2006.

List of Subjects in 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

■ Accordingly, 12 CFR part 620 is corrected by making the following correcting amendment:

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 1. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11) sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

■ 2. Amend § 620.5(i)(2)(i) by adding paragraphs (E) and (F) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(i)(2)(i) * * *

(E) Compensation amounts reported under the category ''Other'' (column (f)) shall reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column shall be specifically identified and described in a footnote to the table. Such compensation includes, but is not limited to:

(*1*) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution; or

(*2*) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(F) Amounts displayed under ''Total'' (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

* * * * *

Dated: January 25, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–1533 Filed 1–30–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27077; Directorate Identifier 2006–NM–286–AD; Amendment 39–14916; AD 2007–03–05]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream 100 Airplanes, and Model Astra SPX and 1125 Westwind Astra Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The unsafe condition is incomplete closure of the main entry door, which may result in the door opening in flight, causing damage to wing, fuselage, engine, and/or tail, and possible damage to the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective February 15, 2007.

We must receive comments on this AD by March 2, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 52–06–11–08, dated November 28, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The unsafe condition is incomplete closure of the main entry door, which may result in the door opening in flight, causing damage to wing, fuselage, engine, and/or tail, and possible damage to the airplane. The MCAI requires amending the airplane flight manuals to include additional procedures for verifying complete closure and locking of the main entry door. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there have been two incidents of main entry doors opening in flight, both at relatively low altitude and airspeeds. Since it cannot be shown the airplane can continue safe operation and return to the nearest airport after such an event in any phase of flight, we have determined that loss of an airplane is possible unless immediate actions are taken. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27077; Directorate Identifier 2006–NM–286–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this 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 AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–03–05 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–14916. Docket No. FAA–2007–27077; Directorate Identifier 2006–NM–286–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra airplanes;

certificated in any category; all serial numbers.

Reason

(d) The unsafe condition is incomplete closure of the main entry door, which may result in the door opening in flight, causing damage to wing, fuselage, engine, and/or tail, and possible damage to the airplane. The mandatory continuing airworthiness information (MCAI) requires amending the airplane flight manuals to include additional procedures for verifying complete closure and locking of the main entry door.

Actions and Compliance

(e) Unless already done, do the following actions. Within 10 days after the effective date of this AD, amend section IV, Normal Procedures, of the following Gulfstream airplane flight manuals (AFMs): Model 1125 Astra, 25W–1001–1; Model Astra SPX, SPX–1001–1; and Model G100, G100–1001–1; as applicable; to include the following statement. Insertion of copies of this AD at the appropriate places of the AFMs is acceptable.

''1. BEFORE ENGINE START: (PRE and POST Mod 20052/Gulfstream Service Bulletin 100–31–284): CABIN DOOR—CLOSED (Physically verify door latch handle pin is fully engaged in the handle lock).

2. BEFORE TAXIING: Change the CABIN DOOR procedure as follows (POST Mod 20052/Gulfstream Service Bulletin 100–31–284): Check CABIN DOOR light—OUT.

3. BEFORE TAKE-OFF: Insert between the POSITION lights switch and the THRUST LEVERS procedures: (PRE Mod 20052/Gulfstream Service Bulletin 100–31–284): Check CABIN DOOR light—OUT (50% N1 may be required).

(POST Mod 20052/Gulfstream Service Bulletin 100–31–284): Check CABIN DOOR light—OUT; CABIN DOOR SEAL light—OUT (50% N1 may be required).''

Note 1: Mod 20052 is equivalent to Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

Note 2: This AD may be accomplished by a holder of a Private Pilot's License.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: We revised the order in which the AFM procedures for verifying closure and locking of the main entry door appear in the MCAI. We also removed one procedure under ''BEFORE TAXIING'' for verifying the cabin door seal light is out (Post Mod 20052/Post Gulfstream Service Bulletin 100–31–284) and for verifying the cabin door light is out (Pre Mod 20052/Pre Gulfstream Service Bulletin 100–31–284).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, Attn: Mike Borfitz, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(g) Refer to MCAI Israeli Airworthiness Directive 52–06–11–08, dated November 28, 2006, for related information.

Material Incorporated by Reference

(h) None.

Issued in Renton, Washington, on January 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1397 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27064; Directorate Identifier 2006–NM–274–AD; Amendment 39–14915; AD 2007–03–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking of the wing MLG (main landing gear) rib 6 aft bearing forward lugs, which could result in reduced structural integrity of the MLG attachment. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective February 15, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 15, 2007.

We must receive comments on this AD by March 2, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative

Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2006–0364–E, dated December 6, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that during MLG lubrication, a crack has been found visually in the MLG rib 6 aft bearing forward lug on one A330 in-service aircraft. The crack has extended through the entire thickness of the forward lug at approximately the 4 o'clock position (when looking forward). (Similar cracks have been found on MLGs with similar configurations on other Airbus airplane models). The investigations are ongoing to determine the root causes of this event and to define the appropriate corrective actions. This situation, if not corrected, could affect the structural integrity of the MLG attachment, which constitutes an unsafe condition. The aim of the MCAI is to mandate repetitive detailed visual inspections of the LH (left-hand) and RH (right-hand) wing MLG rib 6 aft bearing lugs as the first step before finalization of the investigations, and replacement of MLG rib 6 if a crack is detected. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A330–57A3096, A340–57A4104, and A340–57A5009, all dated December 5, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because during a MLG maintenance task for lubrication, a crack was visually detected in the wing MLG rib 6 aft bearing forward lug on one in-service A330 aircraft. The crack had extended through the entire thickness of the forward lug at the 4 o'clock position. Failure of this attachment could result in gear collapse upon landing. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27064; Directorate Identifier 2006–NM–274–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this 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 AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–03–04 Airbus: Amendment 39–14915. Docket No. FAA–2007–27064; Directorate Identifier 2006–NM–274–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes:

(1) Airbus Model A330–200 and A330–300 series airplanes, all certified models, certificated in any category, all serial numbers; except those on which Airbus modification 49353 has been embodied in production, or Airbus Service Bulletin A330–57–3082 has been embodied in service on both wings; and except those that have been repaired on both wings as per Airbus UK Limited Repair Drawing R572–56230, or Airbus A330 Structural Repair Manual 57–26–13, page block 201.

(2) Airbus Model A340–200 and A340–300 series airplanes, all certified models, certificated in any category, all serial numbers; except those on which Airbus modification 49353 has been embodied in production, or Airbus Service Bulletin A340–57–4088 has been embodied in service on both wings; and except those that have been repaired on both wings as per Airbus UK Limited Repair Drawing R572–56230, or Airbus A340 Structural Repair Manual 57–26–13, page block 201.

(3) Airbus Model A340–500 and A340–600 series airplanes, all certified models, certificated in any category, all serial numbers; except those on which Airbus modification 50040 or 51585 has been embodied in production.

Reason

(d) EASA Emergency Airworthiness Directive 2006–0364–E, dated December 6, 2006, states that during MLG lubrication, a crack has been found visually in the MLG (main landing gear) rib 6 aft bearing forward lug on one A330 in-service aircraft. The crack has extended through the entire thickness of the forward lug at approximately the 4 o'clock position (when looking forward). (Similar cracks have been found on MLGs with similar configurations on other Airbus airplane models). The investigations are ongoing to determine the root causes of this event and to define the appropriate corrective actions. This situation, if not corrected, could affect the structural integrity of the MLG attachment, which constitutes an unsafe condition. The aim of the MCAI is to mandate repetitive detailed visual inspections of the LH (left-hand) and RH (right-hand) wing MLG rib 6 aft bearing lugs as the first step before finalization of the investigations, and replacement of MLG rib 6 if a crack is detected.

Actions and Compliance

(e) Unless already done, do the following actions in accordance with the instructions defined in Airbus Service Bulletin A330–57A3096, dated December 5, 2006; A340–57A4104, dated December 5, 2006; or A340–57A5009, dated December 5, 2006; as applicable.

(1) Within 60 months since first flight, or 14 days after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection of the LH (left-hand) and RH (right-hand) wing MLG rib 6 aft bearing lugs (forward and aft) to detect any cracks on the two lugs.

(2) If any crack is detected, contact Airbus immediately and proceed with the replacement of the MLG rib 6 before further flight.

(3) If no crack is detected, repeat the inspection at intervals not to exceed the applicable interval specified in paragraph (e)(3)(i), (e)(3)(ii), or (e)(3)(iii) of this AD, and if a crack is detected during the repeat inspections, before further flight, apply the corrective action mentioned in paragraph (e)(2) of this AD as applicable.

(i) 300 flight cycles (FC) for Model A330 airplanes.

(ii) 200 FC for Model A340–200 and A340–300 airplanes.

(iii) 100 FC for Model A340–500 and A340–600 airplanes.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, Attn: Tim Backman, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

(4) *Special Flight Permits:* We are not allowing special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199).

Related Information

(g) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Emergency Airworthiness Directive 2006–0364–E, dated December 6, 2006; and Airbus Service Bulletins A330–57A3096, A340–57A4104, and A340–57A5009, all dated December 5, 2006; for related information.

Material Incorporated by Reference

(h) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision	Date
A330–57A3096	Original	December 5, 2006.
A340–57A4104	Original	December 5, 2006.
A340–57A5009	Original	December 5, 2006.

Issued in Renton, Washington, on January 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1394 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24496; Directorate Identifier 2005–NM–141–AD; Amendment 39–14914; AD 2007–03–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections to detect cracks in the vertical beam webs of the body station (BS) 178 bulkhead, and corrective actions if necessary. This AD also requires a terminating modification for the repetitive inspections. This AD results from reports of numerous cracks in the vertical beam webs. We are issuing this AD to prevent fatigue cracks in certain vertical beam webs, which could result in loss of structural integrity of the BS 178 bulkhead, and consequently could impair the operation of the control cables for the elevators, speed brakes, and landing gear, or could cause the loss of cabin pressure.

DATES: This AD becomes effective March 7, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 7, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6430; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on April 18, 2006 (71 FR 19835). That NPRM proposed to require repetitive inspections to detect cracks in the vertical beam webs of the body station (BS) 178 bulkhead, and corrective actions if necessary. That NPRM also proposed to require a terminating modification for the repetitive inspections.

Comments

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

Request To Extend Compliance Time Threshold

Continental Airlines (Continental) requests that the threshold for the compliance times specified in Table 1 of the NPRM be aligned with the compliance times specified in ADs 2000–05–29, amendment 39–11639 (65 FR 14834, March 20, 2000), and 2001–02–01, amendment 39–12085 (66 FR 7576, January 24, 2001). Continental states that this will reduce the economic impact on operators from doing early inspections and will encourage operators to terminate those ADs at 20,000 total flight cycles as opposed to doing repetitive inspections.

We do not agree. Continental provided no technical justification for revising the inspection threshold. In developing an appropriate compliance time for this action, we considered the safety implications and normal maintenance schedules for the timely accomplishment of the inspections. In consideration of these items, as well as the reports of numerous cracks in the vertical beam webs in service, we have determined that the compliance times specified in Table 1 of this AD will ensure an acceptable level of safety and allow the inspections to be done during scheduled maintenance intervals for most affected operators. However, according to the provisions of paragraph (m) of the AD, we may approve requests to adjust the compliance time if the request includes data that substantiate that the new compliance time would provide an acceptable level of safety.

Request To Include an Additional Grace Period

The Air Transport Association (ATA), on behalf of one of its members, United Airlines (United), requests that the compliance time specified in paragraph (f)(2) of the NPRM be revised to reflect the intention of Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005 (referred to in the NPRM as the appropriate source of service information for accomplishing the repetitive inspections and terminating preventative modification). United proposes that all airplanes should have a minimum of 4,500 flight cycles after the effective date of the AD to do the initial inspection required by paragraph (f) of the NPRM. United also states that Boeing Service Bulletin 737–53A1225, dated October 19, 2000, specifies an interval of 12,000 flight cycles for the repetitive high frequency eddy current (HFEC) inspections. Without a grace period, United points out that operators doing those inspections would be grounded as of the effective date of the AD.

We agree and have revised paragraph (f)(2) of this AD to provide a grace period of 4,500 flight cycles after the effective date of this AD.

Request To Include Certain Airplanes in Compliance Time Table

Boeing requests that we revise Table 1, ''Compliance Times,'' of the NPRM to address airplanes inspected in accordance with Boeing Service Bulletin 737–53A1225, Revision 1.

We do not agree. Operators are given credit for actions previously done by means of the phrase in paragraph (e) of this AD that states, ''unless the actions have already been done.'' Therefore, in the case of this AD, if the required inspection specified in Boeing Service Bulletin 737–53A1225, Revision 1, has been done before the effective date of this AD, this AD does not require that it be repeated. In addition, if the required inspection specified in Boeing Service Bulletin 737–53A1225, Revision

1, has not been done before the effective date of this AD, this AD requires that inspection to be done at the applicable time specified in Table 1. We have made no change to the final rule in this regard.

Requests To Allow the Use of Boeing BOECOM M–7200–01–00546

KLM Engineering & Maintenance (KLM), Southwest Airlines (Southwest), and United request that the procedures specified in Boeing BOECOM M–7200–01–00546, dated March 1, 2001 (referred to in paragraph (j) of the NPRM) be allowed to be used after the effective date of the AD as an acceptable method of compliance with the preventative modification specified in paragraph (i) of the NPRM. Southwest states that BOECOM M–7200–01–00546 describes procedures for fabricating replacement parts, which would result in a significant cost savings to operators. United states that it has modified the majority of its fleet using instructions equivalent to those contained BOECOM M–7200–01–00546. KLM states that it has modified a majority of its fleet using Boeing Service Bulletin 737–53A1173, Revision 4, dated September 19, 2002 (Revision 3 of Boeing Service Bulletin 737–53A1173 is referred to in paragraph (k) of the NPRM as the appropriate source of service information for accomplishing the preventative modification), together with the instructions specified in BOECOM M–7200–01–00546. United and KLM would like to continue modifying their fleets using the same instructions. In addition, Boeing requests that the description of acceptable actions in paragraph (j) of the NPRM be revised to include procedures done in accordance with Boeing BOECOM M–7200–01–00546 and approved by Boeing and the FAA after March 1, 2001.

We partially agree. We agree that doing the replacement or modification specified in Boeing BOECOM M–7200–01–00546, dated March 1, 2001, may be an acceptable means of compliance with the requirements of paragraph (j) of this AD. However, it is not likely that replacement or modification in accordance with BOECOM M–7200–01–00546 can be done without deviations that require further FAA approval. It has been our experience that work done in accordance with BOECOM M–7200–01–00546 has nearly always required deviations. As noted in BOECOM M–7200–01–00546, to obtain approval for using the BOECOM, the operator must provide an Authorized Representative (AR) for the Boeing Commercial Airplanes Delegation Option Authorization Organization with the airplane identification, the details of the proposed replacement, and any deviations. Therefore, we have determined that operators who use the BOECOM procedures after the effective date of this AD must get them approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m) of this AD. We have made no change to the final rule in this regard.

Request To Remove Option To Repair

Boeing requests that the word ''repair'' in paragraph (i) of the NPRM and in the ''Relevant Service Information'' section of the NPRM be deleted. Boeing did not provide a justification.

We agree. We have re-reviewed Boeing Service Bulletin 737–53A1225, Revision 1. In several places in Parts II through IV of the Accomplishment Instructions, the service bulletin states, ''Repair or change the vertical beam * * * Refer to Figure 25 * * *.'' Figure 25 refers to ''replacement'' procedures; however, it does not refer to a repair procedure. Therefore, we have deleted ''repair or'' in paragraph (i) of this AD. We have made no change to the AD in regard to the ''Relevant Service Information'' section, because that section of the NPRM does not reappear in the final rule.

Request To Allow Repair Plans Approved Previously

Southwest requests that paragraph (j) of the NPRM be revised to allow certain repair plans approved by an AR for the Boeing Commercial Airplanes Delegation Option Authorization Organization or a Boeing Designated Engineering Representative (DER) before the release of Boeing BOECOM M–7200–01–00546, dated March 1, 2001, as an acceptable method of compliance with the preventative modification specified in paragraph (i) of the NPRM. Southwest states that it has installed thicker vertical beam webs with such approval on some of its airplanes before the issuance of Boeing BOECOM
M–7200–01–00546, dated March 1, 2001.

We do not agree with Southwest to revise paragraph (j) of this AD. Southwest did not provide sufficient data for us to determine if these earlier repairs are equivalent to those specified in Boeing BOECOM M–7200–01–00546, dated March 1, 2001. It is possible that the review and approval of earlier repairs may not have taken into account the latest information that was used to develop the BOECOM. However, if a particular repair is shown to be equivalent to that specified in the BOECOM, paragraph (m) of the AD provides operators the opportunity to apply for an AMOC to address this type of repair.

Request for Clarification

Southwest requests that paragraph (j) of the NPRM be revised to clarify that it is not necessary to replace certain stiffeners per step 4 of Boeing BOECOM M–7200–01–00546, if the existing holes can be oversized and a new identical fastener can be installed with an acceptable edge distance. Step 4 indicates that certain stiffeners must be replaced because they are offset by the thickness of the new webs. Southwest believes that the intent of that step is to eliminate detrimental fastener over-sizing and short edge distances that can result from the offset.

We do not agree with Southwest to revise paragraph (j) of this AD. Southwest did not provide any specific limits nor define any acceptable combinations of maximum over-sizing of fasteners and/or minimum fastener edge distance. Therefore, we are unable to provide approval at this time. However, under the provisions of paragraph (m) of this AD, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Request To Delete Concurrent Requirements

Delta Air Lines (Delta) requests that the concurrent requirements of paragraphs (k) and (l) of the NPRM be deleted, and to continue to allow the requirements specified in paragraph (c) of ADs 2000–05–29 and 2001–02–01 to be done separately. Delta notes that the ''Effect of Accomplishing Concurrent Requirements'' section in the preamble of the NPRM states, ''We realize that the concurrent requirements of this proposed AD will force some operators to do the preventative modifications required by AD 2001–02–01 early and to do the optional preventative modification specified in AD 2000–05–29. However, accomplishing the applicable preventative modifications together is necessary to avoid repeated disassembly and re-assembly of common parts, which increases the likelihood of additional assembly errors.'' Delta states that the timing of doing the preventative modification is an economic and operational decision, which is properly at the discretion of the operators, not a subject for an AD.

We partially agree. We do not agree with Delta that the concurrent

requirements be deleted. We determined that mandating the previous optional preventative modification specified in AD 2000–05–29 in this AD will better ensure long-term continued operational safety of the affected airplanes by removing the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety necessary for the affected airplanes. This, coupled with our understanding of the human factor errors associated with numerous repetitive inspections, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. The preventative modification required by paragraph (l) of this AD is consistent with these considerations. Additionally, accomplishing the modifications concurrently provides the most effective installation of these modifications and will avoid repeated disassembly and re-assembly of common parts of critical structure, which increases the likelihood of additional assembly errors. Boeing also has provided us with data supporting our determination.

We somewhat agree with Delta to allow the requirements specified in paragraph (c) of ADs 2000–05–29 and 2001–02–01 to be done separately. It is acceptable to do the preventative modifications required by AD 2001–02–01 before the requirements of paragraph (i) of this AD. However, paragraphs (k) and (l) of the NPRM state, ''Concurrently with the requirements of paragraph (i) of this AD * * *.'' Therefore, we have revised those paragraphs to clarify that the concurrent requirements must be done ''before or concurrently with the requirements of paragraph (i) of this AD.'' For clarification purposes, we also removed the phrase ''unless already done before the effective date of this AD'' from paragraph (k) of this AD.

Request To Supersede AD 2000–05–29

The ATA, on behalf of one of its members, Delta, requests that AD 2000–05–29 be superseded or revised to avoid conflicting requirements. Delta states that this should be done if its request in the ''Request To Delete Concurrent Requirements'' section of this AD is not feasible.

We do not agree. Paragraph (k) of this AD mandates the previously optional preventative modification specified in paragraph (c) of AD 2000–05–29. A mandatory requirement takes precedence over an optional action. Therefore, we find that no conflict exists between the requirements of this AD and AD 2000–05–29.

In addition, we considered superseding ADs 2000–05–29 and AD 2001–02–01 when developing the NPRM. We determined that doing so would have made this AD more complex and would have increased the consequent workload associated with revising maintenance record entries, because this AD does not affect all requirements of those ADs. This AD only affects paragraph (c) of those ADs. Therefore, we determined that a less burdensome approach for operators was not to supersede those existing ADs.

Request To Address Certain Airplanes

If the concurrent requirements of the NPRM are kept, Delta further requests that Boeing be tasked to address airplanes on which the replacement of the forward pressure bulkhead web has been done and on which the modification of the vertical beam has not been done.

We do not agree. We have determined that the procedures specified in the Accomplishment Instructions of Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005, adequately address all affected airplanes. Although the information mentioned by Delta may be helpful, the procedures specified in the service bulletin are adequate. Therefore, we find it inappropriate to task Boeing to revise the service bulletin and to delay the issuance of this AD. However, if additional data are presented that would justify additional actions, we may consider further rulemaking on this issue.

Requests To Allow AMOCs Approved Previously

Southwest requests that paragraphs (k) and (l) of the NPRM be revised to allow AMOCs approved previously in accordance with ADs 2000–05–29 and 2001–02–01, respectively. Southwest wants to avoid any issues as to whether or not those AMOCs must be resubmitted to us for approval.

Continental requests that paragraph (k) of the NPRM be revised to refer to Boeing Service Bulletin 737–53A1173, Revision 4, dated September 19, 2002. Continental states that Revision 4 included several corrections and work flow improvements.

We partially agree with both Southwest and Continental. We agree that approved AMOCs to paragraph (c) of ADs 2000–05–29 and 2001–02–01 that are done before or concurrently with the requirements of paragraph (i) of this AD are acceptable as AMOCs for the corresponding provisions of paragraphs (k) and (l) of this AD, respectively. Boeing Service Bulletin 737–53A1173, Revision 4, is one of those AMOCs. We do not agree with the commenters that the paragraphs (k) and (l) should be revised in regard to AMOCs. The appropriate paragraph to revise is paragraph (m) of this AD, which is the AMOC paragraph. Therefore, we have revised paragraph (m) accordingly.

Request To Revise AMOC Paragraph

Boeing requests that paragraph (m)(3) of the NPRM be changed to allow AR approval of modifications as well as repairs.

We agree and have revised paragraph (m)(3) of this AD accordingly.

Requests To Revise Costs of Compliance

The ATA, on behalf of two of its members, U.S. Airways and United, requests that the Costs of Compliance section in the preamble of the NPRM account for the work required to gain access, reassemble, complete post-modification checkouts, close access, etc. associated with the proposed inspection and preventative modification. U.S. Airways states that these actions represent an increase of almost 40 percent above and beyond the 240 work hours specified in the NPRM. United states that the proposed inspection and preventative modification are not normally accessed at any routine maintenance visit.

We do not agree. The Costs of Compliance section describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours (240 for preventative modification; 4 for each inspection) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. Therefore, we have made no change to this AD in this regard.

Request To Correct Typographical Error

Boeing requests that a typographical error be fixed in paragraph (h) of the NPRM. The reference to ''paragraph (1) of this AD'' should be changed to ''paragraph (m) of this AD.''

We agree and have changed paragraph (h) of this AD accordingly.

Conclusion

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

Costs of Compliance

There are about 3,132 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	4	$80	None	$320, per inspection cycle.	1,172	$375,040, per inspection cycle.
Preventative modification.	240	80	Between $960 and $13,620, depending on kit purchased.	Between $20,160 and $32,820, depending on configuration.	1,172 (720 airplanes have had the preventative modification incorporated).	Between $9,112,320 and $14,834,640.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–03–03 Boeing: Amendment 39–14914. Docket No. FAA–2006–24496; Directorate Identifier 2005–NM–141–AD.

Effective Date

(a) This AD becomes effective March 7, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005.

Unsafe Condition

(d) This AD results from reports of numerous cracks in the vertical beam webs. We are issuing this AD to prevent fatigue cracks in certain vertical beam webs, which could result in loss of structural integrity of the body station (BS) 178 bulkhead, and consequently could impair the operation of the control cables for the elevators, speed brakes, and landing gear, or could cause the loss of cabin pressure.

Compliance

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

Repetitive Inspections

(f) At the applicable times specified in Table 1 of this AD, do a high frequency eddy current (HFEC) inspection and detailed inspection to detect cracks in the BS 178 vertical beam webs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005.

TABLE 1.—COMPLIANCE TIMES

For airplanes on which—	Inspect—	And repeat the HFEC and detailed inspections thereafter at—
(1) An HFEC or a detailed inspection specified in Boeing Service Bulletin 737–53A1225, dated October 19, 2000, has not been done as of the effective date of this AD.	Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later.	Intervals not to exceed 6,000 flight cycles.
(2) An HFEC or detailed inspection specified in Boeing Service Bulletin 737–53A1225, dated October 19, 2000, has been done before the effective date of this AD.	Within 6,000 flight cycles since the last HFEC inspection, within 1,200 flight cycles since the last detailed inspection, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later.	Intervals not to exceed 6,000 flight cycles.

Corrective Actions

(g) If any crack is detected during any inspection required by paragraph (f) of this AD, before further flight, repair or replace the vertical beam web and associated parts with a new vertical beam web, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005, except as provided by paragraph (h) of this AD.

(h) If any damage is beyond the scope of the service bulletin or structural repair manual, before further flight, repair the damaged vertical beam web in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (m) of this AD.

Terminating Preventative Modification

(i) Before the accumulation of 50,000 total flight cycles, or within 25,000 flight cycles after the effective date of this AD, whichever occurs later, replace the vertical beams at buttock lines (BL) 5.7 and 17.0 of the BS 178 bulkhead, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005. Accomplishing the replacement ends the repetitive inspections required by paragraph (f) of this AD.

(j) Actions done before the effective date of this AD in accordance with Boeing BOECOM M–7200–01–00546, dated March 1, 2001, are acceptable for compliance with the requirements of paragraph (i) of this AD.

Prior to or Concurrent Requirements

(k) For Group 1 airplanes identified in Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005: Before or concurrently with the requirements of paragraph (i) of this AD, do the preventative modifications of the center web, vertical chords, and side chord areas, including the side chord areas at water line 207, of the forward pressure bulkhead, specified in paragraph (c) of AD 2000–05–29, amendment 39–11639 (reference Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999).

(l) For Group 2 airplanes identified in Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005: Before or concurrently with the requirements of paragraph (i) of this AD, but no later than the time specified in AD 2001–02–01, amendment 39–12085, do the preventative modifications of the vertical and side chord areas of the forward pressure bulkhead required by paragraph (c) of AD 2001–02–01 (reference Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999).

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Approved AMOCs to paragraph (c) of AD 2000–05–29 done before or concurrently with the requirements of paragraph (i) of this AD are approved as AMOCs for the corresponding provisions of paragraph (k) of this AD.

(5) Approved AMOCs to paragraph (c) of AD 2001–02–01 done before or concurrently with the requirements of paragraph (i) of this AD are approved as AMOCs for the corresponding provisions of paragraph (l) of this AD.

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 737–53A1225, Revision 1, dated April 14, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on January 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1396 Filed 1–30–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 113, 141, and 151

[CBP Dec. 07–02]

RIN 1505–AB57

Conditional Release Period and CBP Bond Obligations for Food, Drugs, Devices, and Cosmetics

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) regulations to clarify the responsibilities of importers of food, drugs, devices, and cosmetics under the basic CBP importation bond and to provide a reasonable period of time to allow the Food and Drug Administration (FDA) to perform its enforcement functions with respect to these covered articles. The amendments include a provision for a specific conditional release period of 30 days for any food, drug, device, or cosmetic which has been released under bond and for which admissibility is to be determined under the provisions of

the Federal Food, Drug, and Cosmetic Act (the Act). The amendments also clarify the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the bond and authorize any representative of FDA to obtain a sample of any imported article subject to section 801 of the Act, as amended.

DATES: *Effective Date:* The amendments set forth in this document are effective on May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Office of International Trade, (202–572–8761).

SUPPLEMENTARY INFORMATION:

Background

Federal Food, Drug, and Cosmetic Act

Section 801 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 381 referred to herein as section 381), and the regulations promulgated under that statute, provide the basic legal framework governing the importation of food, drugs, devices, and cosmetics into the United States. Under 21 U.S.C. 381(a), the Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import. The Secretary of Health and Human Services is authorized under section 381(a) to refuse admission of, among other things, any article that appears from the examination or otherwise to be adulterated or misbranded or to have been manufactured, processed, or packed under insanitary conditions. In addition, the Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision (by FDA) as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of that article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of liquidated damages in the event of default, as may be required pursuant to regulation. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes under such bonding requirements as the Secretary of the Treasury may prescribe by regulation.

Authority Delegation

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (referred to in this document as ''the HS Act''), which involved, among other things, the creation of a new cabinet-level department, the Department of Homeland Security (DHS), and the transfer or reorganization of a number of executive branch agencies and offices within existing cabinet-level departments. This legislation and subsequent reorganization plans affected the organization and operation of the Customs Service.

Section 402 of the HS Act provides that the Secretary of Homeland Security shall be responsible for administering the customs laws of the United States. With regard to the Customs Service, section 403(1) of the HS Act transferred the functions, personnel, assets, and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating to the Customs Service, to the Secretary of Homeland Security. However, notwithstanding the transfer of the Customs Service to DHS, section 412 of the HS Act provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 also authorizes the Secretary of the Treasury to delegate any of the retained legal authorities over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Order 100–16, dated May 15, 2003, the Secretary of the Treasury, by virtue of authority vested in him/her by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002, delegated to the Secretary of Homeland Security authority for customs revenue functions with certain exceptions, including that contained in paragraph (1)(a)(i) of the Order by which the Secretary of the Treasury retains the sole authority to approve regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and establishment of related recordkeeping requirements. As this final rule concerns activities involving both the completion of entry and the substance of the entry summary focusing on bond obligations and consequences that might arise as a result of post-entry and post-summary determinations of admissibility of merchandise, its subject matter is excepted from the delegation of authority to the Secretary of Homeland Security. Thus, the responsibility for this regulation rests with the Secretary of the Treasury.

Applicable Regulations

Based upon the above Federal Food, Drug, and Cosmetic Act statutory provisions, imported foods, drugs, devices, and cosmetics are conditionally released under bond while determinations as to admissibility are made; *see* 19 CFR 12.3. Under current 19 CFR 141.113(c), CBP may demand the return to CBP custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure).

The condition of the basic importation and entry bond contained in 19 CFR 113.62(d) sets forth the obligation of the importer of record to timely redeliver released merchandise to CBP on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Under current procedures, when imported merchandise is refused admission by the Food and Drug Administration (FDA), CBP issues a notice of redelivery in order to establish a claim for liquidated damages if the importer of record fails to export, destroy, or redeliver the refused merchandise in the time period prescribed in that notice of redelivery.

CBP has taken the position in C.S.D. 86–21 that the term ''end of the conditional release period'' in 19 CFR 113.62(d) has reference to a set time limitation that is either established by regulation (*see*, for example, 19 CFR 141.113(b) which prescribes a 180-day conditional release period for purposes of determining the correct country of origin of imported textiles and textile products) or by express notification to the importer of record. The end of the conditional release period does not refer to the liquidation of the entry covering the imported merchandise.

Proposed Regulatory Changes

On June 7, 2002, a Notice of Proposed Rulemaking was published in the **Federal Register** (67 FR 39322; the NPRM) that proposed to amend the regulations to provide for a specific conditional release period for

merchandise for which the FDA is authorized to determine admissibility. The changes proposed were intended to clarify importers' responsibilities under the bond, provide a defined period of time to allow the FDA to perform its enforcement functions, and provide finality to the process.

The NPRM proposed to make the following specific changes to what were then referred to as the Customs regulations (now the CBP regulations):

1. To redesignate some paragraphs in 19 CFR 141.113 due to the addition of a new paragraph (c), which provided for a specific conditional release period of 180 days for any food, drug, device, or cosmetic. The FDA would have this time period to make its determination of admissibility. Similar to the case of textiles and textile products mentioned above, the proposed amendment specified a 180-day conditional release period but also provided for a shorter period if FDA made a determination of inadmissibility before the expiration of that 180-day period. It is noted that under the proposed regulatory text, a demand for redelivery under 19 CFR 113.62(d) could be made up to 210 days (that is, 180 days plus 30 days) after the date of release of the merchandise. (The standard CBP bond condition states that redelivery may be demanded within 30 days after release or 30 days after the end of any applicable conditional release period, whichever is later.) The proposed regulation also made clear that the failure to redeliver merchandise would result in the assessment of liquidated damages equal to three times the value of the merchandise or equal to the domestic value of the merchandise in those instances where the port director has required a bond equal to the domestic value as permitted by current 19 CFR 12.3.

2. To amend 19 CFR 151.11 to authorize a representative of the FDA to obtain samples of food, drugs, devices, and cosmetic products covered by the Federal Food, Drug, and Cosmetic Act.

Comments

One hundred and forty (140) comments were received from importers, brokers, sureties, freight forwarders, express consignment operators, and trade associations. All commenters were opposed to the length of time of the proposed conditional release period. An analysis of those comments follows.

Comment

The vast majority of commenters stated that, as importers of food and health and beauty aid products, having a conditional release period of 180 days would effectively put them out of business. The costs involved in warehousing the goods would make their businesses unmanageable. Additionally, the long waiting period could cause products to fall out of specification, lose effectiveness, or become obsolete or unusable. These comments assume that any FDA-regulated merchandise must be held intact for 180 days after entry. Other commenters who stated that the 180-day period is too long recognize that the intent of the regulation was not to require that all this merchandise be held during the pendency of the conditional release period, but rather that it only apply to merchandise for which an admissibility decision by FDA is not made. Many of these commenters specifically recommended that the conditional release period end upon issuance of a notice from FDA providing that the goods may proceed (a may proceed notice) or issuance of a notice of refusal if those acts occur before the end of the 180-day conditional release period. Various other commenters noted that under FDA's own Regulatory Procedures Manual, articles which have been released by FDA are no longer considered to be in import status by that agency.

Response

After review of all the comments, CBP concurs that the 180-day conditional release period is too long. Thus, the regulatory text of this final rule is amended to provide that the conditional release period ends upon the soonest occurring of the following events: issuance by the FDA that the merchandise may proceed, issuance of a notice of refusal of admission, or expiration of the 30-day period after release of the goods.

It was not the intention of the proposed regulation to require that all goods regulated by the FDA be warehoused for 6 months while the conditional release period runs its course. When FDA issues a notice that the merchandise may proceed (which is the case on the vast majority of entries that come under FDA scrutiny), that act will serve to end the conditional release period. Accordingly, we concur with the commenter who recommended amendment of the proposed rule to indicate that the conditional release period ends upon issuance of the notice by FDA that the merchandise may proceed. In addition, the issuance of a notice of refusal of admission would end the conditional release period.

There may be some situations where FDA will need additional time to determine admissibility. Accordingly, the final rule also includes regulatory language that would permit FDA to extend the general 30-day conditional release period through express notification to the importer identifying the necessary testing requiring this extension.

Comment

Many commenters opposed the 180-day conditional release period for the reason that it extends the current conditional release period of 30 days.

Response

Under the conditions of the basic importation bond, in order to establish a valid claim for liquidated damages for failure to redeliver merchandise into CBP custody, CBP must issue a notice of redelivery within 30 days of CBP release of merchandise or within 30 days after the end of the conditional release period, whichever is later. As stated in the notice of proposed rulemaking, there currently exists no conditional release period created by regulation for merchandise the admissibility of which is determined by the FDA. Therefore, neither the proposed rulemaking nor this final rule extends the conditional release period from 30 to 180 days because no express conditional release period for FDA contexts has ever been created by regulation. The commenters were apparently confusing the conditional release period with the 30-day period, after the conditional release period, during which CBP may still demand redelivery.

Comment

One commenter suggested that the proposed sampling procedures would result in the compromising of its packaging between manufacturing sites and customers' facilities. The commenter proposed a process whereby it and other manufacturers could provide dedicated samples of present and proposed imported products, and CBP could maintain a data bank of importers and known imported products covered by these regulations.

Response

The commenter's suggestion is outside the scope of the regulation because it proposes an examination procedure that is not done on a shipment-by-shipment basis. Under the provisions of 21 U.S.C. 381, CBP delivers to the Secretary of Health and Human Services such samples of food, drugs, devices, and cosmetics that are being imported or offered for import into the United States. Through these regulations, this sampling authority is

delegated to the FDA in recognition of the practicalities of merchandise inspection. This will clarify that FDA inspectors may, under section 381(a), pull samples of imports of food, drugs, devices, and cosmetics.

Comment

One commenter asked whether CBP contemplates changing line release (otherwise known as Border Release Advanced Screening and Selectivity (BRASS)) procedures to accommodate the exchange of information necessary for providing notices of sampling.

Response

Contemplated changes to line release (otherwise known as BRASS release) systems are operational in nature and are, thus, outside the scope of this rulemaking.

Comment

One commenter suggested that the rule must be rescinded in order to comply with Executive Order (E.O.) 12866. The commenter stated that given the huge volume of imports involved, the storage costs alone would almost certainly exceed the $100 million threshold or would, at the very least, adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Response

The commenter did not provide detail or justification for these comments, but CBP does not believe that storage costs of this magnitude would be incurred as a result of the rule now being promulgated. As noted above, CBP does believe that the 180-day conditional release period originally proposed is too long and realizes that this time period could negatively affect importers. To that end, CBP has modified the conditional release period from 180 days to 30 days in the final rule to reduce potential negative impacts to imports and corresponding storage costs.

Comment

Various commenters state that CBP has failed to comply with the Regulatory Flexibility Act, disagreeing with the statement in the proposed rulemaking that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. The commenters claim that, contrary to the assertion in the notice of proposed rulemaking, assessment of liquidated damages of three times the value of imported merchandise could have a devastating impact upon the many thousands of small companies engaged in the importation of FDA-regulated products. It is also stated that the proposed rulemaking represents a radical departure from current CBP policy with regard to redelivery of FDA-regulated products.

Response

CBP does not agree because the rule is not a radical departure from current CBP policy. Additionally, in response to the comments to the proposed rule, the final rule reduces the conditional release period time from 180 days to 30 days, and potential costs that could be incurred should now be substantially less. The rule should not affect small entities that are compliant with redelivery requirements, and the rule does not impose further entry requirements or additional paperwork burden.

Comment

Various commenters suggested that CBP rescind or place a stay on consideration of the proposed rulemaking until the implications of recently passed legislation governing port security can be considered in relation to FDA's inspection protocol and CBP's release procedures. The commenters indicated that the new law requires that importers provide CBP and FDA with advance notice of their intent to import food products—a procedure that should enhance FDA's ability to promptly identify shipments that pose a safety concern. Those commenters also stated that the proposed rule should be rescinded in order to allow CBP and FDA to examine and discuss standardization of FDA notifications to importers and to take into account the commercial needs of the importing community.

Response

CBP disagrees. We are unaware of legislation governing port security that impinges upon or supplants FDA's authority to refuse merchandise pursuant to the provisions of 21 U.S.C. 381(a). That provision allows for the release of merchandise under bond while the determination as to admissibility is made. This rulemaking simply provides for the creation of a conditional release period for FDA contexts that is more clearly defined than the practice that currently exists. Furthermore, the Bioterrorism Act creates a new section 21 U.S.C. 381(m), which specifically indicates that FDA-regulated food and food products for which prior notice of arrival is not received shall not be released under a bond authorized by section 381(b). As set out in implementing regulations issued by FDA and CBP (see 68 FR 58974), decisions regarding compliance with new prior notice requirements are different from, and may precede, determinations of admissibility under other sections of the Federal Food, Drug, and Cosmetic Act or other laws. (*See* 21 CFR 1.283(g).) While CBP believes that the Bioterrorism Act will affect the importation of FDA-regulated products, it does not serve to overrule regulations concerning longstanding FDA and CBP authorities. Effect must be given to all of the substantive provisions of 21 U.S.C. 381, not part of them. Further, since the FDA-regulated food or food products for which prior notice of arrival is not received will not be released under a bond authorized by section 381(b), any issues arising concerning a conditional release period for merchandise released under bond are moot.

Comment

One commenter suggested that the time period to comment on the proposed rule be extended because of the complex underlying issues involved.

Response

CBP disagrees that the comment period needed to be extended. CBP received 140 comments to the proposed rule, and a wide variety of issues were presented in these comments. The primary concern, which was raised by all commenters to the proposed rule, was the length of the conditional release period. In response to this concern CBP has reduced the conditional release period from 180 to 30 days.

Comment

Many commenters conceded that it may be appropriate to clearly define a conditional release period, but they also suggested that 30 days would be a reasonable conditional release period for these products. Those same commenters also stated that CBP must further clarify and limit the scope of the proposed rule. Clarification is needed that clearly exempts from the conditional release period shipments that have been issued a may proceed notice. The commenters also suggested that FDA should notify importers when an entry is deemed conditional. As proposed, the commenters claimed that the rule represents a radical departure from current practices when the release of imported product is only rendered conditional through FDA's timely notification of its intent to examine or sample the product.

Response

CBP agrees that the rule should make clear that a conditional release period ends when FDA provides a may proceed notice. The final rule has been amended accordingly. CBP also agrees that a conditional release period shorter than 180 days is appropriate and has amended the rule to provide for a conditional release period of 30 days after the release of the merchandise unless FDA issues a may proceed notice or a notice of refusal which would immediately end the conditional period as provided for in the final rule. However, shipments that have been issued a may proceed notice are still subject to demands for redelivery for 30 days from the issuance of the may proceed notice. The regulation confirms that all FDA-regulated products under the Federal Food, Drug, and Cosmetic Act are conditionally released pending FDA's determination of admissibility. In the vast majority of cases the conditional release period will end when the may proceed notice is provided before the end of the time provided in the regulation.

Comment

Various commenters contended that CBP seeks to modify its regulations in order to reverse the result of the court decision in *United States* v. *So's USA Company, Inc.,* 23 CIT 605 (1999). These commenters stated that the *So's* court indicated that an importer must have affirmative notice that goods are released conditionally in order to extend the redelivery period beyond the 30 days from the date of release. Another stated that under the proposed regulation, FDA would no longer be required to advise an importer why its product is on hold, or even that it is on hold, within the first 30 days of entry.

Response

CBP disagrees. The final rule is entirely consistent with the So's opinion and it does not conflict with that opinion in any respect. Further, this regulation does not affect any notice that FDA provides to an importer under its authorities.

Comment

One commenter stated that the proposal is arbitrary because the Government has not explained the need for a 180-day period to render a decision on admissibility. The statement in the proposed rule that the 180-day period is a reasonable period of time to allow the FDA to perform its enforcement functions is not supported by any explanation.

Response

Again, CBP agrees that the 180-day period is too long a time period to have this merchandise conditionally released by regulation. Accordingly, the conditional release period has been reduced to 30 days in the final regulation. The 30-day release period can be shortened by the earlier issuance of a may proceed notice or a notice of refusal of admission. It also can be extended by an express notification from FDA to the importer.

Comment

One commenter suggested that FDA import inspectors issue a notice of review with regard to any shipment for which a may proceed notice is not provided. The commenter stated that the conditional release period could be established from the issuance date of the notice of review. That same commenter stated that for perishable products, the conditional release period should not exceed 5 days. For non-perishable products, the conditional release period should not exceed 30 days.

Response

Issuance of a new FDA form of notice that a shipment is under review is beyond the scope of this regulation. CBP disagrees that a conditional release period should be for as little as 5 days. The taking of samples and testing of merchandise could exceed that 5-day time period.

Comment

Some commenters stated that the 180-day conditional release period is not consistent with the Customs-Trade Partnership Against Terrorism (C-TPAT) in that homeland security efforts are focused on increased review of imports at the time of admission. The proposed 180-day period would provide no potential homeland security benefits since the materials would already be conditionally released to importers.

Response

CBP acknowledges that the proposed 180-day conditional release period is too long and has revised the regulation accordingly. Review of cargo for terrorism concerns preferably is performed earlier than the time of admission of merchandise. In fact, review for terrorism concerns is performed in the information transmission or presentation process, which is in advance of arrival. For example, the FDA's prior notice regulations (21 CFR 1.276 *et seq.*) require notice of food being imported or offered for import into the United States in advance of the foods' arrival, and CBP's advance electronic cargo information regulations (set forth in 68 FR 68140) require information concerning cargo before the cargo is brought into the United States by any mode of transportation, so that CBP can pre-screen all cargo based on advance data transmission. CBP's enforcement of these requirements is consistent with C-TPAT. The conditional release period is meant to address the longstanding application of the provisions of the Federal Food, Drug, and Cosmetic Act, which allow for the release of merchandise under good and sufficient bond pending an admissibility determination and therefore is in addition to the prior notice and advance cargo information requirements that implement border security measures.

Comment

Many commenters stated that a 180 day conditional release period is contrary to public policy in that merchandise which causes a public health or safety issue should be identified and refused by FDA as quickly as possible. A 180-day period raises an unreasonable risk.

Response

CBP has revised the regulation to provide for a 30-day conditional release period in order to address this concern.

Comment

Many commenters indicated that if the redelivery period was shorter than the 180-days prescribed, companies would hold merchandise pending such a period and there would be more chance for a successful recall for safety concerns, since there is less chance that the goods would have been used or consumed.

Response

CBP agrees and has revised the final rule to provide for a 30-day conditional release period in order to address this concern.

Comment

One commenter suggested that CBP should strive to allow unconditional release of FDA-regulated merchandise with the filing of the CF–3461 (CBP entry document) as long as the entry summary and carrier manifest data are consistent with information contained within the FDA approved product listings.

Response

CBP disagrees because this would have CBP making decisions as to admissibility under the Federal Food, Drug, and Cosmetic Act when this

decision-making authority clearly resides with the Secretary of Health and Human Services.

Comment

Many commenters stated that the proposed amendment to 19 CFR 151.10 of the CBP regulations regarding the collection of samples is not necessary. The commenters noted that the provisions of section 702(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) already allow for the taking of samples by representatives of FDA.

Response

Under the provisions of 21 U.S.C. 381(a), CBP delivers samples of food, drugs, devices, and cosmetics that are being imported or offered for import into the United States, to the Secretary of Health and Human Services upon his request. The proposed amendment simply clarifies that such delivery authority is delegated to representatives of FDA and is not intended to intrude on any other authority that the Secretary of Health and Human Services may already have.

Comment

A group of commenters suggested the adoption of regulatory language that would preclude the issuance of fines or penalties against an importer who distributes articles after having received an FDA may proceed notice.

Response

CBP disagrees with this proposed language. CBP cannot by regulatory amendment exempt an importer from incurring fines or penalties that may otherwise be imposed for violation of a statute.

Comment

Various commenters stated that imposition of a 180-day conditional release period is violative of U.S. international obligations under the GATT 1994, and one commenter indicated that the proposed rule is violative of the Agreement on the Application of Sanitary and Phytosanitary Measures. While conceding that some additional controls at the border are acceptable, these commenters asserted that extending CBP control over imports for a seven-month period after importation would not stand scrutiny. Additionally, it was noted that sanitary and phytosanitary procedures must be undertaken and *completed without undue delay* (commenter's emphasis) and in no less favorable a manner for imported products than for like domestic products. Imposition of a conditional release period of 180 days is claimed to be violative of this ''undue delay'' proscription.

Response

Again, CBP has reduced the conditional release period from 180 to 30 days in the final rule.

Comment

Some commenters indicated that continuation of a conditional release period after FDA admits goods into commerce is inconsistent with the provisions of the Federal Food, Drug, and Cosmetic Act. The commenters stated that conditional delivery of the merchandise to the owner is made pending a decision as to admission generally, and not solely a decision to deny admission. It is argued that conditional release also ends upon admission of the article and, as such, CBP's proposal to extend the conditional release period to 180 days without concern as to whether the merchandise has been admitted defeats the statutory intent of the Act. In contrast, another commenter stated that once a positive determination as to admissibility is made, the importer should not have to be subjected to the possibility of a redelivery demand for sampling or testing of the product. The latter commenter further contended that even after receiving a may proceed notice, an importer is left in the dark as to the status of goods that are apparently admitted into the commerce.

Response

CBP agrees that issuance of a notice from FDA that the merchandise may proceed would usually make it unnecessary to issue a redelivery notice in order to establish liability under the bond. For purposes of clarity, CBP is amending the language in the final rule to indicate that one of three acts occurring first in time—issuance of a notice of refusal, issuance of a may proceed notice or passage of 30 days from the date of conditional release—will end the conditional release period. However, it should be understood that issuance of a may proceed notice does not mean that CBP is precluded from issuing a subsequent demand to redeliver within 30 days from the end of that conditional release period.

Comment

Two commenters suggested that sureties be given the earliest possible notice (preferably in electronic form) that goods they have secured are subject to detention, refusal, and/or redelivery in order that immediate action can be taken with regard to pending and future importations. Also, mitigation guidelines should be adopted that provide extraordinary mitigation to sureties for efforts to locate, redeliver, and/or rehabilitate goods which are subject to liquidated damages for failure to redeliver into CBP custody.

Response

Mitigation guidelines for claims for liquidated damages are outside the scope of this rulemaking. Issuance of notices of detention and refusal are governed by FDA statute and regulation and any changes to issuance of those documents are also outside the scope of this regulation. Notices of redelivery may include private or confidential business information that would not be releasable to a surety unless a demand for payment was made against its bond.

Comment

One commenter proposed that the regulation require that all demands for redelivery be made contemporaneously with the notice of refusal issued by FDA. The commenter contended that this change would promote cooperation between FDA and CBP and encourage compliance through the more efficient issuance of required notices.

Response

CBP does not agree because, for operational reasons, it may not always be possible for notices to be issued contemporaneously.

Conclusion

In accordance with the foregoing analysis of the comments and further consideration of the matter, CBP has determined that the amendments of the proposed rule should be adopted as final with the sole major change being a reduction in the conditional release period from 180 days to 30 days, as set forth in the regulatory text further below. In addition, cross-references to the section of the regulations involving conditional release periods are being added to the relevant portion of the section on basic importer and entry bond conditions in 19 CFR 113.62.

Executive Order 12866 and the Regulatory Flexibility Act

This rule is not considered to be a significant regulatory action under Executive Order 12866. Accordingly, a regulatory assessment is not required.

It is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the regulatory amendments set forth in this final rule will not have a significant economic impact on a substantial

number of small entities. The rule should not affect small entities that are compliant with redelivery requirements, and the rule does not impose further entry requirements or additional paperwork burdens.

A review of data for FY2004 indicates actual CBP liquidated damage collections for FDA jurisdiction goods are comparatively rare and of modest amounts. The total amount of liquidated damages collected in FY2004 for these goods was approximately $4 million. The total revenue (including those liquidated damages) collected for all imports was $27 billion. This amount reflects 6,000 liquidated damage cases, compared to 28.1 million entries of all goods worth $1.41 trillion. Pertinent cases and liquidated damage amounts are a tiny fraction (less than 1 percent) of overall revenue collected and import value. The value of liquidated damages collected changes minimally from year to year based on the number of importers, the number of bonds, and the number of violations. CBP does not expect this amount to change as a result of this rule.

Additionally, the conditional release period should help importers, regardless of size, by clarifying that CBP must issue a redelivery notice within 30 days if it wishes to collect liquidated damages. As noted previously, there is currently no set date to issue a redelivery notice. The rule will compel CBP to act more quickly to provide notice to importers that violate the conditions of their bond. If CBP cannot act within the 30 days, it then foregoes collecting any liquidated damages.

List of Subjects

19 CFR Part 113

Customs bond conditions.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

19 CFR Part 151

Customs duties and inspection, Examination, Sampling and testing, Imports, Laboratories, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated above, parts 113, 141, and 151 of the CBP regulations (19 CFR Parts 141 and 151) are amended as set forth below.

PART 113—CUSTOMS BOND CONDITIONS

■ 1. The authority citation for part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

■ 2. Section 113.62(d) is amended by adding a sentence at the end to read as follows: ''(See §§ 141.113(b), 12.73(b)(2), and 12.80 of this chapter.)''

PART 141—ENTRY OF MERCHANDISE

■ 3. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

■ 4. Section 141.113 is amended as follows:
■ a. The heading of the section is revised to read as set forth below;
■ b. Paragraph (a) is amended by, after the heading, designating the introductory text of paragraph (a) as paragraph (a)(1), redesignating current paragraphs (1) through (5) as paragraphs (a)(1)(i) through (v), and designating the remaining text, after redesignated paragraph (a)(1)(v), as paragraph (a)(2);
■ c. In redesignated paragraph (a)(2), first sentence, the words ''Customs custody'' are removed and replaced with the words ''CBP custody'';
■ d. In paragraph (b), the two references to ''Customs'' are replaced with reference to ''CBP'' and the three references to ''Customs custody'' are replaced with reference to ''CBP custody'';
■ e. Current paragraphs (c) through (h) are redesignated as paragraphs (d) through (i);
■ f. New paragraph (c) is added;
■ g. In redesignated paragraph (d), the words ''in paragraph (a) or (b) of this section'' are removed and replaced with the words ''in paragraph (a), (b), or (c) of this section'', and the words ''Customs custody'' are removed and replaced with the words ''CBP custody'';
■ h. In redesignated paragraphs (e) and (f), the words ''Customs custody'' are removed and replaced with the words ''CBP custody'';
■ i. In redesignated paragraph (g), first sentence, the words ''Customs custody'' are removed and replaced with the words ''CBP custody''; and
■ j. In redesignated paragraph (h) and in the first sentence of redesignated paragraph (i), the words ''Customs custody'' are removed and replaced with the words ''CBP custody''.

The revisions read as follows:

§ 141.113 Recall of merchandise released from Customs and Border Protection custody.

* * * * *

(c) *Food, drugs, devices, and cosmetics*—(1) *Conditional release period.* For purposes of determining the admissibility of any food, drug, device, or cosmetic imported pursuant to section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)), as amended, the release from CBP custody of any such product will be deemed conditional. Unless extended in accordance with paragraph (c)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

(i) The date that FDA issues a notice of refusal of admission;

(ii) The date that FDA issues a notice that the merchandise may proceed; or

(iii) Upon the end of the 30-day period following the date of release.

(2) *Extension of conditional release period.* The conditional release period provided under this paragraph (c) may be extended. The FDA must issue a written or electronic notice of sampling, detention, or other FDA action to the bond principal (i.e., importer of record) within 30 days of the release of the merchandise in order for the extension of the conditional release period to be valid.

(3) *Issuance of a redelivery notice.* If FDA refuses admission of a food, drug, device or cosmetic into the United States, or if any notice of sampling or other request is not complied with, FDA will communicate that fact to the CBP port director who will demand the redelivery of the product to CBP custody. CBP will issue a notice of redelivery within 30 days from the date the product was refused admission by the FDA or from the date FDA determined the noncompliance with a notice of sampling or other request. The demand for redelivery may be made contemporaneously with the notice of refusal issued by the FDA. Notwithstanding the provisions of paragraph (i) of this section, a failure to comply with a demand for redelivery made under this paragraph (c) will result in the assessment of liquidated damages equal to three times the value of the merchandise involved unless the port director has prescribed a bond equal to the domestic value of the merchandise pursuant to § 12.3(b) of this Chapter.

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

■ 5. The general authority citation for part 151 continues to read, and a specific authority citation for § 151.11 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 3(i) and 3(j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

Section 151.11 also issued under 21 U.S.C. 381;

* * * * *

■ 6. Section 151.11 is amended as follows:

■ a. In the first sentence, the words ''Customs custody'' are removed and replaced with the words ''CBP custody'';

■ b. In the second sentence, the words ''Customs custody'' are replaced with the words ''CBP custody''; and

■ c. After the second sentence, a third sentence is added, to read as follows:

§ 151.11 Request for samples or additional examination packages after release of merchandise.

* * * For purposes of determining admissibility, representatives of the Food and Drug Administration may obtain samples of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 381).

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

Approved: January 25, 2007.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 07–408 Filed 1–30–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 2006–26584]

RIN 2135–AA25

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2007 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff for full or partial transit of the Seaway will apply in the U.S. Also, the SLSDC is changing the toll charged per pleasure craft using the U.S. locks from $25 U.S. or $30 Canadian to $30 U.S. or $30 Canadian. Several minor editorial corrections are being made in § 402.3, ''Interpretation.'' and § 402.6, ''Description and weight of cargo.'' (See **SUPPLEMENTARY INFORMATION**.)

DATES: This rule is effective March 2, 2007.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising 33 CFR 402.8, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2007 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment was necessary on these amendments.

The SLSDC is amending 33 CFR 402.8, ''Schedule of tolls'', to increase the minimum charge per vessel per lock for full or partial transit of the Seaway from $20.40 to $25.00. This charge is for vessels that are not pleasure craft or subject in Canada to the tolls under items 1 and 2 of the Tariff. This increase is due to higher operating costs at the locks.

The SLSDC is modifying its practice regarding the collection of pleasure craft tolls by allowing pleasure craft operators to pay the toll for transiting the U.S. locks, Eisenhower and Snell, in either $30 U.S. or $30 Canadian. Currently the toll is payable in $25 U.S. or $30 Canadian; however, this has resulted in confusion to pleasure craft operators when transiting both Canadian and U.S. locks. With almost eighty (80) percent of the tolls for pleasure crafts being paid in Canadian dollars and little disparity between the U.S. and Canadian exchange rates, the SLSDC is streamlining the pleasure craft toll collection process by allowing for payment in either $30 U.S. or $30 Canadian. Additionally, the SLSDC is making several minor editorial changes to 33 CFR402.3 and 33 CFR 402.5. Interested parties have been afforded an opportunity to comment; however no comments were received.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

■ Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for Part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. Section 402.3 is amended by revising paragraph (a)(5), (b)(1) and (f) to read as follows

§ 402.3 Interpretation.

* * * * *

(a) * * *

(5) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, gravel, phosphate rock, sand, stone and sulphur;

* * * * *

(b) * * *

(1) Empty containers or the tare weight of loaded containers;

* * * * *

(f) *General cargo* means goods other than bulk cargo, grain, government aid cargo, steel slabs and coal.

* * * * *

■ 3. Section 402.5 is amended by revising paragraph (b) to read as follows:

§ 402.5 Description and weight of cargo.

* * * * *

(b) The cargo tonnage shall be rounded to the nearest 1,000 kilograms (2,204.62 pounds.)

■ 4. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Column 1 Item—description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0966	0.1568
(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(*a*) bulk cargo	1.0012	0.6634
(*b*) general cargo	2.4124	1.0616
(*c*) steel slab	2.1833	0.7600
(*d*) containerized cargo	1.0012	0.6634
(*e*) government aid cargo	n/a	n/a
(*f*) grain	0.6151	0.6634
(*g*) coal	0.5911	0.6634
(3) a charge per passenger per lock	1.4233	1.4233
(4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:		
(*a*) loaded	n/a	529.79
(*b*) in ballast	n/a	391.43
2. Subject to item 3, for partial transit of the Seaway	20 percent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).	13 percent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).
3. Minimum charge per ship per lock transited for full or partial transit of the Seaway.	25.00	25.00
4. A rebate applicable to the rates of item 1 to 3	n/a	n/a
5. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [1].	25.00	25.00
6. Subject to item 3, in lieu of item 1(4), for vessel carrying new cargo on the Welland Canal or returning ballast after carrying new cargo on the Welland Canal, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1):		
(a) loaded	n/a	0.1561
(b) in ballast	n/a	0.1144

Column 1 Item—description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
7. Subject to item 3, in lieu of item 1(1), for vessel carrying new cargo on the MLO section or returning ballast after carrying new cargo on the MLO Section, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1):	0.0000	n/a

Issued at Washington, DC on January 22, 2007.

Saint Lawrence Seaway Development Corporation.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E7–1535 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–61–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

[NARA–06–0005]

RIN 3095–AB55

Use of NARA Facilities; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Correcting amendment.

SUMMARY: The National Archives and Records Administration (NARA) published a final rule in the **Federal Register** on December 20, 2006 (71 FR 76166), revising NARA's rules relating to use of NARA property. In the heading to a paragraph within a section, the rule misidentified the National Archives Southeast Region as the National Archives Southwest Region. This document corrects the identification error.

EFFECTIVE DATE: Effective on January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at 301–837–3023 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: In addition to revising 36 CFR Part 1280 provisions on the inspection of personal property, the final rule identified those properties that had come under the control of the Archivist since the last revision of the regulation. Although the final rule incorrectly used ''*The National Archives Southwest Region*'' as the heading to 36 CFR 1280.2(d), the rule did correctly identify the physical location of the property as the National Archives Southeast Region in Morrow, Georgia, as specified in 36 CFR 1253.7(e).

List of Subjects in 36 CFR Part 1280

Archives and records.

■ For the reason stated in the preamble, 36 CFR part 1280 is corrected by making the following correcting amendment:

PART 1280—USE OF NARA FACILITIES

■ 1. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Revise § 1280.2 (d) to read as follows:

§ 1280.2 What property is under the control of the Archivist of the United States?

* * * * *

(d) *The National Archives Southeast Region.* The National Archives Southeast Region in Morrow, Georgia, as specified in 36 CFR 1253.7(e).

* * * * *

Dated: January 23, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–1498 Filed 1–30–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0547; FRL–8274–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Michigan on May 26, 2006, and July 14, 2006, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Southeast Michigan area which includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. Michigan has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving Michigan's fuel requirements into the Michigan SIP because EPA has found that the requirements are necessary for Southeast Michigan to achieve the 8-hour ozone National Ambient Air Quality Standard (NAAQS). On August 15, 2006, the EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the SIP revision. During the comment period EPA received adverse comments from one commenter.

This document summarizes the comments received, EPA's responses, and finalizes the approval of Michigan's SIP revision to establish a RVP limit of 7.0 pounds per square inch (psi) for gasoline sold in Southeast Michigan.

DATES: This final rule is effective on March 2, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0547. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *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 Federal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian Share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Protection Specialist, at (312) 886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

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 is the background for this action?
II. What is our response to comments received on the notice of proposed rulemaking?
III. Is this action consistent with provisions of the Energy Policy Act (EPAct)?
IV. What action is EPA taking today?
V. Statutory and Executive Order Reviews.

I. What is the background for this action?

On June 15, 2004, the EPA designated eight counties in Southeast Michigan as nonattainment for the 8-hour ozone standard (Detroit-Ann Arbor CMSA—Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties). These counties were initially classified under the CAA as Moderate, but EPA later reclassified them as Marginal on September 22, 2004. See 69 FR 56697 (September 22, 2004) for further details. As part of this reclassification, the Michigan Department of Environmental Quality (MDEQ) and the Southeast Michigan Council of Governments (SEMCOG) committed to a schedule to identify and implement controls that will help the area attain by the Marginal attainment date of June 15, 2007.

To bring this area into attainment, the State is adopting and implementing a broad range of ozone control measures including control of emissions from cement manufacturing, control of emissions from the use of consumer/commercial products, and the implementation of a 7.0 psi low-RVP fuels program.

The State of Michigan submitted a SIP revision on May 26, 2006, and July 14, 2006, which included legislation establishing a lower RVP fuel requirement for gasoline distributed in the 8-hour ozone nonattainment area portions of Southeast Michigan. In addition, Michigan submitted additional technical support for the SIP revision, including materials supporting the State's request to waive the CAA preemption of State fuel controls pursuant to section 211(c)(4) of the CAA. On August 15, 2006, EPA proposed approval of the State's SIP revision to establish a 7.0 psi low-RVP fuel program in the Southeast Michigan area which includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. (See 71 FR 46879.) As detailed in the proposed approval, EPA found the State's demonstration sufficient to satisfy the necessity requirement of Section 211(c)(4)(C) of the CAA. In addition, EPA also proposed approval of the State's SIP revision as consistent with the provisions of the Energy Policy Act (EPAct), based on our interpretation of the EPAct provisions discussed at 71 FR 32532 (June 6, 2006).

II. What is our response to comments received on the notice of proposed rulemaking?

During the comment period we received two comment letters on the August 15, 2006, proposal. The first, from the Grand Rapids Area Chamber of Commerce, supported the proposed SIP approval and recommended that it be implemented as quickly as possible. The second, from the National Petrochemical and Refiners Association (NPRA), raised concerns regarding whether the August 15, 2006, proposal addressed all the pertinent requirements under EPAct needed to approve Michigan's fuel waiver request. NPRA's comments are addressed below.

Comment: The NPRA expressed support for EPA's fuel controls preemption review process, but commented that EPA could not approve Michigan's request for a waiver from preemption of state fuel controls, prior to finding, after public review and comment, that the proposed new fuel would not cause either supply or distribution disruptions or have an adverse impact on fuel producibility in the affected or contiguous areas. The NPRA also stated that EPA should consult with the Secretary of Energy and publish findings in the **Federal Register** that the proposed new fuel will not cause supply or distribution disruptions and will not have an adverse impact on fuel producibility in the affected area or in contiguous areas.

Response: In our proposed approval of Michigan's waiver of preemption to adopt a 7.0 psi RVP fuel program, we explained that the EPAct amended CAA section 211(c)(4)(C) by requiring EPA, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all SIPs as of September 1, 2004, under section 211(c)(4)(C), and publish for public review and comment a list of such fuels, including the state and Petroleum Administration for Defense District (PADD) in which they are used. We explained that the EPAct also placed three additional restrictions on our authority to waive preemption by approving a state fuel into the SIP. Under one restriction, where our approval of a new fuel would not increase the total number of fuels approved into SIPs as of September 1, 2004, because the total number of fuels at that point is below the number of fuels approved into SIPs as of September 1, 2004, we make a finding, after consultation with the DOE, that the new fuel will not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas.

We further explained that, on June 6, 2006, we had discussed an interpretation of the EPAct that required EPA to identify and publish a list of the total number of fuels approved into all SIPs as of September 1, 2004, and imposed three restrictions on our ability to approve future state fuel programs into SIPs.

We also explained that, based on our June 6, 2006, interpretation of the EPAct amendments, Michigan's 7.0 psi RVP requirement for Southeast Michigan would not increase the total number of fuels approved into all SIPs, as of September 1, 2004, and was not a ''new fuel type,'' because 7.0 psi RVP is on the published draft list of fuels. We further explained that we did not need to make a finding, after consultation with DOE, on the effect of a 7.0 psi RVP fuel requirement in Southeast Michigan on fuel supply and distribution in either Southeast Michigan or the contiguous areas because the fuel was not a new fuel, and the total number of fuels approved into SIPs as of our consideration of Michigan's 7.0 psi RVP fuel was not below the number of fuels approved into SIPs as of September 1, 2004, or, in other words, below the total number of fuels on the published draft list. 71 FR 46879, 46882–46883 (August 15, 2006).

At proposal, we also referenced that an April 2005 American Petroleum Institute study titled ''Potential Effects of the 8-Hour Ozone Standard on Gasoline Supply, Demand and Production Costs,'' which had concluded that the petroleum industry was capable of supplying 7.0 psi RVP fuel without any fuel supply or distribution disruptions. 71 FR 46879, 46882–46883.

We have now finalized the interpretation of the EPAct amendments, and published our final list of fuels, subject to a few revisions. See the final **Federal Register** notice

entitled ''Boutique Fuels List'' under Section 1541(b) of the Energy Policy Act.'' 71 FR 78192 (December 28, 2006). Under this final interpretation, because the 7.0 psi RVP is not a new fuel; and the total number of fuels approved into all SIPs at this time is not below the number of fuels on the final list of fuels, we are not required to make a finding, after consultation with DOE, on the effect of Michigan's 7.0 psi RVP fuel requirement in Southeast Michigan on fuel supply and distribution in either Southeast Michigan or the contiguous areas.

Comment: The commenter emphasized that the fuel supply analysis and public comment duties outlined in the EPAct apply to this approval process because currently there are no other summer maximum 7.0 psi RVP conventional gasoline areas within hundreds of miles of Detroit and Ann Arbor.

Response: As earlier explained, under the fuel type interpretation that we have adopted, where there is a new fuel type and there is ''room'' on the fuels list, we may approve a state fuel program, after consultation with the DOE, and a finding that the state fuel will not cause either supply or distribution interruptions; or have a significant adverse impact on fuel producibility in either the affected or contiguous areas. This fuel is not a new fuel and the total number of fuels approved into all SIPs at this time is not below the number of fuels on the final list of fuels (See 71 FR 78192), therefore we do not believe that we are required to make a finding on the effect of a 7.0 psi RVP fuel requirement in Southeast Michigan on fuel supply and distribution in either Southeast Michigan or the contiguous areas. In addition, EPA consulted with DOE and they have concurred with our determination that the 7.0 psi Michigan fuel does not constitute a new boutique fuel and hence a supply study is not required.

III. Is this action consistent with provisions of the Energy Policy Act (EPAct)?

In a **Federal Register** notice published on June 6, 2006 (71 FR 32532), we discussed an interpretation of the EPAct provisions which was based on a fuel type interpretation. We also identified and published a draft list of the total number of fuels approved into all SIPs as of September 1, 2004, pursuant to section 211(c)(4)(C)(i). On August 15, 2006, we proposed approval of Michigan's SIP revision as consistent with our June 6, 2006, interpretation of the EPAct provisions. On December 21, 2006, EPA Administrator Stephen L. Johnson signed a **Federal Register** notice containing EPA's final interpretation of the EPAct provisions. The final notice was published in the **Federal Register** on December 28, 2006. (See 71 FR 78192.) Our approval of Michigan's 7.0 psi RVP program is consistent with EPA's final promulgated interpretation of the EPAct.

IV. What action is EPA taking today?

EPA is approving a SIP revision submitted by the State of Michigan on May 26, 2006, and July 14, 2006, establishing a 7.0 psi RVP fuel requirement for gasoline distributed in Southeast Michigan which includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. EPA is approving Michigan's fuel requirements into the SIP because EPA has found that the requirements are necessary for Southeast Michigan to achieve the 8-hour NAAQS for ozone. EPA's approval is consistent with the boutique fuel provisions of section 211(c)(4)(C) enacted in EPAct.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions Concerning Regulations 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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 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.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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.

Paperwork Reduction Act

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.*).

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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 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 may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 18, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart X—Michigan

■ 2. The table in § 52.1170(c) entitled, ''EPA Approved Michigan Regulations'' is amended by adding a new entry in the ''State Statutes'' section after ''House Bill 5016'' titled ''House Bill 5508'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * *	*	*	*	*
State Statutes				
* * *	*	*	*	*
House Bill 5508	Amendment to Motor Fuels Quality Act, Act 44 of 1984.	4/06/06	3/2/07, [Insert page number where the document begins].	
* * *	*	*	*	*

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[FR Doc. E7–1421 Filed 1–30–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0962 FRL–8111–1]

Thiabendazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of thiabendazole in or on Brussels sprout, cabbage, and cauliflower. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on Brussels sprout, cabbage, and cauliflower. This regulation establishes a maximum permissible level for residues of thiabendazole in these food commodities. The tolerances expire and are revoked on December 31, 2009.

DATES: This regulation is effective January 31, 2007. Objections and requests for hearings must be received on or before April 2, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0962. All documents in the docket are listed on the regulations.gov website. 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: Stacey Groce, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address: *groce.stacey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0962 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 2, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0962 by one of the following methods:

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing time-limited tolerances for residues of the fungicide thiabendazole in or on Brussels sprout, cabbage, and cauliflower at 0.05 parts per million (ppm). These tolerances expire and are revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

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

Section 408(b)(2)(A)(i) of 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. . . .''

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

III. Emergency Exemption for Thiabendazole on Brussels sprout, cabbage, nd cauliflower and FFDCA Tolerances

The fungus *Phoma lingam* is the cause of a destructive disease (black leg disease) on crucifer crops and has caused periodic epidemics in the United States. The applicants from California and Washington state that an emergency situation has existed since the registration for the pesticide product that had been the industry standard was cancelled in 2002. The applicants asserted that without the requested use of thiabendazole to control this disease, significant economic losses would occur. EPA has authorized under FIFRA section 18 the use of thiabendazole on Brussels sprout, cabbage, and cauliflower seeds for control of black leg disease caused by *Phoma lingam* in California and Washington State. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of thiabendazole in or on Brussels sprout, cabbage, and cauliflower. In doing so, EPA considered the safety

standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address the urgent non-routine situations and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on Brussels sprout, cabbage, and cauliflower after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether thiabendazole meets EPA's registration requirements for use on Brussels sprout, cabbage, and cauliflower seeds or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these time-limited tolerances serve as a basis for registration of thiabendazole by a State for special local needs under FIFRA section 24(c). Nor do these time-limited tolerances serve as the basis for any States other than California and Washington to use this pesticide on these crop seeds under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for thiabendazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of 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*.

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 thiabendazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of thiabendazole in or on Brussels sprout, cabbage, and cauliflower seeds at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies 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 SF.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{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 used for human risk assessment is discussed in Table 1 on page 8 of the human health risk assessment dated November 20, 2006: *Section 18 Exemptions for the Use of Thiabendazole on Brussels sprout, Cabbage, and Cauliflower as a Seed Treatment*, available in the docket for this action.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.242) for the residues of thiabendazole in or on a variety of raw agricultural commodities. Tolerances have also been established for thiabendazole and its metabolite 5-hydroxythiabendazole at 0.4 ppm in milk, 0.1 ppm in eggs, and 0.1 ppm in meat, fat, and meat byproducts of livestock and poultry. Risk assessments were conducted by EPA to assess dietary exposures from thiabendazole in food as follows:

i. *Acute exposure.* Since there are no toxic effects noted in the database that are likely the result of a single exposure to thiabendazole, no acute dietary endpoints have been selected.

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 for thiabendazole is partially refined. For the use of thiabendazole as a seed treatment, the Agency used the analytical method limit of quantitation (LOQ) of 0.05 ppm as the appropriate residue value for Brussels

sprout, cabbage, and cauliflower and assumed 100% crop treated as inputs into the DEEM chronic dietary analysis. Inputs into the DEEM analysis for all existing uses incorporated PDP data for many commodities, experimental processing factors, anticipated residues for animal commodities and percent crop treated information. Further, estimated thiabendazole residues in drinking water were incorporated directly into the dietary assessment using the highest chronic estimated environmental concentration (EEC) value for surface water.

iii. *Cancer.* Thiabendazole has been classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' Chronic dietary risk is currently being regulated with a chronic RfD that reflects a dose level below the dose levels at which thyroid hormone balance is impacted. Since chronic dietary risk is below the Agency's level of concern, there is no concern for dietary cancer risk arising from existing uses as well as the use of thiabendazole as a seed treatment on Brussels sprout, cabbage, and cauliflower.

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

The treatment of seeds for purposes of the section 18 request is expected to be an indoor activity with no potential concern for leaching to ground water or run off to surface water. However, there is some potential for transfer of residues of thiabendazole to the environment with the planting of treated seed in the field. Drinking water was incorporated directly into the dietary assessment by extrapolation of the drinking water concentrations generated as a result of planting treated seed. Based on the GENEEC and SCI-GROW models, the estimated environmental concentrations (EECs) of for acute exposures are estimated to be 2.4 parts per billion (ppb) for surface water and 0.01 ppb for ground water. The EECs for chronic exposures are estimated to be 0.52 ppb for surface water and 0.01 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The Agency has concluded that there is low potential for residential exposure based on thiabendazole's use profile, and the proposed section 18 uses of thiabendazole on Brussels sprout, cabbage, and cauliflower seeds do not result in new residential exposure scenarios. Currently, there are no thiabendazole products registered for use by residential users. However, thiabendazole is incorporated in low concentrations into paints, adhesives, paper, and carpet. This incorporation greatly reduces the potential for exposure. The Agency has calculated worst case scenarios for thiabendazole exposure to thiabendazole treated carpet and paint. A summary of the residential exposure and risk estimates for thiabendazole are summarized in Table 6 on page 16 of the human health risk assessment dated November 20, 2006: *Section 18 Exemptions for the Use of Thiabendazole on Brussels sprout, Cabbage, and Cauliflower as a Seed Treatment*, available in the docket for this action.

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 thiabendazole and any other substances and thiabendazole 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 thiabendazole 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/.*

C. 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 database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* The toxicity database for thiabendazole includes an acceptable prenatal developmental toxicity study in rats and rabbits, which shows no increased sensitivity to fetuses. A neurotoxicity study is not required since there is no evidence in the database that supports a requirement for a developmental neurotoxicity study.

3. *Reproductive toxicity study.* Based on data submitted to the Agency as well as data from the open literature, there was no evidence of reproductive toxicity in the prenatal developmental toxicity studies in rats, rabbits, and mice or in the two-generation reproduction study in rats.

4. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility in rats, rabbits, or mice to in utero or early postnatal exposure to thiabendazole based on the prenatal developmental toxicity study rats, rabbits, and mice and in the two-generations reproduction study in rats. The developmental effects in the fetuses occurred at or above doses that caused maternal or paternal toxicity.

5. *Conclusion.* There is a complete toxicity database for thiabendazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity.

D. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs), which are used as a point of comparison against estimated drinking water concentrations

(EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf.* More recently, the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This approach provides a more realistic estimate of exposure because actual body weights and water exposures are then added to estimated and water consumption form the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs. The risk assessment for thiabendazole used in this tolerance document uses this approach of incorporating water exposure directly into the dietary exposure analysis.

EPA conducted partially refined chronic dietary assessments, which included the use of thiabendazole used as a seed treatment in/on Brussels sprout, cabbage, cauliflower seeds in addition to the existing use for thiabendazole that results in a chronic dietary exposure (food and water) for the U.S. population equivalent to 1.4% of the cPAD. The most highly exposed population subgroup is children 1 to 2 years of age with a chronic dietary exposure (food and water) which is equivalent to 4.2% of the cPAD. Since chronic dietary (food and water) estimates of risk for the U.S. population and all subgroups are below 100% of the cPAD, the Agency has no concern for chronic dietary risk from the use of thiabendazole as a seed treatment for use on Brussels sprout, cabbage, and cauliflower seeds.

1. *Acute risk.* EPA did not assess acute dietary risk for thiabendazole because no acute dietary endpoint of concern was identified for the general population or any subpopulation.

2. *Chronic risk.* EPA concluded that chronic aggregate exposure to thiabendazole from food and water will utilize 4.2% of the cPAD for the most highly exposed population subgroup, which is children 1 to 2 years of age. This chronic aggregate risk estimate is based on dietary risk from food and water. Since the estimated thiabendazole chronic aggregate dietary exposure from food and water for the general population and all subpopulations results in an estimated risk value less than 100% of the cPAD, EPA has no concern for chronic aggregate risk. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to from food will utilize 1.4% of the cPAD for the U.S. population, 4.2% of the cPAD for the most highly exposed subpopulation (children 1–2 years of age) and 1.2 % of the cPAD for females 13 to 49 years of age.

3. *Short and Intermediate-term risk.* Short-and intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). EPA does not expect short-and intermediate-term aggregate exposure to exceed the Agency's level of concern. The Agency has concluded that there is low potential for residential exposure based on thiabendazole's use profile. There are currently no thiabendazole products registered for use by residential users. However, thiabendazole is incorporated in low concentrations into paints, adhesives, paper, and carpet. This incorporation greatly reduces the potential for exposure. To assess short- and intermediate-term aggregate exposure likely to result from the use of thiabendazole on Brussels sprout, cabbage, and cauliflower as a seed treatment, as well as existing uses, the Agency combined average food and water exposure values with estimates of residential exposure. For adult populations, the Agency assumed that both painting with thiabendazole treated paint and contact with thiabendazole treated carpet could occur simultaneously and combined those exposures for the purpose of calculating the aggregate risk estimates. For infant and child populations, the Agency assumed that residential exposure was a result of contact with treated carpet only.

More detailed information on the short-and intermediate-term exposure and risk estimates for thiabendazole are summarized and can be found in the document entitled *Section 18 Exemptions for the Use of Thiabendazole on Brussels sprout, Cabbage, and Cauliflower as a Seed Treatment*, dated November 20, 2006 in Table 7 on page 17 of the human health risk assessment, by going to *http:www.regulations.gov*, and searching for docket ID number EPA–HQ–OPP–2006–0962. Double - click on the document to view the referenced information.

4. *Aggregate cancer risk for U.S.* population. Thiabendazole has been classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' Since the chronic aggregate exposure is below the level that would alter rat thyroid hormone homeostasis, there is no concern for aggregate cancer risk arising from existing uses or the use of thiabendazole use as a seed treatment in/on Brussels sprout, cabbage, and cauliflower seeds.

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 thiabendazole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

No specific CODEX, Canadian or Mexican maximum residue limits (MRLs) or tolerances have been established for thiabendazole in or on Brussels sprout, cabbage, or cauliflower. Therefore, international harmonization is not an issue at this time.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of thiabendazole in or on Brussels sprout, cabbage, or cauliflower at 0.05 ppm. These tolerances expire and are revoked on December 31, 2009.

VII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211,

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 18, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ Section 180.242 is amended by alphabetically adding the following commodites to paragraph (b) to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Brussels sprout	0.05	12/31/09
Cabbage	0.05	12/31/09
Cauliflower	0.05	12/31/09
* * * * *		

* * * * *

[FR Doc. E7–1234 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–52; MB Docket No. 05–114; RM–11190]

Radio Broadcasting Services; Hale Center, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition filed by Charles Crawford to allot Channel 236C1 to Hale Center, Texas, as a first local aural service. With this action, the proceeding is terminated. See **SUPPLEMENTARY INFORMATION**.

DATES: Effective February 26, 2007.

ADDRESSES: Federal Communications Commision, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–114, adopted January 10, 2007, and released January 12, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The reference coordinates for Channel 236C1 at Hale Center, TX, are 34–13–00 NL and 101–34–00 WL. *See* 70 FR 17384, April 6, 2005.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hale Center, Channel 236C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–1522 Filed 1–30–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–37; MB Docket No. 05–238; RM–11260]

Radio Broadcasting Services; Columbus, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making filed by Columbus Community Radio Corporation, licensee of Station WHUM–LP, Channel 253L1, Columbus, Indiana, requesting the allotment of Channel 228A at Columbus, Indiana, as its reservation for noncommercial educational NCE use. The reference coordinates for Channel *228A at Columbus, Indiana are 39–09–06 NL and 85–52–09 WL. This allotment requires a site restriction of 7.9 kilometers (4.9 miles) southeast of Columbus.

DATES: Effective February 26, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–238, adopted January 10, 2007, and released January 12, 2007. The *Notice of Proposed Rule Making* proposed the allotment of Channel 228A at Columbus, Indiana and its reservation for NCE use. *See* 70 FR 48357, published August 17, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Channel *228A at Columbus.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–1524 Filed 1–30–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–42; MB Docket No. 05–79; RM–10983, RM–11247]

Radio Broadcasting Services; Opelika and Waverly, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a counterproposal filed by Waverly Radio Broadcasters by allotting Channel 232A at Waverly, Alabama, as the community's first local aural transmission service. The reference coordinates for Channel 232A at Waverly, Alabama are 32–42–28 NL and 85–29–27 WL. This allotment requires a site restriction of 8.7 kilometers (5.4 miles) east of Waverly. To accommodate the allotment, Station WSTR(FM) Channel 231C at Smyrna, Georgia, was

downgraded to Channel 231C0 at its existing transmitter site. Additionally, the petition filed by Opelika Broadcasting Company, requesting the allotment of Channel 232A at Opelika, Alabama, as its second local FM transmission service was denied.

DATES: Effective February 26, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–79, adopted January 10, 2007, and released January 12, 2007. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Waverly, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–1523 Filed 1–30–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175 and 178

[Docket No. RSPA–04–17664 (HM–224B)]

RIN 2137–AD33

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA (also, ''we'' or ''us'') is amending the Hazardous Materials Regulations (HMR) to: require cylinders of compressed oxygen and other oxidizing gases and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft; revise the pressure relief device (PRD) setting limit on cylinders of compressed oxygen and other oxidizing gases transported aboard aircraft; limit the types of cylinders authorized for transporting compressed oxygen aboard aircraft; and convert most of the provisions of an oxygen generator approval into requirements in the HMR. PHMSA is issuing this final rule in cooperation with the Federal Aviation Administration (FAA) to increase the level of safety associated with transportation of these materials aboard aircraft.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2007.

Voluntary Compliance: Voluntary compliance with all these amendments, including those with a delayed mandatory compliance date, is authorized as of March 2, 2007.

FOR FURTHER INFORMATION CONTACT: John A. Gale or T. Glenn Foster, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, or David Catey, Office of Flight Standards Service, telephone (202) 267–3732, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Safety Issues Associated with the Air Transportation of Compressed Oxygen Cylinders and Oxygen Generators
III. Summary of the Final Rule
IV. Comments and Regulatory Changes
A. General
B. Outer Packagings for Compressed Oxygen Cylinders, Other Oxidizing Gases, and Chemical Oxygen Generators
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2. Other Oxidizing Gases Aboard Aircraft
3. Packaging Design Standards
4. Packaging Availability and Costs
5. Compliance Date
C. Pressure Relief Device Settings and Authorized Cylinders for Compressed Oxygen and Other Oxidizing Gases
D. Limits on Number of Oxygen Cylinders Transported on Aircraft
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V. Effects on Individuals with Disabilities
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A. Statutory/Legal Authority for Rulemaking
B. Executive Order 12866 and DOT Regulatory Policies and Procedures
C. Executive Order 12988
D. Executive Order 13132
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F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
G. International Trade Impact Assessment
H. Unfunded Mandates Reform Act of 1995
I. Paperwork Reduction Act
J. Environmental Assessment
K. Regulation Identifier Number (RIN)
L. Privacy Act

I. Background

The National Transportation Safety Board (NTSB) determined that one of the probable causes of the May 11, 1996 crash of ValuJet Airlines flight No. 596 was a fire in the airplane's cargo compartment initiated and enhanced by the actuation of one or more chemical oxygen generators carried as cargo in violation of requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180). Recommendations issued by the NTSB following this tragedy, in which 110 lives were lost, addressed both the initiation of the fire by the improperly packaged generators (which produce external heat when activated) and the possible enhancement of an aircraft cargo compartment fire (of any origin) by the oxygen produced by the generators or other cargo, such as gaseous oxygen in cylinders and other oxidizing agents. In response to the NTSB recommendations, the Department of Transportation has:

—Prohibited the transportation of chemical oxygen generators (including personal-use chemical oxygen generators) on board passenger-carrying aircraft and the

transportation of spent chemical oxygen generators on both passenger-carrying and cargo-only aircraft [61 FR 26418 (May 24, 1996), 61 FR 68952 (Dec. 30, 1996), 64 FR 45388 (Aug. 19, 1999)];

—Issued standards governing the transportation of chemical oxygen generators on cargo-only aircraft (and by motor vehicle, rail car and vessel), including the requirement for an approval issued by PHMSA [62 FR 30767 (June 5, 1997), 62 FR 34667 (June 27, 1997)];

—Upgraded fire safety standards for cargo compartments on aircraft to require a smoke or fire detection system and a means of suppressing a fire or minimizing the available oxygen, on certain transport-category aircraft [63 FR 8033 (Feb. 17, 1998)]; and

—Imposed additional requirements on the transportation of cylinders of compressed oxygen by aircraft and prohibited the carriage of chemical oxidizers in inaccessible aircraft cargo compartments that do not have a fire or smoke detection and fire suppression system [64 FR 45388 (Aug. 19, 1999)].

In the August 19, 1999 final rule, ''Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft,'' (Docket No. HM–224A), we amended the HMR to: (1) Allow a limited number of cylinders containing medical-use oxygen to be carried in the cabin of a passenger-carrying aircraft; (2) limit the number of oxygen cylinders that may be carried as cargo in compartments lacking a fire suppression system and require cylinders to be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device; and (3) require each cylinder of compressed oxygen transported in the passenger cabin or a cargo compartment to be placed in an overpack or outer packaging that meets the performance criteria of Air Transport Association Specification 300 for Type I (ATA 300) shipping containers. In the HM–224A rulemaking, we received more than 55 written comments, and 14 persons made oral statements at a public meeting on January 14, 1998. Based on the comments submitted in that proceeding and our assessment of alternatives, we did not adopt the proposal in Docket No. HM–224A to prohibit all transportation of all oxidizers, including compressed oxygen, on passenger-carrying aircraft.

In the preamble to the August 19, 1999 final rule, we explained that testing conducted by FAA indicated the ATA 300 container provides an ''incremental'' level of thermal protection for oxygen cylinders by increasing the time before a cylinder exposed to a fire would release its contents. However, FAA's testing also indicated the risk posed by a compressed oxygen cylinder in a cargo compartment can be further reduced, or even eliminated, if the cylinder is placed in an overpack or outer packaging providing more thermal protection and flame resistance than the ATA 300 containers currently in use. Accordingly, we announced we were ''considering a requirement that an oxygen cylinder may be carried in an inaccessible cargo compartment on an aircraft only when the cylinder is placed in an outer packaging or overpack meeting certain flame penetration resistance, thermal protection, and integrity standards.'' (64 FR 45393). In our earlier June 5, 1997 final rule (also in Docket No. HM–224A), we also indicated we were considering additional packaging requirements for chemical oxygen generators (62 FR at 30769).

On May 6, 2004, we published a notice of proposed rulemaking under Docket HM–224B (69 FR 25469). In the NPRM, we proposed to amend the HMR to: (1) Require cylinders of compressed oxygen and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft; (2) revise the PRD setting limit on cylinders of compressed oxygen transported aboard aircraft; (3) limit the types of cylinders authorized to transport compressed oxygen aboard aircraft; (4) prohibit the transportation of all oxidizing gases, other than compressed oxygen aboard cargo-only or passenger aircraft; and (5) incorporate most of the provisions of an oxygen generator approval into the HMR.

II. Safety Issues Associated With the Air Transportation of Compressed Oxygen Cylinders and Oxygen Generators

When installed on an aircraft or provided during flight for the use of passengers or crew members, compressed oxygen in cylinders and oxygen generators are subject to requirements in FAA's regulations in Title 14 of the Code of Federal Regulations, and are not subject to the HMR. When transported as cargo, cylinders of compressed oxygen and oxygen generators are subject to requirements in the HMR. Air carriers routinely transport their own oxygen cylinders and oxygen generators as replacement items for use on other aircraft. Some also transport cylinders for their passengers or other customers. Commenters to Docket HM–224A identified a continuing need for the transportation of oxygen cylinders as cargo on both passenger and cargo-only aircraft.

As determined through testing conducted by FAA in 1999, cylinders of compressed oxygen release their contents at temperatures well below those that aircraft cargo compartment liners and structures are designed to withstand. When the surface temperature of a cylinder of compressed oxygen reaches approximately 300 °F, the increase in internal pressure causes the cylinder's pressure relief device to open and release oxygen. In addition to the ValuJet tragedy, three accidents and ten incidents involving airplane cargo compartment fires have occurred between 1986 and 2002. While some of these events involved hazardous materials, in some instances the fire was caused by a malfunction of the aircraft's electrical system. The origin of other fires could not be determined. Regardless of the cause of the fire, the presence of an oxygen generator or a cylinder containing oxygen or another oxidizing gas creates the potential for oxygen or another oxidizing gas to be released and to vent directly into a fire, which significantly increases the risks posed by the fire.

FAA also found that use of an outer packaging may significantly lengthen the time a cylinder will retain its contents when exposed to fire or heat. Some outer packagings meeting the ATA specification 300 Category I extended the time by up to 60 minutes or more. However, the ATA 300 standard does not specifically address thermal protection or flame penetration. An outer packaging designed to provide both thermal protection and flame penetration could provide even more protection. A copy of the test report is available for review in the public docket.

In additional tests conducted in 2002, FAA determined that a sodium chlorate oxygen generator will initiate and release oxygen at a minimum temperature of 600 °F. However, due to uncertainties with other designs and the physical properties of sodium chlorate, the FAA has recommended that oxygen generators not be exposed to temperatures above 400 °F. A copy of this test report is also available in the public docket. This test report shows that an unprotected oxygen cylinder or oxygen generator can quickly and violently release its contents when

exposed to temperatures that can be expected from an aircraft cargo compartment fire.

III. Summary of Final Rule

Because of safety concerns associated with the air transportation of compressed oxygen cylinders and oxygen generators, we are amending the HMR to require cylinders of compressed oxygen and chemical oxygen generators to be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire. The outer packaging standard that is being adopted addresses two safety concerns: (1) Protecting a cylinder and an oxygen generator that could be exposed directly to flames from a fire; and (2) protecting a cylinder and an oxygen generator that could be exposed indirectly to heat from a fire. These performance requirements must remain in effect for the entire service life of the outer packaging.

Under this final rule, an outer packaging for a cylinder containing compressed oxygen or another oxidizing gas and a package containing an oxygen generator must meet the standards in Part III of Appendix F to 14 CFR Part 25, Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners. An outer packaging's materials of construction must prevent penetration by a flame of 1,700 °F for five minutes, in accordance with Part III of Appendix F, paragraphs (a)(3) and (f)(5) of 14 CFR Part 25.

In addition, a cylinder of compressed oxygen or another oxidizing gas must remain below the temperature at which its pressure relief device would activate and an oxygen generator must not actuate when exposed to a temperature of at least 400 °F for three hours. The 400 °F temperature is the estimated mean temperature of a cargo compartment during a halon-suppressed fire.[1] Three hours and 27 minutes is the maximum estimated diversion time world-wide; based on an aircraft flying a southern route over the Pacific Ocean. Data collected during the FAA tests indicate that, on average, a 3AA oxygen cylinder with a pressure relief device set at cylinder test pressure will open when the cylinder reaches a temperature of approximately 300 °F. This result is consistent with calculations performed by PHMSA. In analyzing PRD function, PHMSA calculated that a 3HT cylinder with a PRD set at 90% of cylinder test pressure will vent at temperatures greater than 220 °F. In order to assure an adequate safety margin for all authorized cylinders, including 3HT cylinders, we are amending the HMR to require cylinders of compressed oxygen and other oxidizing gases, which are contained in the specified outer packaging, to maintain an external temperature below 93 °C (199 °F) when exposed to a 400 °F temperature for three hours.

[1] The FAA is currently evaluating other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. Some of these agents can maintain an adequate level of safety in the compartment, but the mean temperature may be slightly higher than 400 °F, which is the level found during typical halon-suppressed fires. If an alternate agent is used, the oven soak temperature level may need to be adjusted accordingly.

IV. Comments and Regulatory Changes

A. General

PHMSA received comments from 24 entities in response to proposals and specific questions in the NPRM concerning outer packaging, PRDs, authorized cylinders, oxidizing gases aboard aircraft, and chemical oxygen generator approvals. These comments were submitted by representatives of trade organizations, hazardous materials shippers, carriers, and packaging manufacturers, including Airbus, Air Line Pilots Association (ALPA), Air Products and Chemicals, Air Transport Association (ATA), Alaska Airlines, Aviation Excellence, Aviation Mobility, Aviosupport, BE Aerospace, Carleton Technologies, Continental Airlines, Draeger Aerospace, Federal Express (FedEx), International Federation of Air Line Pilots Association (IFALPA), Intertechnique, National Transportation Safety Board (NTSB), Northwest Airlines (NWA), Satair, Scott Aviation (Scott), SR Technics Switzerland, United Parcel Service (UPS), Viking Packing Specialist (Viking), and two individuals.

Commenters generally noted our continued efforts to enhance the safe transportation of hazardous materials by air. For example, ALPA applauds our efforts to address the potential hazards associated with oxidizing chemicals, oxygen generators, and gaseous oxygen. Relevant portions of these comments are discussed in the following sections of the preamble.

B. Outer Packaging for Compressed Oxygen Cylinders, Other Oxidizing Gases, and Chemical Oxygen Generators

In the NPRM, we proposed to require an outer packaging for an oxygen cylinder and a package containing an oxygen generator to meet the standards in Part III of Appendix F to 14 CFR Part 25, Test Method to Determine Flame Penetration of Cargo Compartment Liners. We proposed to require the outer packaging to conform to these performance requirements with no deterioration for its entire service life. We also proposed to prohibit cylinders of compressed oxygen contained in an outer packaging from reaching an external temperature of 93 °C (199 °F)—which is below the temperature at which its PRD would actuate—when exposed to a 205 °C (400 °F) temperature for three hours. We proposed to add a thermal resistance test for packagings for oxygen cylinders and oxygen generators in appendix D to Part 178. We further proposed to remove the limits in § 175.85(i) on the number of oxygen cylinders that may be transported in cargo compartments not equipped with sufficient fire suppression systems. We proposed to allow outer packaging to be built either to the ATA Specification 300 standard or to a UN standard at the Packing Group II performance level. We proposed to authorize only rigid outer packagings for compressed oxygen cylinders. In addition, we proposed one year after publication of the final rule as the mandatory date to comply with the thermal resistance and flame penetration standards for outer packagings for oxygen cylinders and oxygen generators transported on board aircraft.

1. Scope of Rulemaking

FedEx and NWA ask PHMSA to reconsider its approach to this rulemaking and begin a more comprehensive assessment with other Federal agencies (including FAA and NTSB), equipment manufacturers, and the air carrier industry. NWA states the requirements on compressed oxygen cylinders proposed in the NPRM are not adequately justified. It differentiates oxygen cylinders from oxygen generators because the latter provide their own heat source and, once initiated, release an uncontrolled flow of oxygen. FedEx suggests the origins and results of cargo compartment fires should be examined in a more comprehensive manner before this rulemaking is implemented. Continental states PHMSA should seek input from both the International Air Transport Association (IATA) and International Civil Aviation Organization (ICAO) regarding the potential impact of the proposed packaging requirement on international regulations and international carriers serving the United States.

ATA states thermal protection of oxygen cylinders and oxygen generators does not increase the level of safety under the extreme conditions assumed in test protocols. ATA also states passenger carriers no longer transporting oxygen generators on passenger aircraft due to post-1996 regulations must transport oxygen generators by ground, and ground transportation of oxygen generators in compliance with post-1996 regulations has not resulted in any incidents involving oxygen generators. ATA recommends PHMSA thoroughly review all incidents pertaining to burned aircraft in order to investigate the condition of any oxygen cylinders or oxygen generators that were on board.

Aviation Excellence, an aircraft parts distributor holding a Competent Authority Approval to ship oxygen generators (UN3356) questions why the transportation of oxygen generators has become a critical concern, and, along with other commenters, cites ValuJet as the only accident of note involving oxygen generators. This commenter asserts the ValuJet incident was likely due to improper marking and loading, not improper packaging standards, and that thick smoke was the likely cause of the ValuJet incident. Aviation Excellence suggests PHMSA should address the reasons a fire occurred in the cargo bay, rather than what effect the fire had on oxygen, and notes non-hazardous materials, such as rubber and plastic, generate deadly gases and smoke when exposed to fire.

Scott notes chemical oxygen generators are currently transported by air as either components or as larger assemblies. When transported as components, the commenter states chemical oxygen generators are cylinders ranging from 2 ½ to 4 inches in diameter and 5 to 11 inches in overall length. The commenter states the size of chemical oxygen generator outer packaging would depend on whether the shipping requirement is for individual generators or a group of generators.

Intertechnique also suggests the exception in § 175.501(c) of the HMR allowing a limited number of oxygen cylinders to be transported in the aircraft cabin should recognize that oxygen cylinders used for carrying supplemental oxygen on board frequently have a large capacity, up to 213 cubic feet. Intertechnique states these cylinders must be transported from their respective manufacturing sites to the aircraft manufacturing facility, as well as to and from maintenance facilities, and restrictions on air transportation would increase turnaround times and operational costs when surface transportation is required. Intertechnique also notes that equipment containing an oxygen cylinder must be considered an oxygen cylinder, even when the cylinder is not apparent as in the case of the large number of protective breathing equipment units used on aircraft.

We disagree with the commenters' assertions that PHMSA did not conduct a comprehensive assessment before initiating this rulemaking and that the requirements proposed in the NPRM were not effectively justified. The safe transportation of hazardous materials by air is an ongoing area of significant concern for the Department. We regularly assess methods to increase the safe transportation of hazardous materials, and incorporate input from other Federal agencies (including NTSB), equipment manufacturers, and the regulated community as we develop new or revised regulatory requirements. This process was applied to this current rulemaking as well.

The FAA and PHMSA have taken a number of steps to reduce the likelihood of a fire on board an aircraft. These include limiting the transport of known flammable materials; imposing restrictions on aircraft systems likely to increase the risk of a fire, requiring increased inspection and maintenance of wiring systems; and incorporating designs to prevent the spread of fire from highly flammable zones. Despite all these measures, it is not possible to totally eliminate fires aboard aircraft. In addition to the risks presented by hazardous materials (whether shipped in violation or conformance with the HMR), structural failures, improper maintenance, and the ignition of non-hazardous materials remain possibilities. For these reasons, we cannot accept claims that PHMSA and the FAA did not conduct a sufficient assessment before initiating this rulemaking.

We also disagree with the commenter that suggested we only addressed the reasons a fire occurs in a cargo bay, rather than what effect a fire has on oxygen. A fire in cargo compartments aboard an aircraft can result from several causes, some of which cannot be controlled through regulations, including illegal shipments of oxidizing agents, heat- or fire-producing chemical interaction between certain goods damaged during shipment, or human error. FAA concluded that the use of an outer packaging may significantly lengthen the time an oxygen cylinder or chemical oxygen generator will retain its contents when exposed to fire or heat. The provisions of this final rule will reduce the risk that a fire on board an aircraft will be significantly worsened by the presence of compressed oxygen cylinders or chemical oxygen generators.

Because the possibility of fire in a cargo compartment cannot be completely eliminated, the FAA has adopted requirements to mitigate risk and increase the likelihood that a fire can be suppressed and contained long enough to land the aircraft. The FAA has upgraded fire safety standards to require inaccessible cargo compartments on passenger aircraft to have a fire detection and three-hour suppression system, by minimizing the available oxygen (e.g., 14 CFR 25.857(c), 25.858, 121.314(c)). In addition, flame penetration and fire resistance requirements apply to cargo compartments on both passenger and cargo-only aircraft (e.g., 14 CFR 25.855, 121.314(a)). However, these requirements do not, and cannot, address those situations where a fire is actually fed by oxygen provided by other cargo, such as cylinders of compressed oxygen or other oxidizing gases or oxygen generators.

Accordingly, as discussed in the ''Background'' section above, we have prohibited the transportation of chemical oxygen generators on board passenger-carrying aircraft and the transportation of spent chemical oxygen generators on both passenger-carrying and cargo-only aircraft, and we issued standards governing the transportation of chemical oxygen generators on cargo-only aircraft, including the requirement for an approval issued by PHMSA. We have also imposed additional requirements on the transportation of compressed oxygen cylinders by aircraft; and prohibited the carriage of chemical oxidizers in inaccessible aircraft cargo compartments that do not have a fire or smoke detection and fire suppression system. The amendments adopted in this final rule are a continuation of our ongoing objective to reduce the risk of another catastrophic event like the ValuJet crash.

Because fires on aircraft cannot be totally eliminated, and the consequences of fire in air transportation are far greater than those in highway transportation, an absence of incidents involving ground transportation of oxidizing gases and oxygen generators does not justify postponing these actions. The fact that an oxygen cylinder or generator did not release oxygen during a particular aircraft fire does not diminish the potential for enhancement of a cargo compartment fire by the release of oxygen and the likely consequences. For

these reasons, we disagree with the comment that PHMSA should only address the reasons a fire occurs in a cargo bay, rather than what effect a fire has on oxygen.

We accept the suggestion that international carriers and international regulations should be considered when undertaking any rulemaking potentially affecting international commerce. The escalating quantity of hazardous materials transported in international commerce necessitates the harmonization of domestic and international requirements to the greatest extent possible. However, we cannot wait for an international agreement when it is necessary to address a known safety hazard. Therefore, we intend to submit a paper to the ICAO Dangerous Goods Panel proposing that the ICAO Technical Instructions be amended consistent with this final rule.

We also considered this proposal based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal in this rulemaking is to increase the level of safety for the transportation of oxygen cylinders and oxygen generators currently in the HMR in the most cost-effective manner possible. We believe the adoption of this final rule contributes to meeting that goal.

Larger cylinders used as part of an aircraft's supplemental oxygen system (up to 213 cubic feet) makes it impractical for them to be transported (as cargo) in the aircraft cabin under the exception in § 175.501(c). As noted above, when these cylinders are installed on the aircraft, they are not subject to the HMR, nor are Protective Breathing Equipment (PBEs) that are part of the required equipment on board the aircraft—but alternate packagings may be used for these cylinders and PBEs when carried or shipped as replacement items (or company material), ''provided such packagings provide at least an equivalent level of protection to those that would be required by this'' final rule. 49 CFR 175.8(a)(3) (as adopted at 71 FR 14605 [March 22, 2006]).

We disagree with the commenter's opinion that thick smoke was the likely cause of the ValuJet incident. First, that view has little support in the NTSB's findings (at p. 134 of the accident report) that ''[o]nly a small amount of smoke entered the cockpit before the last recorded flightcrew verbalization * * * including the period when the cockpit door was open,'' and the ''loss of control was most likely the result of flight control failure from the extreme heat and structural collapse,'' although ''the Safety Board cannot rule out the possibility that the flightcrew was incapacitated by smoke or heat in the cockpit during the last 7 seconds of the flight.'' Moreover, even if the commenter were correct, that circumstance would support the measures we are adopting to prevent the enhancement of a cargo compartment fire (and the associated smoke) caused by the release of oxygen from a cylinder or an oxygen generator.

BP Aerospace and Intertechnique recommend an exception from the proposed packaging requirements for cylinders that are nominally empty, with only a small amount of residual pressure, on the ground that the hazards of these ''empty'' cylinders are negligible. BP Aerospace states it is a common practice to transport such cylinders in order to avoid possible contamination of the cylinder from inward leakage. Intertechnique notes many cylinders are shipped before filling (new or repaired cylinders) or after being emptied (for maintenance).

Oxygen is a Division 2.2 gas and, as such, is only subject to the regulations when the pressure in the container (cylinder) equals or exceeds 280 kPa (40.6 psia) at 20 °C (68 °F) (see § 173.115(b)(1)). Therefore, oxygen cylinders where the pressure has been reduced to less than 280 kPa (40.6 psia) are not subject to the regulations and are considered to have been purged to the extent necessary for the purposes of § 173.29(b)(2)(ii). In addition, a completely empty cylinder (either new and never filled or purged of all its contents) is not subject to the packaging requirements adopted in this final rule (or to other transportation requirements in the HMR).

2. Other Oxidizing Gases Aboard Aircraft

Several commenters also addressed our proposal to prohibit the transportation of all oxidizing gases (other than compressed oxygen) aboard both passenger and cargo-only aircraft. In the NPRM, we discussed our concern that cylinders containing these materials, if exposed to a fire, could intensify the fire to the extent that it would overcome the compartment's halon fire suppression system, penetrate the cargo compartment sidewalls, and cause severe damage or destruction of the aircraft. We stated we had no information to support the need for the following materials to be transported aboard aircraft: ''Air, refrigerated liquid, (cryogenic liquid),'' ''Carbon dioxide and oxygen mixtures, compressed,'' ''Nitrous oxide,'' ''Nitrogen trifluoride, compressed,'' ''Compressed gas, oxidizing, n.o.s.,'' and ''Liquefied gas, oxidizing, n.o.s.''

Air Products expressed agreement with the Department on the need to increase the level of safety in the transportation of oxidizing gases by aircraft, and it states the list should not be limited to oxygen. Air Products suggests materials in Division 2.2 with a subsidiary risk of 5.1 can be transported safely by aircraft and pose no great risk to the aircraft unless the oxidizing material is exposed to abnormally high temperatures over an extended period of time. This commenter suggested packaging performance requirements can be met by limiting the fill density pressure of the oxidizing material and configuring the cylinder so that oxidizing material cannot escape at temperatures up to and including 205 °C (400 °F). Air Products submitted alternative wording for a new section under § 173.302a that would pertain to nitrogen trifluoride and nitrous oxide.

Alaska Airlines opposes the proposal to ban Division 2.2 gases with a 5.1 subsidiary risk for transportation by air, stating it is not aware of any experience indicating a safety problem. According to the Alaska Airlines' comments, consumers in Alaska use some of these gases, and in many cases, could not obtain them if not via air transportation. One Anchorage vendor of gas products estimates 20,000 to 50,000 pounds of cylinders of compressed oxygen and nitrous oxide are transported by air every month to medical facilities around the State, with empty cylinders constantly being returned for refilling and return to the hospitals. Alaska Airlines states DOT needs to consider the impact of this proposed rule on the health and welfare of Alaskans, not to mention the subsequent increased cost of medical care. This commenter also notes international regulations identify two additional materials classified as Division 2.2 materials with a 5.1 subsidiary hazard that are permitted on passenger aircraft: ''UN2037, Receptacles, small, containing gas (oxidizing) without a release device, non-spillable,'' and ''UN2037, Gas cartridges (oxidizing) without a release device, non-spillable.'' The commenter concludes that if PHMSA does ban oxidizing gases, it will create additional variances between United States and United Nations dangerous goods regulations DOT has been working to harmonize.

The comments summarized above indicate a continuing need for air transportation of most of the oxidizing gases we had proposed to prohibit on

aircraft, including Compressed gas, oxidizing, n.o.s.; Nitrogen trifluoride, compressed; and Nitrous oxide. Based on those comments, we conclude we should not prohibit air transportation of these oxidizing gases; however, the same outer packaging standards adopted for cylinders of compressed oxygen and oxygen generators should also be required for these other oxidizing gases. The only exception is that Air, refrigerated liquid (cryogenic liquid), which is already prohibited on passenger aircraft, will also be prohibited on cargo-only aircraft.

3. Packaging Design Standards

In the NPRM, we proposed to require a cylinder of compressed oxygen to remain below the temperature at which its PRD would activate, and an oxygen generator not actuate, when exposed to a temperature of at least 205 °C (400 °F) for three hours. ALPA recommends the design standards be raised to 260 °C (500 °F), instead of 205 °C (400 °F), and to 3.5 hours, instead of three hours, in cargo compartments required to have an active fire suppression system, and maintain the knock-down fire status to allow for a safety margin for temperature in excess of the expected mean of 205 °C (400 °F). In addition, Aviation Mobility states there is no aircraft that would survive the extreme conditions for the three-hour duration which the rule would require the cylinder to survive without the actuation of the PRD.

We disagree. We continue to believe that these requirements for outer packagings are the most appropriate means to prevent the release of oxidizing gases from a cylinder or chemical generator, which could feed an aircraft compartment fire. The U.S. DOT/FAA Report titled ''Evaluation of Oxygen Cylinder Overpacks Exposed to Elevated Temperature'' (included in the docket of this rulemaking), found that: ''In a Class C compartment, the fire would be detected and agent discharged to extinguish the fire. In the event of a suppressed but not fully extinguished fire, which would be the case if the origin were a deep-seated fire, the temperatures in the compartment could reach 205 °C (400 °F).'' For a deep-seated fire in a Class C cargo compartment, a temperature of 205 °C (400 °F) is the estimated mean temperature of a cargo compartment during a halon-suppressed fire.

The FAA test results support our conclusion that a temperature of at least 205 °C (400 °F) is sufficient for the flame resistant penetration test method. In addition, the conditions noted in the NPRM are a worst-case scenario, and were based on a deep-seated fire in a Class C cargo compartment, the duration of which would be the maximum estimated diversion flight time for an aircraft flying a southern route over the Pacific Ocean. However, limiting the requirement for overpacks capable of meeting the three-hour suppression performance standard to overseas flights would be impractical, since this rulemaking anticipates in most instances the overpacks will be provided with the containers, rather than purchased and maintained by an air carrier. Since the initial shipper may not know the final destination of its product, it would also be unable to reliably determine when to use a three-hour overpack as opposed to a one-hour overpack. In any case, applying a lesser fire penetration and thermal protection standard to overpacks because of the shorter flight times to diversion airports in geographic areas other than the South Pacific would undermine the existing rationale behind our requirements that Class C cargo compartments on airplanes be equipped to meet the three-hour fire suppression standard. Therefore, we are amending the HMR to require each cylinder of compressed oxygen remain below the temperature at which its PRD would activate, and that an oxygen generator not actuate, when exposed to a temperature of at least 205 °C (400 °F) for three hours.

We also received comments on the proposal to require an outer packaging to be built either to the ATA Specification 300 standard or to a UN standard at the Packing Group II performance level. One commenter (Aviation Mobility) states it encloses oxygen cylinders in a manner that provides safe delivery to the gate and use of the cylinder in the passenger compartment without altering the outer packaging. The commenter notes that, under Special Provision A52 of the HMR, an oxygen cylinder may be carried in the passenger compartment or an inaccessible cargo compartment on a passenger aircraft if it is in ''an overpack or outer packaging that conforms to the performance criteria of Air Transport Association (ATA) Specification 300 for Category I shipping containers.'' The same commenter states its specific outer packaging meets the ATA 300 definition of a ''rigid pack'' and questions whether PHMSA intended any difference in its use of the term ''rigid'' in the NPRM.

For clarification, we proposed requiring an outer packaging to be built either to the ATA Specification 300 standard or to a UN standard at the Packing Group II performance level to provide greater flexibility in the design of outer packaging for oxygen cylinders. In the NPRM, we proposed to authorize only rigid outer packagings in order to clarify our original intent to ensure outer packaging provides an adequate level of safety. In addition to meeting the flame penetration and thermal resistance protection requirement, we will continue to require the outer packaging for compressed oxygen cylinders to meet certain performance criteria. Therefore, we are amending the HMR to allow the outer packaging be built either to the ATA Specification 300 standard or to a UN standard at the Packing Group II performance level. In addition, we are amending the HMR to authorize only rigid outer packaging for compressed oxygen cylinders.

4. Packaging Availability and Cost

Commenters expressed concern about the availability and cost of the proposed outer packaging, and the number of different types of outer packagings meeting the proposed thermal resistance and flame penetration requirements. For example, Continental states because this packaging is not yet available, any cost estimate is subject to significant error. Continental estimates the initial cost to provide outer packagings meeting the required flame and temperature penetration standards will exceed $850,000. The same commenter estimates costs of at least $500,000 to modify its medical oxygen service.

Scott states it would need a minimum of nine (9) different-sized ATA 300 specification containers to accommodate all of the high-pressure oxygen cylinders it currently supplies, and additional size packages may be required to adequately accommodate high pressure oxygen cylinders supplied by other entities or to accommodate cylinder configurations for new aircraft development programs. This commenter estimates the average cost of currently used outer packagings would range from $300 to $500 per container. Scott recommends PHMSA conduct additional analyses to determine the number of different outer containers that would be required to accommodate chemical oxygen generators.

Scott also disputes our statement in the NPRM that only a few small aviation entities will require flame and heat protective reusable packaging and suggests PHMSA did not consider the major potential impact of this rule on small entities. According to Scott, ''many small aircraft operators do not provide their own oxygen system maintenance or have extensive spare part inventories but, rather, rely on the shipping of these components to specialized oxygen repair stations, by air, in order to maintain their aircraft in

a timely manner.'' Scott states these companies would be required to obtain outer packages meeting the requirements of this proposed rule in order to ship oxygen cylinders and valve and regulator assemblies to oxygen service shops for maintenance. These outer packages ''would then be used to return these items to the operator in the same manner that the present rule has required the operators to purchase ATA 300 specification containers for that purpose.''

ATA contends the requirement for carriers to comply with the proposed outer packaging requirements would be costly and prohibitive to air carriers of oxygen generators, forcing carriers to refuse passengers or cancel flights because of the lack of generators supplying emergency oxygen to aircraft passenger seats. It states it conferred with vendors and found neither existing packaging, nor a design amenable to the proposed requirements in the developmental stage of manufacturing. ATA estimates replacement packaging costs of approximately $2,200,000 to $3,350,000 for its members, without any substantial improvement in safety. This commenter states this cost could effectively double as existing ATA Specification 300 packaging, acquired in response to the final rule in HM–224A, could not be converted for other uses.

NWA states it uses seven cylinder types and estimates four separate sized boxes will be required for its seven cylinder types to meet the proposed packaging requirement. NWA foresees the replacement of 1,400 boxes at twice the cost necessary to replace the boxes that were required by HM–224A. In addition, the commenter says it would be forced to scrap the boxes purchased in compliance with HM–224A before the exhaustion of their useful life. FedEx notes the proposed outer packaging is neither currently available for purchase, nor does it know when it will be available, or at what cost. It estimates the required packaging will range between $600 and $900 per unit, for an estimated cost imposed on its operations of between $360,000 and $540,000.

Intertechnique states the introduction of the packaging proposed in the NPRM will lead to added costs for shipping cylinders from the cylinder manufacturer to aircraft manufacturers and airlines, and to and from airline maintenance sites. Intertechnique asserts there are approximately 500 new cylinders per year requiring outer packagings and those packagings delivered to aircraft manufacturers may be sent back for future shipment (with an estimated loss of 20% per year). It says the outer packagings of cylinders shipped to airlines will be retained by the airlines for their own shipment or repair, and new packagings will have to be bought for each shipment. Intertechnique estimates a replacement rate of 10% per year, with a best estimate need of 300 new outer packagings per year, leading to an average cost increase of the oxygen cylinders and repairs of 10 to 15% depending on the final cost of packaging not yet available on the market.

Satair states it is currently spending approximately $50,000.00 on packaging and other materials to facilitate the shipping of chemical oxygen generators. It estimates a ten-fold increase in packaging and other material costs needed to implement the requirements in the NPRM, for a total of approximately $500,000.00. This commenter considers this to be a significant impact on its business and would have to bill and recover this expense from its customers, the airlines. Aviation Excellence states the additional cost for packaging and return shipments will impose a prohibitive financial burden.

Many of the commenters indicate they do not provide medical oxygen service to persons with disabilities, and, therefore, do not address whether the proposals would increase the cost to transport medical oxygen. However, Continental and ATA state they offer this service and this requirement would have to be evaluated for the cost impacts and feasibility of this service. Aviation Mobility states it is not aware of any outer packaging in existence that would meet the fire resistance criteria proposed in the NPRM. The commenter states the cost of this service would become too expensive to pass along to customers, or for carriers to absorb. This same commenter asserts that, as a result of the costs to acquire the outer packaging specified in this rulemaking and the added weight of such a packaging, most carriers transporting medical oxygen to passenger air carriers will discontinue this service. Further, this commenter states all cost speculations with regard to such a packaging are merely theoretical. ATA recommends PHMSA reconsider this rulemaking action to consider possible disadvantages to disabled passengers requiring medical oxygen.

We considered possible cost increases and the availability of outer packaging for oxygen generators and cylinders containing compressed oxygen and other oxidizing gases. At least one packaging manufacturer (Viking) appears to have addressed the flame penetration and thermal penetration standard and states it is able to produce the required packaging. That manufacturer provided estimates of costs for the existing ATA specification 300 packagings and the new outer packagings, and those estimates were used in our complete analysis of the associated costs to implement this final rule in the regulatory evaluation (available for review in the public docket for this rulemaking).

In that regulatory evaluation, we specifically discussed cost figures provided by other commenters and the basis on which we estimated a total cost of $10.8 million ($7.6 million discounted to present value) over 15 years, for the transport of oxygen cylinders; and $27.0 million ($16.9 million discounted to present value) over 15 years, for the costs associated with the transport of chemical oxygen generators. While some of the cost figures provided by other commenters are higher, those figures are reasonably close to the estimates used in the regulatory evaluation; moreover, the estimates used in the regulatory evaluation do not reflect the likelihood that, when this requirement becomes effective, additional manufacturers will produce the required packaging, thereby reducing purchase prices. With competitive packaging pricing available in the marketplace, air carriers will be in a better position to make cost-effective business decisions to continue providing medical oxygen service to the disabled community and will continue to do so. Even if we were to assume the industry commenters were correct, and the cost of this rule was to double, the benefits would still outweigh the higher costs. Thus, the agency has carefully weighed these comments in deciding to proceed with this rulemaking initiative.

We also estimated benefits of this rule over the next 15 years range from $30 million, if a single cargo aircraft accident is averted, to $357 million, if a single passenger aircraft accident is averted. This indicates a significant potential to improve the level of safety associated with the continued transportation aboard aircraft of packages of chemical oxygen generators and cylinders containing compressed oxygen and other oxidizing gases.

PHMSA continues to believe that only a few small entities will be affected by this rulemaking. For example, we learned from container manufacturers that only ten small air carriers transport cylinders of compressed oxygen. Outside of Alaska, air shipments of other oxidizing gases are very infrequent, according to the comment of Air Products, and most small entities will be able to utilize ground

transportation or local companies for shipping cylinders of compressed oxygen or other oxidizing gases.

Therefore, we are amending the HMR to require an outer packaging for an oxygen cylinder and a package containing an oxygen generator to meet the standards in Part III of Appendix F to 14 CFR Part 25, Test Method to Determine Flame Penetration of Cargo Compartment Liners. We are also amending the HMR to require cylinders of compressed oxygen and chemical oxygen generators to be transported in an outer packaging meeting certain flame penetration and thermal resistance requirements when transported aboard an aircraft. In addition, we are amending the HMR to require that the outer packaging be capable of meeting the requirements throughout its service life.

5. Compliance Date

PHMSA received several comments regarding the proposed effective date of one year after publication of the final rule as the mandatory date to comply with this final rule. Many commenters state one year does not provide adequate time to resolve concerns regarding a lack of packaging development and availability, manufacturing lead times, inventory, logistics, and documentation. For instance, Scott states the currently proposed rule, with a proposed compliance date of one year after promulgation, provides neither the time necessary for an orderly process of ensuring compliance, nor a mechanism by which compliance can be readily determined. The commenter also states the demand for reusable flame and heat-resistant packagings required by the proposed rule may be much higher than PHMSA currently envisions. Another commenter (ATA) states a one-year effective date would impose additional costs on carriers by forcing the removal of aircraft from service to replace the outer packaging proposed in the NPRM. In response to our inquiries in the NPRM regarding the effective date, we received recommendations ranging from one to three years for implementation of the effective date of this final rule.

It appears compliance with the additional overpack requirements of one year following the publication of the final rule as proposed in the NPRM may result in insufficient time or undue hardship on the affected parties to come into compliance with the new requirements. A compliance date that allows flexibility for the affected parties and sufficient time for various manufacturers to develop and market the necessary equipment would better serve the overall objectives of this rulemaking. Therefore, we are amending the HMR to establish a mandatory compliance date of two years following the effective date of the final rule.

C. Pressure Relief Device Settings and Authorized Cylinders for Compressed Oxygen and Other Oxidizing Gases

In the NPRM, we proposed amendments to the HMR pertaining to limits on PRD settings and cylinders authorized for the transportation of oxygen aboard aircraft. Compressed Gas Association (CGA) Pamphlet S–1.1, which has been incorporated by reference in the HMR, specifies the rated burst pressure of a rupture disk must be no greater than the cylinder minimum test pressure. However, CGA Pamphlet S–1.1 does not set a lower burst limit on the disks, increasing the risk of oxygen releases at elevated temperatures. To better prevent a cylinder from releasing its contents when exposed to a fire, we proposed to require an oxygen cylinder to be equipped with a PRD that has a rated burst pressure equal to the cylinder test pressure with allowable tolerances of −10 to plus zero percent.

We also proposed to limit cylinders authorized for the transportation of compressed oxygen aboard aircraft to DOT specifications 3A, 3AA, 3AL, and 3HT in order to minimize numerous PRD setting requirements for oxygen cylinders aboard aircraft. Although numerous specifications are authorized for oxygen and other oxidizing gases (49 CFR 173.201, 173.202a, 173.204, 173.204a), we understand these four specifications account for the vast majority of the cylinders used to transport these materials aboard aircraft—in addition to cylinders made of composite materials and authorized under special permit. (Specification 3HT cylinders are only authorized for aircraft use, and specification 3A and 3AA cylinders represent approximately 70% of the cylinders in all service.) This proposed limitation was not intended to restrict the use of composite cylinders that are currently, or may in the future be, authorized for transporting oxygen and other oxidizing gases under special permits.

Several commenters, including ATA, noted the proposed PRD setting for a DOT specification 3HT was incorrect. The NPRM should have stated the rated burst pressure of a rupture disk on a 3HT cylinder must be 90% of the cylinder test pressure. In this final rule, we have corrected this error.

ATA also asks about the proposal for replacement of PRDs specifically on 3HT cylinders, and whether this standard will be applied to other types of cylinders. Aviation Mobility expresses concern that raising the discharge pressure of PRDs on any gas cylinder will increase the potential for catastrophic failure. Continental Airlines states the limit on PRD settings proposed in the NPRM does not significantly increase the level of safety beyond current hazardous materials regulations. It questions the need to raise the PRD standards based on the lack of incidents related to compressed oxygen that meet existing temperature and pressure relief standards. It argues the level of protection of the aircraft transporting the oxygen cylinders is not increased even if the level of protection to the oxygen cylinders is increased.

Continental also raises cost concerns and estimates the costs for its company to meet the new PRD settings could exceed $2,500,000, of which $500,000 would be required to modify its medical oxygen service. According to this commenter, these costs will result in additional expense to disabled customers via increased oxygen service fees, and may force airlines to consider discontinuing this service. Scott suggests the requirement for PRDs apply after the next requalification.

NWA expresses concern about the cost to replace approximately 2,800 PRDs in its current supply of cylinders. The commenter states its cylinder maintenance is performed by a vendor and this rulemaking will force cylinders out of service for an extended period of time. NWA also recommends PHMSA perform an analysis to determine the effects a slow venting cylinder will have on the concentration of oxygen in cargo holds.

For cost reasons and ease of maintenance, according to Intertechnique, most PRDs are standard items, and changing the PRDs to match the new requirements will increase costs and delays. Intertechnique recommends that the reliability of PRDs with a smaller tolerance should be considered. In addition, Intertechnique states increasing the PRD setting does not drastically change the safety level. The leaking of the cylinder will be delayed until the temperature is higher (as will be the pressure), but the energy released at the moment of bursting the device will be higher, thus propelling oxygen with a higher flow and a larger velocity to a larger area. Intertechnique also states proof pressure varies from steel to composite cylinders, and the same PRD can be used for both types. It says changing the tolerance will lead to duplicating the PRD part numbers and cost increases, resulting in confusion within workshops that could lead to errors in installing PRDs. In

addition, Intertechnique states the packaging should include a pressure balancing device (PBD) to prevent packaging burst due to pressure change within the cargo compartment during ascents and descents.

PHMSA continues to believe increasing the discharge pressure of PRDs on cylinders used to transport oxygen and other oxidizing gases will significantly increase the level of safety without increasing the potential for catastrophic failure of the packaging. One objective of this rulemaking is to prevent the actuation of the cylinder PRD so as to retain the cylinder's contents during an otherwise controllable cargo compartment fire. The outer packaging requirement proposed in the NPRM is designed to protect a cylinder and oxygen generator that could be exposed directly to flames from a fire, or indirectly, to heat from a fire. A new limit on the PRD settings on cylinders containing compressed oxygen or other oxidizing gases transported aboard aircraft will help ensure the contents of the cylinder are not released into an aircraft cargo compartment in the event of a fire. The design safety margin on the cylinder is high enough that the risk of catastrophic failure of the cylinder is not a serious concern.

Therefore, we are amending the HMR to require a new limit on the PRD settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft to ensure the cylinder contents are not released into an aircraft cargo compartment in the event of a fire. In order to accomplish this, we are amending the HMR to limit the PRD to a setting that will prevent it from releasing at temperatures the cylinder will experience while protected by the outer packaging. We are also amending the HMR to require cylinders containing oxidizing gases, including oxygen, to be equipped with PRDs that have a set pressure equal to the cylinder test pressure with allowable tolerances of −10 to plus zero percent.

In order to eliminate a significant portion of the costs associated with this requirement, we are adopting the commenter's suggestion to apply this requirement to cylinders beginning with each individual cylinder's next requalification date. Although not required, many cylinder owners replace the PRD during the five-year requalification as recommended by CGA Pamphlet S–1.1. Because relatively few cylinders are shipped by air, any additional costs associated with replacing the PRD at the next requalification date will be negligible.

Several commenters (Airbus, ATA, Carleton, Draeger, Intertechnique, Satair, Scott Aviation, and UPS) ask PHMSA to reconsider the requirement to limit the transportation of compressed oxygen aboard aircraft to DOT specifications 3A, 3AA, 3AL, and 3HT cylinders. Airbus states this proposed restriction is based on the assumption that these cylinders are the most commonly used for the transportation of compressed oxygen aboard aircraft, and on an apparent intention by PHMSA to limit the number of PRD settings. BE Aerospace contends the large volume of these cylinders is primarily because they have been in existence for many years. Scott confirms that the majority of oxygen cylinders currently in aviation service are DOT specification 3AA and 3HT cylinders.

Several commenters appear to believe we were proposing to exclude composite cylinders on board aircraft, despite the fact that a significant portion of compressed oxygen cylinders are currently made of composite material. For example, Airbus states composite cylinders combine weight-saving potential with significant cost reductions; perform as well as steel/aluminum cylinders; are subject to the same qualification tests as steel/aluminum cylinders; and are likely to be used increasingly in the future, especially the storage of oxygen as part of a gaseous oxygen system and portable oxygen cylinders for first aid. Airbus and others suggest that, if composite oxygen cylinders are not allowed aboard aircraft, many airlines will experience difficulty and increased costs regarding the maintenance and servicing of these composite oxygen cylinders. Carleton recommends that 49 CFR 173.302a(c)(1) be amended to include ''DOT Exemption Cylinders manufactured to the requirements of DOT FRP–1 or DOT–CFFC,'' and that § 173.302a(e)(2) define the PRD requirements for compressed oxygen cylinders and be amended to include ''DOT Exemption Cylinders must be equipped with a PRD as required by the appropriate Specification.'' Carleton also recommends PHMSA amend paragraph (e)(2) to read ''90% of cylinder test pressure'' and change ''−10 to zero percent of cylinder test pressure'' to ''−10 to plus zero percent of cylinder test pressure.''

Composite cylinders are lightweight, possess weight- and fuel-saving potential, and may lead to an overall reduction in the associated costs for air transportation of compressed oxygen. PHMSA recognizes the prevalence of composite cylinders in air transportation, the increased use of these cylinders by industry for the transportation of compressed oxygen, and that these trends are likely to continue in the future. We acknowledge that composite cylinders are currently authorized for the transportation of compressed oxygen aboard aircraft under special permit. No change in the HMR is required to permit composite cylinders to be used in oxygen service. The limitation of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft to DOT specifications 3A, 3AA, 3AL, and 3HT does not exclude composite cylinders from being utilized for the transport of compressed oxygen by air transportation under the terms of a special permit, which is issued only upon a finding that the use of a composite cylinder achieves a level of safety that is at least equal to that required by this rulemaking. The PRD requirements for composite cylinders will be updated to match the new requirements of this final rule. Consistent with our past practice of adopting special permits into the HMR, we will review these special permits to determine if they are suitable for inclusion into the HMR.

Therefore, we are amending the HMR to require cylinders authorized for the transportation of compressed oxygen aboard aircraft to be limited to DOT specifications 3A, 3AA, 3AL, and 3HT.

D. Limits on Number of Oxygen Cylinders Transported on Aircraft

In HM–224A, we adopted a limitation on the number of cylinders of compressed oxygen allowed to be carried on aircraft: (1) Up to six cylinders belonging to the aircraft carrier plus one cylinder per passenger needing oxygen at destination could be transported in the passenger cabin, and (2) no more than a combined total of six cylinders of compressed oxygen may be carried in inaccessible aircraft cargo compartments that lack a fire or smoke detection system and a fire suppression system. See former 49 CFR 175.10(b), 175.85(i), recodified at 175.501(b) & (c) (71 FR 14586). In the NPRM in this rulemaking, we proposed to remove the limits on the number of oxygen cylinders that may be transported in cargo compartments not equipped with sufficient fire suppression systems.

NTSB did not support the proposal to remove the current limit on the number of compressed oxygen cylinders that may be transported aboard aircraft until sufficient data on the performance and durability of the proposed overpacks has been collected. ALPA notes that, in justifying the proposal to require

cylinders of compressed oxygen contained in an outer packaging not reach a temperature of 93 °C (199 °F) when exposed to a 205 °C (400 °F) temperature for three hours, PHMSA outlines conditions expected to be encountered within a cargo compartment during a suppressed cargo fire. The commenter states these conditions are then used as a basis for the requirement that an oxygen cylinder withstand a 1,700 °F flame for 5 minutes, followed by a temperature of 205 °C (400 °F) for 3 hours.

ALPA questions why PHMSA would propose to allow these oxygen cylinders in cargo compartments without any fire or smoke detection or an active fire suppression system. The commenter states if there were to be a fire in a cargo compartment without an active fire suppression system, the temperatures in the compartment would far exceed 205 °C (400 °F). According to ALPA, the only method available to limit the severity of such a fire is to limit the oxygen present within the compartment, either through an airtight under-floor design or by depressurizing the aircraft in the case of the main deck (Class E compartment) of an all-cargo aircraft. By introducing an oxygen cylinder unable to withstand the high temperatures of an unsuppressed fire, the commenter states either method would be negated. The commenter recommends oxygen cylinders be prohibited from transport in compartments without a fire or smoke detection system and an active fire suppression system.

Further, ALPA stresses any fire suppression system required by the rulemaking should be an active fire suppression system, with a knock-down agent (e.g., Halon). While a cargo compartment that limits the flow of oxygen may be considered to have a suppression system, the commenter contends this is clearly not the intent of the rulemaking, and asks that the word ''active'' be included in any discussion of suppression systems. The commenter also requests specific criteria to determine what constitutes passing or failing a visual inspection of oxygen generators by accepting personnel, and suggests a requirement for this person to provide a signature indicating the cylinder has passed a visual inspection. Finally, this commenter expresses concern with the proposal to allow oxygen generators aboard cargo-only aircraft in cargo compartments without an active fire suppression system, as the compartment design criteria are insufficient to withstand the conditions encountered in an unsuppressed fire. The objections by this commenter to this scenario are the same as for oxygen cylinders; specifically, the compartment design criteria are insufficient to withstand the conditions that would be encountered in an unsuppressed fire. The commenter concludes by recommending that oxygen generators be prohibited from transport on both passenger and cargo-only aircraft due to the additional hazard potential even in the presence of fire suppression systems.

Other commenters suggest alternatives to this rulemaking. Intertechnique recommends PHMSA conduct further investigation into this area before incorporating this proposal into the HMR. The commenter notes one procedure to control or suppress fire involves depressurizing the aircraft and suggests tests should include a rapid pressure change of the test chamber to simulate rapid decompression followed by a rapid descent of the burning aircraft. The commenter argues this decompression should not lead to bursting the packaging, and the ingestion of hot gas into the packaging during descent may lead to a rapid increase of the internal temperature that should be evaluated before the introduction of this regulatory change.

We acknowledge the commenters' concerns regarding the transportation of oxygen cylinders in cargo compartments without an active fire suppression system, and have reconsidered this proposed regulatory change. Based on these comments and consistent with current requirements, we are revising § 175.501 to require that, except for Oxygen, compressed, no person may load or transport a hazardous material for which an OXIDIZER label is required in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system. We are also revising this section to simplify the stowage requirements of cylinders of compressed oxygen previously located in § 175.85(i)(2) and (3), and to retain the limit of a combined total of six cylinders of compressed oxygen that may be stowed on an aircraft in the inaccessible aircraft cargo compartment(s) that do not have fire or smoke detection systems and fire suppression systems.

E. Chemical Oxygen Generator Approval

In the NPRM, we proposed to add a new § 173.168 that would: (1) Specify the means to be incorporated into an oxygen generator to prevent inadvertent actuation; (2) require the oxygen generator to be capable of withstanding a 1.8 meter drop with no loss of contents or actuation; and (3) specify packaging, shipping paper, and marking requirements for those oxygen generators that are installed in a piece of equipment sealed or otherwise packaged so it is difficult to determine if an oxygen generator is present.

SR Technics supports the additional marking requirement contained in the newly proposed § 173.168. This commenter states it is currently undergoing an evaluation involving the inadvertent transportation of chemical oxygen generators assembled in sealed components. In this situation, personnel handling this material did not realize the generators were installed in the component (passenger service units). In addition, this same commenter suggests chemical oxygen generators are not properly identified on Material Safety Data Sheets (MSDS). The commenter recommends we coordinate efforts with the Occupational Safety and Health Administration (OSHA) so critical safety transportation information is included on a MSDS for chemical oxygen generators.

Scott argues the proposed rule would reword paragraph 173.168(d) to require ''a chemical oxygen generator installed in equipment, (e.g., a PBE) [to] be placed in a rigid packaging * * * that conforms to the requirements capable of meeting the flame penetration and thermal resistance requirements of this proposed rule for shipment by air.'' PBEs, manufactured by Scott, are all one size and shape and, therefore, one size outer packing may suffice for Scott. This commenter states other manufacturers offering PBEs will most likely need a different outer packing. The commenter says PBEs are not the only aviation ''equipment'' in which oxygen generators are installed. For instance, Scott states that, in certain aircraft, it may be practical to replace just the chemical oxygen generator when maintenance is required. However, in other aircraft, it may be safer and more convenient to replace what is termed the ''dropout box,'' or passenger service unit (PSU), rather than just the oxygen generator. According to Scott, the dropout box is an assembly containing one or more oxygen masks, a chemical oxygen generator, and the related equipment needed to cause the box to open and the masks to deploy during a depressurization event.

The same commenter further states chemical oxygen generators are often contained in PSUs, which are segments of the cabin interior ceiling containing a chemical oxygen generator, several passenger oxygen masks, the reading lights, ventilation ducting, attendant call button, and other associated appliances. The commenter suggests the great variety of sizes and shapes of these assemblies means a large number of

different sized packages may be required, or that these items may have to be disassembled, their chemical oxygen generators removed for shipment in a separate package, and the items reassembled at destination. The commenter says disassembly for shipment and subsequent reassembly increases cost and the possibility of mis-assembly and the subsequent failure of the oxygen equipment to function properly in an emergency.

Other commenters also express concern about the elimination of approvals for any person except manufacturers of chemical oxygen generators. Aviosupport recommends the proposal to eliminate distributors from being able to handle or repackage chemical oxygen generators to the airline industry be removed from this rulemaking, altogether. Satair states this proposal would not allow it to handle, repack and offer for transportation chemical oxygen generators and PBEs on any mode of transportation, including air. The commenter states such a limitation would create a significant loss of support in the commercial aerospace supply chain and would negatively impact its company. The same commenter further states the Competent Authority approval is a proven tool to ensure safe storage, handling and transportation of chemical oxygen generators and PBEs.

The approval requirement for a chemical oxygen generator is still necessary and will be retained. However, the approval process will apply only to manufacturers of the chemical oxygen generator. This will eliminate the need for other persons to obtain shipment approvals, because we are incorporating into the HMR those aspects of the approvals specifically focused on safety controls, packaging, and marking. Accordingly, in this final rule, we are amending the HMR by adding a new § 173.168 to: (1) Specify means to be incorporated into an oxygen generator design to prevent actuation; (2) require an oxygen generator to be capable of withstanding a 1.8 meter drop with no loss of contents or actuation; and (3) establish packaging, shipping paper, and marking requirements for those oxygen generators that are installed in sealed equipment (or equipment in which it otherwise is difficult to determine if an oxygen generator is present). In addition, we have reconsidered the proposal to amend the shipping paper requirements and are not adopting this provision at this time. The recommendation that we coordinate efforts with OSHA to ensure that critical safety transportation information is included on a MSDS is beyond the scope of this rulemaking, but may be considered in the future.

We also proposed to specify in the HMR that a chemical oxygen generator that has passed the manufacturer's expiration date is forbidden for transportation by aircraft. Through the approval process, PHMSA had not allowed the transportation of expired oxygen generators aboard aircraft. With the elimination of the approval for other than oxygen generator manufacturers, we believe it is now necessary to specify this restriction in the HMR. We did not receive any adverse comments to this specific proposal. Therefore, we are amending the HMR to specify that a chemical oxygen generator that has passed the manufacturer's expiration date is forbidden for transportation by aircraft.

V. Effects on Individuals With Disabilities

Under separate PHMSA and FAA requirements [49 CFR 175.8(b)(1), and 14 CFR 121.574, 125.219, and 135.91, respectively], which this rulemaking would not amend, passengers may not carry their own oxygen dispensing systems aboard aircraft for use during flight. Air carriers are permitted to provide oxygen for passenger use in accordance with specified requirements in the aforementioned rules, although some air carriers may choose not to provide this service for their passengers. In the NPRM, PHMSA requested comments on whether the new proposed provisions placed on carriage of air carriers' own oxygen cylinders will significantly interfere with carriers' ability to provide this service, or increase the costs of this service, to passengers. This topic is covered above under ''Outer Packaging for Compressed Oxygen Cylinders and Oxygen Generators.''

The Office of the Secretary, PHMSA and FAA have initiated projects separate from this rulemaking action to explore whether safe alternatives exist for accommodating passenger needs in regard to use of medical oxygen. These projects may result in proposals to amend the relevant portions of the HMR and FAA regulations, as well as those of the Office of the Secretary implementing the Air Carrier Access Act of 1986 (49 U.S.C. 41705), which prohibits discrimination in regard to air traveler access on the basis of disability.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for Rulemaking

This final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Section 1.53 of 49 CFR delegates the authority to issue regulations in accordance with 49 U.S.C. 5103(b) to the Administrator of the Pipeline and Hazardous Materials Safety Administration. United States Code § 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous material by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget (OMB). This rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The costs associated with the transport of oxygen cylinders are estimated to be $10.8 million over 15 years ($7.6 million discounted; the majority of which is believed to be associated with the transport of oxygen cylinders aboard passenger-carrying aircraft). The costs associated with the transport of chemical oxygen generators is estimated to be $27.0 million over 15 years ($16.9 million discounted). All costs have been discounted to present value at 7% and are expressed in 2004 dollars). The benefits of this rulemaking range from $30 million, if a single cargo aircraft accident is averted to $357 million, if a passenger aircraft accident is averted. Therefore, we conclude this final rule will be cost beneficial. A copy of the regulatory evaluation is available for review in the public docket.

C. Executive Order 12988

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The changes to the HMR in this final rule will not have a retroactive effect. Under PHMSA's procedural rules, there is a right to administratively appeal this final rule to PHMSA's Administrator (49 CFR 106.100 *et seq.*), but such an administrative appeal is not a prerequisite to seeking judicial review in accordance with 49 U.S.C. 5127.

D. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements, but does not amend any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses items 2 and 5 above and would preempt any State, local, or Indian tribe requirements not meeting the ''substantially the same'' standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

E. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule will not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b) provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration recommends that ''small'' represent the impacted entities with 1,500 or fewer employees. For this final rule, small entities are part 121 and part 135 air carriers with 1,500 or fewer employees that are approved to carry hazardous materials. DOT identified 729 air carriers that meet this definition. DOT contacted several of these entities to estimate the number of containers that each small air carrier uses to transport oxygen cylinders aboard aircraft in other than the passenger cabin. All the entities that were contacted maintained that although they are approved to carry hazardous materials, they transport no oxygen cylinders in cargo compartments. From conversations with container manufacturers, DOT learned that approximately ten small air carriers transport compressed oxygen cylinders. DOT believes that each of the ten small air carriers would need approximately 5 compressed oxygen containers to comply with the final rule. DOT also estimates that each of ten small carriers will need approximately 5 oxygen generator containers to comply with the final rule.

After calculating the prorated annualized costs per entity using the same assumptions that were used in the cost section (all costs have been discounted to present value at 7% and are expressed in 2004 dollars), DOT has determined that the incremental cost impact per small entity would be $451 (See Table 3 of the regulatory evaluation in the public docket), which PHMSA considers ''de minimus'' for a small business (See Appendix C) . The baseline costs per small entity shown in Table 3 are generated from Appendix C by adding the baseline discounted costs of oxygen cylinders and chemical oxygen generator overpacks. Similarly, the costs in Table 3 are generated by adding discounted costs of the rule for oxygen cylinder and chemical oxygen generator overpacks. Annualized costs are calculated by applying a capital recovery factor to total incremental costs and measuring the annual impact of the regulation.

Thus, DOT has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), DOT certifies that this rule will not have a significant economic impact on a substantial number of small entities.

G. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as

safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential affect of this final rule and has determined that it will have only a domestic impact and therefore it will not affect any trade-sensitive activity.

H. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

I. Paperwork Reduction Act

This final rule results in an information collection and recordkeeping burden increase under OMB Control Number 2137–0572, due to changes in package design and testing requirements for compressed oxygen and oxygen generators. There is an editorial change with no change in burden under OMB Control Number 2137–0557, due to changes in section designations regarding approval requirements for oxygen generators. PHMSA currently has approved information collections under OMB Control Number 2137–0572, ''Testing Requirements for Non-Bulk Packaging'' with 32,500 burden hours, and an expiration date of July 31, 2007, and OMB Control Number 2137–0557, ''Approvals for Hazardous Materials'' with 25,605 burden hours, and an expiration date of March 31, 2008. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

PHMSA estimates this rulemaking will result in approximately 10 additional respondents, 500 additional responses, 2,500 additional burden hours, and $750,000 additional burden costs. The new total information collection and recordkeeping burden for OMB Control Number 2137–0572 would be as follows:

''Testing Requirements for Non-Bulk Packaging''

OMB Number 2137–0572:

Total Annual Number of Respondents: 5,010.

Total Annual Responses: 15,500.

Total Annual Burden Hours: 32,500.

Total Annual Burden Cost: $812,500.00.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an environmental assessment (EA) to consider the effects of these revisions on the environment and determine whether a more comprehensive environmental impact statement may be required. We have concluded that there are no significant environmental impacts associated with this final rule. An environmental assessment prepared for this final rule has been placed in the public docket for this rulemaking.

K. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

L. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

■ 2. In § 171.11, paragraph (d)(16) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(16) A package containing Oxygen, compressed, or any of the following oxidizing gases must be packaged as required by parts 173 and 178 of this subchapter: carbon dioxide and oxygen mixtures, compressed; compressed gas, oxidizing, n.o.s.; liquefied gas, oxidizing, n.o.s.; nitrogen trifluoride; and nitrous oxide.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

§ 172.101 [Amended]

■ 4. In the Hazardous Materials Table in § 172.101, for the shipping name ''Air, refrigerated liquid, (cryogenic liquid),'' Column (9B) is revised to read ''Forbidden.''

§ 172.101 [Amended]

■ 5. In the Hazardous Materials Table in § 172.101, for the shipping name ''Oxygen, compressed,'' in column (7), Special Provision ''A52'' is removed.

§ 172.101 [Amended]

■ 6. In the Hazardous Materials Table in § 172.101, for the shipping name ''Oxygen generator, chemical,'' in Column (7), Special Provisions ''60, A51'' are removed and Column (8B) is revised to read ''168.''

§ 172.102 [Amended]

■ 7. In § 172.102, in paragraph (c)(1), Special Provisions ''60'' is removed.

§ 172.102 [Amended]

■ 8. In § 172.102, in paragraph (c)(2), Special Provisions ''A51'' and ''A52'' are removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 10. Section 173.168 is added to read as follows:

§ 173.168 Chemical oxygen generators.

An oxygen generator, chemical (defined in § 171.8 of this subchapter) may be transported only under the following conditions:

(a) *Approval.* A chemical oxygen generator that is shipped with a means of initiation attached must be classed and approved by the Associate Administrator in accordance with the procedures specified in § 173.56 of this subchapter.

(b) *Impact resistance.* A chemical oxygen generator, without any packaging, must be capable of withstanding a 1.8 meter drop onto a rigid, non-resilient, flat and horizontal surface, in the position most likely to cause actuation or loss of contents.

(c) *Protection against inadvertent actuation.* A chemical oxygen generator must incorporate one of the following means of preventing inadvertent actuation:

(1) A chemical oxygen generator that is not installed in protective breathing equipment (PBE):

(i) Mechanically actuated devices:

(A) Two pins, installed so that each is independently capable of preventing the actuator from striking the primer;

(B) One pin and one retaining ring, each installed so that each is independently capable of preventing the actuator from striking the primer; or

(C) A cover securely installed over the primer and a pin installed so as to prevent the actuator from striking the primer and cover.

(ii) Electrically actuated devices: The electrical leads must be mechanically shorted and the mechanical short must be shielded in metal foil.

(iii) Devices with a primer but no actuator: A chemical oxygen generator that has a primer but no actuating mechanism must have a protective cover over the primer to prevent actuation from external impact.

(2) A chemical oxygen generator installed in a PBE must contain a pin installed so as to prevent the actuator from striking the primer, and be placed in a protective bag, pouch, case or cover such that the protective breathing equipment is fully enclosed in such a manner that the protective bag, pouch, case or cover prevents unintentional actuation of the oxygen generator.

(d) *Packaging.* After September 30, 2009 a chemical oxygen generator and a chemical oxygen generator installed in equipment, (e.g., a PBE) must be placed in a rigid outer packaging that—

(1) Conforms to the requirements of either:

(i) Part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level; or

(ii) The performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container.

(2) With its contents, is capable of meeting the following additional requirements when transported by cargo-only aircraft:

(i) The Flame Penetration Resistance Test in part III of Appendix F to 14 CFR part 25, modified as follows:

(A) At least three specimens of the outer packaging materials must be tested;

(B) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(C) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the outer packaging to safely prevent the passage of fire in the horizontal ceiling position; and

(D) There must be no flame penetration of any specimen within 5 minutes after application of the flame source, and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, must not exceed 205 °C (400 °F).

(ii) The Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(iii) None of the following conditions may occur when one generator in the package is actuated:

(A) Actuation of other generators in the package;

(B) Ignition of the packaging materials; and

(C) A temperature above 100 °C (212 °F) on the outside surface temperature of the package.

(iv) All features of the packaging must be in good condition, including all latches, hinges, seams, and other features, and the packaging must be free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the packaging, verified by a visual inspection of the package before each shipment.

(e) *Equipment marking.* The outside surface of a chemical oxygen generator must be marked to indicate the presence of an oxygen generator (e.g., ''oxygen generator, chemical''). The outside surface of equipment containing a chemical oxygen generator that is not readily apparent (e.g., a sealed passenger service unit) must be clearly marked to indicate the presence of the oxygen generator (example: ''Oxygen Generator Inside'').

(f) *Items forbidden in air transportation.* (1) A chemical oxygen generator is forbidden for transportation on board a passenger-carrying aircraft.

(2) A chemical oxygen generator is forbidden for transportation by both passenger-carrying and cargo-only aircraft after:

(i) The manufacturer's expiration date; or

(ii) The contents of the generator have been expended.

■ 11. In § 173.302a, paragraph (f) is added to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

* * * * *

(f) *Compressed oxygen and oxidizing gases.* A cylinder containing oxygen, compressed; compressed gas, oxidizing, n.o.s.; or nitrogen trifluoride is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, and 3HT cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, beginning with the first requalification due after October 1, 2007:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, and 3AL cylinders must be 100% of the cylinder minimum test pressure with a tolerance of −10 to plus zero percent; and

(ii) The rated burst pressure of a rupture disc for a 3HT must be 90% of the cylinder minimum test pressure with a tolerance of −10 to plus zero percent.

(3) After September 30, 2009, the cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M of this subchapter at the Packing Group I or II performance level or the performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) Is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in part III of Appendix F to 14 CFR part 25, modified as follows:

(A) At least three specimens of the outer packagings materials must be tested;

(B) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(C) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the outer packaging to safely prevent the passage of fire in the horizontal ceiling position; and

(D) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, must not exceed 205 °C (400 ° F); and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and that the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the packaging.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR 121.574, 125.219, and 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

■ 12. In § 173.304a, paragraph (f) is added to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

* * * * *

(f) *Oxidizing gases.* A cylinder containing carbon dioxide and oxygen mixture, compressed; liquefied gas, oxidizing, n.o.s.; or nitrous oxide is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, and 3HT cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, beginning with the first requalification due after October 1, 2007:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, and 3AL cylinders must be 100% of the cylinder minimum test pressure with a tolerance of −10 to plus zero percent; and

(ii) The rated burst pressure of a rupture disc for a 3HT must be 90% of the cylinder minimum test pressure with a tolerance of −10 to plus zero percent.

(3) After September 30, 2009, the cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level, or the performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) Is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in part III of Appendix F to 14 CFR part 25, modified as follows:

(A) At least three specimens of the outer packaging materials must be tested;

(B) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(C) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the outer packaging to safely prevent the passage of fire in the horizontal ceiling position; and

(D) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, must not exceed 205 °C (400 °F); and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the container.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR 121.574, 125.219, and 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

PART 175—CARRIAGE BY AIRCRAFT

■ 13. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 14. Section 175.501 is revised to read as follows:

§ 175.501 Special requirements for oxidizers and compressed oxygen.

(a) Compressed oxygen, when properly labeled Oxidizer or Oxygen, may be loaded and transported as provided in this section. Except for Oxygen, compressed, no person may load or transport a hazardous material for which an OXIDIZER label is required under this subchapter in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system.

(b) In addition to the quantity limitations prescribed in § 175.75, no more than a combined total of six cylinders of compressed oxygen may be stowed on an aircraft in the inaccessible aircraft cargo compartment(s) that do not have fire or smoke detection systems and fire suppression systems.

(c) When loaded into a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, cylinders of compressed oxygen must be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device. This provision does not apply to cylinders stowed in the cabin of the aircraft in accordance with paragraph (e) of this section.

(d) When transported in a Class B aircraft cargo compartment (see 14 CFR 25.857(b)) or its equivalent (i.e., an accessible cargo compartment equipped with a fire or smoke detection system, but not a fire suppression system), cylinders of compressed oxygen must be loaded in a manner that a crew member can see, handle and, when size and weight permit, separate the cylinders from other cargo during flight. No more than six cylinders of compressed oxygen and, in addition, one cylinder of medical-use compressed oxygen per passenger needing oxygen at destination—with a rated capacity of 1000 L (34 cubic feet) or less of oxygen—may be carried in a Class B aircraft cargo compartment or its equivalent.

(e) A cylinder containing medical-use compressed oxygen, owned or leased by an aircraft operator or offered for transportation by a passenger needing it for personal medical use at destination, may be carried in the cabin of a passenger-carrying aircraft in accordance with the following provisions:

(1) No more than six cylinders belonging to the aircraft operator and, in addition, no more than one cylinder per passenger needing the oxygen at destination, may be transported in the cabin of the aircraft under the provisions of this paragraph (e);

(2) The rated capacity of each cylinder may not exceed 1,000 L (34 cubic feet);

(3) Each cylinder must conform to the provisions of this subchapter and be placed in:

(i) An outer packaging that conforms to the performance criteria of Air Transport Association (ATA) Specification 300 for a Category I Shipping Container; or

(ii) A metal, plastic or wood outer packaging that conforms to a UN standard at the Packing Group I or II performance level.

(4) The aircraft operator shall securely stow the cylinder in its overpack or outer packaging in the cabin of the aircraft and shall notify the pilot-in-command as specified in § 175.33 of this part; and

(5) Shipments under this paragraph (e) are not subject to—

(i) Sections 173.302(f) and 173.304a(f) of this subchapter, subpart C of part 172 of this subchapter, and, for passengers only, subpart H of part 172 of this subchapter;

(ii) Section 173.25(a)(4) of this subchapter; and

(iii) Paragraph (b) of this section.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 15. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 16. A new Appendix D to part 178 is added to read as follows:

Appendix D to Part 178—Thermal Resistance Test

1. *Scope.* This test method evaluates the thermal resistance capabilities of a compressed oxygen generator and the outer packaging for a cylinder of compressed oxygen or other oxidizing gas and an oxygen generator. When exposed to a temperature of 205 °C (400 °F) for a period of not less than three hours, the outer surface of the cylinder may not exceed a temperature of 93 °C (199 °F) and the oxygen generator must not actuate.

2. *Apparatus.*

2.1 *Test Oven.* The oven must be large enough in size to fully house the test outer package without clearance problems. The test oven must be capable of maintaining a minimum steady state temperature of 205 °C (400 °F).

2.2 *Thermocouples.* At least three thermocouples must be used to monitor the temperature inside the oven and an additional three thermocouples must be used to monitor the temperature of the cylinder. The thermocouples must be 1/16 inch, ceramic packed, metal sheathed, type K (Chromel-Alumel), grounded junction with a nominal 30 American wire gauge (AWG) size conductor. The thermocouples measuring the temperature inside the oven must be placed at varying heights to ensure even temperature and proper heat-soak conditions. For the thermocouples measuring the temperature of the cylinder: (1) two of them must be placed on the outer cylinder side wall at approximately 2 inches (5 cm) from the top and bottom shoulders of the cylinder; and (2) one must be placed on the cylinder valve body near the pressure relief device.

2.3 *Instrumentation.* A calibrated recording device or a computerized data acquisition system with an appropriate range should be provided to measure and record the outputs of the thermocouples.

3. *Test Specimen.*

3.1 *Specimen Configuration.* Each outer package material type and design must be tested, including any features such as handles, latches, fastening systems, etc., that may compromise the ability of the outer package to provide thermal protection.

3.2 *Test Specimen Mounting.* The tested outer package must be supported at the four corners using fire brick or other suitable means. The bottom surface of the outer package must be exposed to allow exposure to heat.

4. *Preparation for Testing.*

4.1 It is recommended that the cylinder be closed at ambient temperature and configured as when filled with a valve and pressure relief device. The oxygen generator must be filled and may be tested with or without packaging.

4.2 Place the package or generator onto supporting bricks or a stand inside the test oven in such a manner to ensure even temperature flow.

5. *Test Procedure.*

5.1 Close oven door and check for proper reading on thermocouples.

5.2 Raise the temperature of the oven to a minimum temperature of 205 °C ± 2 °C (400 °F ± 5 °F). Maintain a minimum oven temperature of 205 °C ± 2 °C (400 °F ± 5 °F) for at least three hours. Exposure time begins when the oven steady state temperature reaches a minimum of 205 °C ± 2 °C (400 °F ± 5 °F).

5.3 At the conclusion of the three-hour period, the outer package may be removed from the oven and allowed to cool naturally.

6. *Recordkeeping.*

6.1 Record a complete description of the material being tested, including the manufacturer, size of cylinder, etc.

6.2 Record any observations regarding the behavior of the test specimen during exposure, such as smoke production, delamination, resin ignition, and time of occurrence of each event.

6.3 Record the temperature and time history of the cylinder temperature during the entire test for each thermocouple location. Temperature measurements must be recorded at intervals of not more than five (5) minutes. Record the maximum temperatures achieved at all three thermocouple locations and the corresponding time.

7. *Requirements.*

7.1 For a cylinder, the outer package must provide adequate protection such that the outer surface of the cylinder and valve does not exceed a temperature of 93 °C (199 °F) at any of the three points where the thermocouples are located.

7.2 For an oxygen generator, the generator must not actuate.

Issued in Washington, DC on January 25, 2007 under authority delegated in 49 CFR part 1.

Thomas J. Barrett,

Administrator.

[FR Doc. E7–1487 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT67

[Docket No. 061109296–7009–02; I.D. 110606A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2007 Atlantic Bluefish Specifications; Quota Adjustment; 2007 Research Set-Aside Project

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

ACTION: Final rule; final specifications for the 2007 Atlantic bluefish fishery.

SUMMARY: NMFS issues final specifications for the 2007 Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2007 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the stock rebuilding program contained in Amendment 1 to the Atlantic Bluefish Fishery Management Plan (FMP), as well as ensuring compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action will publish final specifications that are modified from those contained in the proposed rule.

DATES: This rule is effective March 2, 2007, through December 31, 2007.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298, and on the Northeast Regional Office's website at *http://www.nero.noaa.gov/nero/nr/*.

The Northeast Fisheries Science Center (Center) 41st Stock Assessment Review Committee (SARC) Bluefish Assessment Report (updated for 2006) is available at: *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0514*.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, (978) 281–9103, or Michael Pentony, Supervisory Policy Analyst, (978)281–9283.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is cooperatively managed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish (*Pomatomus saltatrix*) is the U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) review and make recommendations based on the best available data including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee, the Council makes a recommendation to the Northeast Regional Administrator (RA). Because the Bluefish FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission), the Commission meets during the annual specification process to adopt complimentary measures.

In July 2006, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2007. In August 2006, the Council approved the Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures. Detailed background information regarding the status of the bluefish stock and the development of the 2007 specifications for this fishery was provided in the proposed specifications (71 FR 68524, November 27, 2006). That information is not repeated here.

RSA Quota

A request for proposals was published on December 23, 2005, to solicit research proposals to utilize RSA in 2007 based on research priorities identified by the Council (70 FR 76253). One research project that would utilize 363,677 lb (164,961 kg) of bluefish RSA has been conditionally approved by NMFS and is currently awaiting notice of award. Therefore, this final rule implements a 363,677–lb (164,961–kg) RSA quota for the 2007 bluefish fishery. If this project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the bluefish TAL through publication in the **Federal Register**.

Final Specifications

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9–year period and requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2007), or the F estimated in the most recent fishing year (F_{2005} = 0.15), whichever is lower. An overall TAC of 32.033 million lb (14,530 mt) is recommended as the coastwide TAC by the Council at its August 2006 meeting to achieve the target fishing mortality rate (F = 0.15) in 2007, consistent with the rebuilding schedule specified in Amendment 1.

The TAL for 2007 is derived by subtracting an estimate of discards of

4.271 million lb (1,937 mt), the average discard level from 2001–2005, from the TAC. After subtracting estimated discards, the 2007 TAL is approximately 12 percent greater than the 2006 TAL, or 27.762 million lb (12,593 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2007 would be 4.720 million lb (2,141 mt), and the RHL would be 23.043 million lb (10,452 mt) in 2007. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the allocation of TAL between the commercial and recreational sectors that is being implemented in this final rule, and its proportional adjustment downward to account for the bluefish RSA quota.

Council Recommendation: Commercial Quota and Recreational Harvest Limit

As described in the proposed rule, based on the best information available at the time, the Council recommended that 4.780 million lb (2,168 mt) be transferred from the initial recreational allocation of 23.043 million lb (10,452 mt) resulting in a 2007 commercial quota of 9.500 million lb (4,309 mt) and a RHL of 18.262 million lb (8,284 mt). These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

Final 2007 Commercial Quota and Recreational Harvest Limit

Although the Council recommendation was based on the best information available at the time, more recent information not available at the time of the Council's recommendation or at the time of publication of the proposed rule was used to develop a new landings projection for the 2007 fishing year. This new projection indicates that the initial transfer amount would exceed the amount allowable under the regulations. Based on data provided by the Marine Recreational Fisheries Statistic Survey (MRFSS) program, projected recreational landings in 2006 equal 18,823,384 lb (8,538 mt). Using this amount as the most reasonable proxy for expected landings in 2007, this final rule will reduce the amount of the transfer from the recreational to the commercial sector by 810,780 lb (367,764 kg) from 4,780,000 lb (2,168 mt) to 3,969,220 lb (1,800 mt), commensurate with the increase in projected recreational landings. Therefore, the initial recreational allocation of 18,262,270 lb (8,284 mt) will be reduced by 3,969,220 lb (1,800 mt) resulting in a post-transfer commercial quota of 8,688,760 lb (3,941 mt) and a recreational harvest limit of 19,073,240 lb (8,651 mt). After adjusting for the RSA quota, the resulting 2007 specifications will include a commercial quota of 8,574,939 lb (3,890 mt) and a recreational harvest limit of 18,823,384 lb (8,538 mt). The RSA quota will remain unchanged at 363,677 lb (164,961 kg).

Adjustment Additional 2005 New York Overage

In accordance with the regulations found at 50 CFR 648.160(f)(4), NMFS published an in-season adjustment to New York's commercial bluefish quota on May 15, 2006 (71 FR 27977), as the result of an overage of 51,397 lb (23,313 kg) that occurred during FY 2005. Since the publication of that in-season adjustment, updated landings information for FY 2005 indicates an additional bluefish quota overage for New York in the amount of 6,238 lb (2,829 kg), resulting in a total 2005 bluefish quota overage of 57,635 lb (26,143 kg) for the state. This final rule adjusts the 2007 bluefish quota for New York downward by 6,238 lb (2,829 kg) to account for this additional 2005 overage, from 890,516 lb (403,931 kg) to 884,278 lb (401,106 kg).

Final State Commercial Allocations

The 2007 commercial quota is allocated by state as shown in Table 1 below, according to the percentages specified in the FMP. Table 1 shows the allocations both before and after the deductions made to reflect the RSA quota allocation, and also accounts for the carryover quota overage for New York from FY 2005.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007

States	Quota Percent Share	2007 Commercial Quota		Carryover 2005 Overages		2007 Commercial Quota	
		(lb)	(kg)	(lb)	(kg)	(lb)	(kg)
ME	0.6685	58,084	26,347			57,323	26,002
NH	0.4145	36,015	16,336			35,543	16,122
MA	6.7167	583,598	264,718			575,953	261,251
RI	6.8081	591,539	268,321			583,790	264,806
CT	1.2663	110,026	49,907			108,584	49,254
NY	10.3851	902,336	409,297	6,238	2,830	884,278	401,106
NJ	14.8162	1,287,344	583,935			1,270,480	576,286
DE	1.8782	163,192	74,024			161,055	73,054
MD	3.0018	260,819	118,307			257,403	116,757
VA	11.8795	1,032,181	468,194			1,018,660	462,061
NC	32.0608	2,785,686	1,263,579			2,749,194	1,247,026
SC	0.0352	3,058	1,387			3,018	1,369
GA	0.0095	825	374			815	370
FL	10.0597	874,063	396,472			862,613	391,279

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007—Continued

States	Quota Percent Share	2007 Commercial Quota		Carryover 2005 Overages		2007 Commercial Quota	
		(lb)	(kg)	(lb)	(kg)	(lb)	(kg)
Total	**100.0001**	**8,688,769**[1]	**3,941,200**	**6,238**	**2,830**	**8,568,710**[2]	**3,886,741**

[1] The sum of the individual states does not add up to the final commercial quota of 8,688,760 lb due to rounding.
[2] The sum of the individual states does not add up to the final RSA adjusted commercial quota of 8,574,939 lb, less the New York overage of 6,238 lb (i.e., 8,568,701 lb), due to rounding.

Recreational Possession Limit

In this final rule, NMFS approves the Council's recommendation to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Comments and Responses

The public comment period on the proposed rule ended on December 27, 2006, with only one comment received.

Comment 1: The commenter expressed general support for environmental reforms and conservation of bluefish for future generations. The commenter suggested that the TAC be reduced by 50 percent initially, and by 10 percent in each subsequent year.

Response: NMFS acknowledges the importance of the issues raised by the commenter, but those of a general nature are outside the scope of this rulemaking. The commenter gave no specific rationale for why the quotas should be reduced in the manner suggested, and there is no known scientific basis for the commenter's suggestions. The reasons presented by the Council and NMFS for recommending the final 2007 bluefish specifications are discussed in the preambles to both the proposed and final rules, and sufficient analysis is contained within the supporting documents.

Classification

This final rule is exempt from review under Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for these specifications are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was submitted on the proposed rule, but it was not specific to the IRFA or the economic effects of the rule. NMFS has responded to the comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comment received.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to $4.0 million and $6.5 million, respectively. This rule could affect any vessels that fish for bluefish in Federal or state waters. The final measures regarding the 2007 quotas could affect any vessels holding an active Federal permit for bluefish as well as vessels that fish for this species in state waters.

An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish the dealer data during calendar year 2005. Of the active vessels reported in 2005, 745 known vessels landed bluefish from Maine through North Carolina. The Northeast Region dealer data do not cover vessel activity in the South Atlantic. The Northeast Region dealer data indicate that 148 federally permitted vessels landed bluefish in North Carolina in 2005. However, the North Carolina landings data for bluefish may be incomplete is this data system. South Atlantic Trip Ticket Report data indicate that 882 vessels landed bluefish in North Carolina in 2005. Some of these vessels may be included among the 148 vessels identified as landing bluefish in the Northeast Region dealer data. As such, double counting is possible. In addition, up to 620 vessels may have landed bluefish in Florida's east coast in 2005. Bluefish landings in South Carolina and Georgia were less than a thousand pounds combined in FY 2005, representing a negligible proportion of the total bluefish landings along the Atlantic coast in 2005. Therefore, for the purpose of this analysis, it is assumed that no vessels landed bluefish from South Carolina and Georgia.

In addition, it was estimated that in recent years approximately 2,063 party/charter vessels may have been active and/or caught bluefish. All of these vessels are considered small entities under the RFA, having gross receipts of less than $5 million annually. Since the recreational possession limits will remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and, therefore, no impact on revenues earned by party/charter vessels.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota and RHL contained in this final rule are 8.5 percent lower and 4.4 percent higher, respectively, than the Council's preferred alternative contained in the proposed rule. Although the commercial quota under this new alternative is lower than the commercial quota recommended by the Council, it is 7.7 percent higher than the final 2006 commercial quota (71 FR 9471; February 24, 2006). As a result, all affected states will receive an increase in their

individual commercial quota allocation in comparison to their respective 2006 individual state allocations. However, the magnitude of that increase varies depending on the state's respective percent share in the total commercial quota, as specified in the FMP, and depending on if the state had any additional overages from FY 2005 that needed to be adjusted for in this final rule (e.g., New York). NMFS considered a TAL that would have allowed a higher allocation of quota to the commercial sector, but this alternative, proposed by the Council, would have been inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The new alternative, which will transfer less quota from the recreational sector to the commercial sector than the alternative contained in the proposed rule (see Table 2), is being implemented consistent with recent recreational landings trends and should ensure that the 2007 RHL is not exceeded. Furthermore, the RHL being implemented in this final rule is 14.3 percent higher than the RHL specified in FY 2006. In conclusion, because both the 2007 commercial quota and RHL being implemented in this final rule represent increases over the 2006 specifications, and because the revised 2007 RHL is consistent with recent trends in recreational landings, no negative economic impacts are expected relative to the status quo and the Council's preferred alternative.

The impacts on revenues of the proposed RSA were analyzed. The social and economic impacts of this proposed RSA are expected to be minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $120,013 dockside, based on an average 2005 ex-vessel price of $0.33 per pound for bluefish. Assuming an equal reduction among all 745 active dealer reported vessels, this could mean a reduction of about $161 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than a 2- percent decrease), if 1.3 percent of the TAL is used for research. There are no anticipated adverse impacts associated with the RSA. In general, RSAs are expected to yield important long-term benefits associated with improved data upon which to base management decisions.

Table 2. Comparison of New Alternative to Council Preferred and 2006 Specifications

TABLE 2. COMPARISON OF NEW ALTERNATIVE TO COUNCIL PREFERRED AND 2006 SPECIFICATIONS

	Initial TAL	Post-Transfer Commercial Quota	Post-Transfer Recreational Quota	Research Set-Aside	Adjusted Commercial Quota	Adjusted Recreational Harvest Limit
2007 Final Bluefish Specifications						
Final Rule Preferred Alternative	27,762,000 lb (12,593 mt)	8,688,760 lb (3,941 mt)	19,073,240 lb (8,651 mt)	363,677 lb (165 mt)	8,574,939 lb (3,890 mt)	18,823,384 lb (8,538 mt)
Council's Preferred Alternative for 2007 Bluefish Specifications						
Proposed Rule Preferred Alternative	27,762,000 lb (12,593 mt)	9,499,540 lb (4,309 mt)	18,262,460 lb (8,284 mt)	363,677 lb (165 mt)	9,375,098 lb (4,252 mt)	18,023,225 lb (8,175 mt)
2006 Final Bluefish Specifications						
Preferred Alternative	24,798,836 lb (11,249 mt)	8,081,096 lb (3,666 mt)	16,717,740 lb (7,583 mt)	363,677 lb (165 mt)	7,962,586 lb (3,612 mt)	16,472,573 lb (7,472 mt)

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the bluefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov/nero/nr/index.html*.

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

Dated: January 24, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E7–1544 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061003253–7008–02; I.D. 092606A]

RIN 0648–AU27

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone off the Pacific

coast for the fishing season of July 1, 2006, through June 30, 2007. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Effective March 2, 2007.

ADDRESSES: Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2006–2007 Fishing Year* may be obtained by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of a final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews the reports from the Team, Subpanel, and SSC, provides opportunity for public comment, and then makes its recommendation to NMFS. The annual harvest guideline and season structure are then written and published by NMFS in the **Federal Register**. The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

Public meetings of the Team and Subpanel, as well as a subcommittee of the SSC, were held at NMFS Southwest Fisheries Science Center (SWFSC), in La Jolla, CA on May 16, 17, and 18, 2006 (April 28, 2006; 71 FR 25152). During these meetings the current stock assessment update for Pacific mackerel, which included a preliminary biomass estimate and harvest guideline, were reviewed in accordance with the procedures of the FMP. These meetings are designed to allow a review of the biomass and harvest guideline, and are required by the FMP.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2006, this estimate is 112,700 metric tons (mt).

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 94,500 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 94,500 mt, or 66,150 mt.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (66,150 mt), which results in 19,845 mt.

The Team supported the conclusions from the Pacific mackerel stock assessment and recommended to the Council at its June 2006 Council meeting that the Council adopt a harvest guideline (HG) for the 2006/2007 management season (i.e., July 1, 2006, through June 30, 2007) of 19,845 mt. The Council adopted this HG, as well as the Subpanel's recommendation on the management of the fishery by dividing the harvest guideline into a directed fishery with a guideline of 13,845 mt and set-aside of 6,000 mt to accommodate incidental landings of Pacific mackerel in other CPS fisheries. The set-aside is intended to prevent a reoccurrence of the 2000/ 2001 Pacific mackerel season where early attainment of the entire harvest guideline in the directed fishery curtailed the Pacific sardine fishery which incidentally lands mackerel.

The incidental fishery would be constrained to a 40–percent incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one metric ton of Pacific mackerel can be landed without landing any other CPS. The Council recommended a review of the Pacific mackerel fishery at the March 2007 Council meeting with the understanding that NMFS will consider releasing some or all of the incidental fishery set-aside if a sufficient amount of the guideline remains available for harvest.

Based on the estimated biomass of 112,700 mt and the formula in the FMP, a harvest guideline of 19,845 mt will be in effect for the fishery which began on July 1, 2006. This harvest guideline applies to Pacific mackerel harvested in the U.S. EEZ off the Pacific coast from 12:01 a.m. on July 1, 2006, through 11:59 pm on June 30, 2007, unless the harvest guideline is attained and the fishery is closed before June 30, 2007. All landings made after July 1, 2006, will be counted toward the 2006–2007 harvest guideline of 19,845 mt. There shall be a directed fishery of 13,845 mt, followed by an incidental fishery of 6,000 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date when 13,845 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

Classification

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (October 20,2006; 71 FR 61944) and is not repeated here.

No comments were received regarding this certification or the economic impact of this rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: January 26, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E7–1546 Filed 1–30–07; 8:45 am]

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Proposed Rules

Federal Register
Vol. 72, No. 20
Wednesday, January 31, 2007

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

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2006–0104]

Classical Swine Fever Status of the Mexican State of Nayarit

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animals and animal products by adding the Mexican State of Nayarit to the list of regions considered free of classical swine fever (CSF). We are proposing this action at the request of the Mexican Government and the State of Nayarit, and after conducting a risk evaluation that indicates that Nayarit is free of this disease. We are also proposing to add Nayarit to the list of CSF-affected regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF. These actions would relieve certain CSF-related restrictions on the importation into the United States of pork, pork products, live swine, and swine semen from Nayarit while continuing to protect against the introduction of this disease into the United States.

DATES: We will consider all comments that we receive on or before April 2, 2007.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0104 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0104, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0104.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services-Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. Sections 94.9 and 94.10 provide that CSF exists in all regions of the world except for certain regions listed in those sections.

The Government of Mexico and the Mexican State of Nayarit requested that the Animal and Plant Health Inspection Service (APHIS) evaluate the animal disease status of the State of Nayarit with respect to CSF and provided information in support of that request in accordance with 9 CFR part 92, ''Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions.'' Using information submitted to us by the Federal Government of Mexico and State Government of Nayarit, as well as information gathered during a site visit by APHIS staff to Nayarit, we have reviewed and analyzed the animal health status of Nayarit with respect to CSF. Our determinations concerning this request, based on the information submitted to us and the information we gathered, are set forth below.

Risk Analysis

APHIS conducted a risk analysis to examine the risk of introducing CSF [1] from the importation of swine and swine products from Nayarit, Mexico. These findings are described in further detail in an April 2006 risk analysis that may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) We summarize our findings for each of the 11 factors in 9 CFR 92.2 below and summarize our risk considerations of these findings following our discussions of the factors.

Authority, Organization, and Veterinary Infrastructure

Nayarit has the legal authority to enforce Federal and State CSF regulations and the necessary veterinary infrastructure to carry out CSF surveillance and control activities. One

[1] APHIS considers all of Mexico to be affected by blue-eye disease of pigs, a disease which is not known to exist in the United States. APHIS has not evaluated Mexico, including the State of Nayarit, for blue-eye disease. As a result, APHIS denies permits for the importation of live swine and swine semen from all of Mexico, including Nayarit (9 CFR 93.504(a)(3)). CSF is the disease hazard evaluated in the risk analysis, which does not address blue-eye disease.

of the strengths observed by the joint APHIS/Canadian Food Inspection Agency (CFIA) site-visit team was the apparent good communication and cooperation existing among the Mexican Federal, State, and municipal government officials, the Animal Agriculture Promotion and Protection Committee (CFPP) representatives, and swine producers. APHIS could not identify any risk issues associated with this factor that would pose an unacceptable risk to the United States if trade with Nayarit in swine, pork, and pork products were to occur.

Disease Status

The State of Nayarit has not reported a clinical case of CSF since 1989 and was declared free of CSF by the Government of Mexico in May 1999. This 15-year time period exceeds that recommended by the World Organization for Animal Health for the disease-free period required for CSF disease freedom recognition. Wild boar are not known to exist in Nayarit, and therefore, are not considered by APHIS to be a risk for introduction or spread of CSF virus in the State. APHIS also concluded that the CSF surveillance program, which is discussed in more detail in the risk analysis, would likely detect a change in the disease status of Nayarit (*i.e.* introduction of CSF). APHIS could not identify any risks associated with this factor that would pose any unacceptable risk to the United States if trade with Nayarit in swine, pork, and pork products were to occur.

Disease Status of Adjacent Regions

Nayarit shares borders with the States of Durango, Jalisco, Sinaloa, and Zacatecas. Sinaloa and Durango were declared to be CSF-free by the Mexican Government in 1993 and 1999, respectively. Zacatecas and Jalisco were declared to be in the eradication phase by the Mexican Government in 2004. On July 18, 2006 (after the risk analysis for this proposal was drafted), the Government of Mexico declared the States of Jalisco and Zacatecas to be CSF-free. Although APHIS considers Sinaloa to be CSF-free, APHIS has not evaluated Durango, Zacatecas, or Jalisco, and therefore currently considers them to be CSF-affected.

The existence of common land borders with CSF-affected regions does present a risk for reintroducing CSF into Nayarit. However, movement controls and certification requirements regarding region of origin and commingling concerns are designed to mitigate this risk. Because Nayarit has common land borders with CSF-affected regions, we would add the State to the list in § 94.25 of regions considered free of CSF, but to which additional CSF-related certification requirements apply. The specific requirements are explained later in this document under the heading ''Certification Requirements.''

Extent of Active Disease Control Program

CSF is considered exotic to Nayarit; therefore, it does not have an active disease control program. However, the Mexican Government has an ongoing active CSF disease control program which includes surveillance, movement control, and emergency response provisions for the CSF-free States such as Nayarit. The APHIS site visit team concluded that Nayarit is in compliance with provisions of the program and has maintained its CSF-free designation since 1999.

Vaccination

Vaccination for CSF ceased in Nayarit in March 1996, just before its status changed from control to eradication phase. Since that date, CSF vaccination has been prohibited in Nayarit.

Separation From Adjacent Regions of Higher Risk

The State of Nayarit is located along the Pacific coastline of central Mexico. Nayarit borders the States of Sinaloa and Durango on the north, Zacatecas to the east, and Jalisco on the east and south. Natural barriers to disease transmission include the Pacific Ocean to the west and the Sierra Madre Occidental Mountains to the east.

Surface transport into and out of Nayarit primarily move along a north-south corridor from Sinaloa in the north and Jalisco in the south. There are no major seaports on the Nayarit coast and commercial air traffic is light, limited to regional passenger service and private aircraft.

APHIS has determined that the natural barriers of the mountains and ocean, and the few highways into Nayarit, limit the movement of swine and products into the State, thus reducing the risk of CSF introduction.

Movement Controls

The movement controls established by the Mexican National CSF Campaign and implemented and enforced by the Nayarit officials limit the illegal movement of swine or pork products from CSF affected zones. The system of inspection posts in Nayarit was cited by the APHIS site visit team as a strong point in the State's CSF control program. The system of inspection posts ensures reasonable enforcement of these provisions, significantly limiting the risk of CSF introduction into Nayarit. These findings are described in further detail in the risk analysis.

Livestock Demographics and Marketing Practices

Nayarit is not a major swine production area. In 2004, there were 34 commercial swine farms in Nayarit, with a population of 30,634 animals. Only 2 farms had over 4,000 hogs. Another 18,650 hogs are reared in backyards, intended for personal consumption by their owners. The slaughtering and processing of swine in Nayarit is currently handled by State-inspected municipal plants, since there are no federally inspected (in Spanish, Tipo Inspección Federal, or TIF) plants handling swine in Nayarit; slaughter and processing through a TIF plant would be necessary for pork to be exported to the United States as well as to CSF-free States in Mexico.

Currently, Nayarit consumes more pork than it produces and does not have the infrastructure, such as TIF plants, necessary to meet the export requirements of § 94.25 for exportation of pork or pork products to the United States. This dynamic limits the legal movement of swine and pork from Nayarit to the United States. Should producers in Nayarit develop a desire to export, they would need to identify an appropriate TIF plant outside of the State or request that a plant within the State be certified as a TIF plant in accordance with the regulatory requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

Disease Surveillance

An active CSF surveillance program is conducted in Nayarit in accordance with the National CSF Campaign. Nayarit conducts an annual serological sampling survey in commercial and backyard swine herds. APHIS concludes that the surveillance program is sufficient to detect the presence of CSF virus if it were to be introduced into Nayarit.

Diagnostic Laboratory Capabilities

The State of Nayarit does not have a diagnostic laboratory accredited for CSF diagnosis. All samples deemed suspicious for CSF are sent to the National Veterinary Services Diagnostic Laboratory (CENASA), located in the State of Mexico. This laboratory has been previously evaluated in other risk analyses and was not reevaluated during the site visit to Nayarit. Based on these prior assessments, APHIS has confidence that CENASA would be able

to detect CSF in samples submitted for serological testing.

Considering the relatively small swine population in Nayarit, this arrangement is satisfactory for CSF diagnosis and surveillance needs. However, if the swine population in the State increases significantly, this factor may need to be reassessed.

Emergency Response Capacity

Mexico has an established national system for surveillance and reporting of exotic animal diseases operated by their Ministry of Agriculture, Livestock Production, Rural Development, Fishery, and Food (SAGARPA) in collaboration with the Mexico-United States Commission for the Prevention of Foot and Mouth Disease and Other Exotic Animal Diseases. As a disease-free State, CSF virus is considered to be exotic in Nayarit.

Whenever CSF is suspected, SAGARPA must immediately be notified and a precautionary quarantine is implemented in the focal and perifocal area to include the affected, exposed, and at-risk premises. If CSF is confirmed by CENASA, then the quarantine becomes definitive. Movement controls are implemented, sick animals are killed, dead animals are sanitarily disposed of, and an epidemiological investigation ensues.

A close association and cooperation was observed between the Mexican Federal, State, and municipal government officials, the CFPP staff, and swine producers. This cooperation was especially effective in the operation of Nayarit's existing animal health checkpoints. Although no CSF suspect cases have been reported in Nayarit in recent years, these officials demonstrated knowledge of processes required under the National CSF Emergency Plan. These observations give APHIS confidence that an effective veterinary infrastructure exists in Nayarit capable of responding to a CSF outbreak. APHIS was unable to identify specific limitations in this system that would pose a risk to the United States.

These findings are described in further detail in a qualitative evaluation that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.regulations.gov.* (Instructions for accessing Regulations.gov are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) The evaluation documents the factors that have led us to conclude that Nayarit is free of CSF. Therefore, we are proposing to recognize the Mexican State of Nayarit as free of CSF and to add it to the lists in §§ 94.9 and 94.10 of regions where CSF is not known to exist.

Certification Requirements

As previously noted, we are proposing to amend § 94.25 by adding the State of Nayarit to the list of regions in § 94.25, which, among other things, applies restrictions on the importation of live swine, pork, or pork products from certain regions that are listed as free of CSF in §§ 94.9(a) and 94.10(a).

A CSF-free region may be added to the list in § 94.25(a) when it supplements its pork supplies with fresh (chilled or frozen) pork imported from regions considered to be affected by CSF, or supplements its pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements of 9 CFR part 94, or has a common land border with a CSF-affected region, or imports live swine from CSF-affected regions under conditions less restrictive than would be acceptable for importation into the United States. As previously noted, Nayarit shares land borders with Durango, Zacatecas, and Jalisco, which are States we have not evaluated for CSF and thus are considered by APHIS to be CSF-affected. Thus, even though we are proposing to declare Nayarit free of CSF, there is a risk that live swine, pork, or pork products originating in Nayarit may be commingled with live swine, pork, or pork products from CSF-affected regions, resulting in a risk of CSF introduction into the United States.

Adding Nayarit to the list of regions in § 94.25(a) would mean that live swine, pork, or pork products and shipstores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under parts 95 or 96 of this chapter, may not be imported into the United States unless the requirements described below were met. For all swine, pork, and pork products, each shipment would have to be accompanied by a certification issued by a full-time salaried veterinary officer of the Government of Mexico that would have to be presented to an authorized inspector at the port of arrival in the United States. Pursuant to § 94.25(b), the certification for live swine would have to state that:

- The swine have not lived in any region where CSF is considered to exist;
- The swine have not been in contact with swine that have been in a region where CSF is considered to exist;
- The swine have not transited through a region where CSF is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and
- The conveyances or materials used in transporting the swine, if previously used for transporting swine, have been cleaned and disinfected in accordance with the requirements of 9 CFR 93.502.

Pursuant to § 94.25(c), the certification accompanying pork or pork products would have to state that:

- The pork or pork products are derived from swine that were born and raised in a CSF-free region and were slaughtered in such a region at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the national government of that region and that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the FSIS regulations in 9 CFR 327.2;
- The pork or pork products were derived from swine that have not lived in any region where CSF is considered to exist;
- The pork or pork products have never been commingled with pork or pork products from any region where CSF is considered to exist;
- The pork or pork products have not transited through a region where CSF is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and
- If processed, the pork or pork products were processed in a CSF-free region in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

As mentioned above, the State of Nayarit currently does not have any federally inspected (TIF) slaughtering or processing plants. Accordingly, no pork or pork products could be exported from Nayarit until this and all other requirements of § 94.25 have been met.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the regulations for importing animals and animal products by adding the Mexican State of Nayarit to the list of regions considered free of CSF. We are proposing this action at the request of the Mexican Government and the State of Nayarit and after conducting a risk evaluation that indicates that Nayarit is

free of this disease. We are also proposing to add Nayarit to a list of CSF-affected regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF. These actions would relieve certain CSF-related restrictions on the importation into the United States of pork, pork products, live swine, and swine semen from Nayarit while continuing to protect against the introduction of this disease into the United States.

This proposed rule is likely to have a minimal effect on U.S. live swine markets, both in the short term and in the medium term. Hog inventory of the State covered by this rulemaking amounted to about four-tenths of 1 percent of U.S. hog and pig inventory in 2004.[2] In 2004, there were 34 commercial swine farms in Nayarit with a population of 30,634 hogs and pigs. Another 18,650 hogs and pigs were reared in backyards, intended for consumption by the owners (table 1). Nayarit has never exported swine to the United States. This State—as is the case with Mexico as a whole—is a net importer of swine (table 2).

In 2004, the State of Nayarit produced around 4,000 metric tons of pork, an amount equal to 0.35 percent of Mexico's production of pork (table 3). Slaughter/processing plants handling swine in Nayarit are not TIF establishments. Only TIF plants are allowed to ship pork and pork products abroad or to CSF-free States in Mexico.

TABLE 1.—LIVE HOGS IN NAYARIT, 2000–2004, AND MEXICO AS A WHOLE, 2004

Nayarit	Hogs in commercial farms	Hogs in backyard operations	All hogs
2000	10,809	30,006	40,815
2001	36,799	29,587	66,386
2002	34,279	30,890	65,169
2003	36,665	25,010	61,675
2004	30,634	18,650	49,284
Mexico (2004)	26,208,000 (pig crop + beginning stocks) in both commercial and backyard operations.		

Source: SAGARPA; APHIS Risk Analysis on Importation of Classical Swine Fever (CSF) Virus from Nayarit, Mexico; Regional Evaluation Services, National Center for Import and Export, VS, APHIS, USDA; and Regionalization Evaluation Services (*http://www.aphis.usda.gov/vs/ncie/reg-request.html*), April 2006.

This rulemaking is also unlikely to have a significant effect on U.S. pork and pork products markets because, as with live swine, the United States is unlikely to import large amounts of these commodities from Nayarit. The United States is a net exporter of pork, while Mexico, as indicated below in tables 2 and 3, is a net importer. In 2004, Mexico exported 36,000 metric tons of pork, averaging only around 3.2 percent of total Mexican pork production.

TABLE 2.—U.S. AND MEXICAN TRADE WITH THE WORLD OF LIVE SWINE AND PORK, 2004

Commodity	Exports	Imports	Net trade with the world
Live swine (head):			
Mexican swine	0	189,867	189,867 (net imports)*.
U.S. swine	174,010	8,505,518	8,331,508 (net imports).
Pork (metric tons):			
Mexican pork	36,476	86,102	49,626 (net imports).
U.S. pork	747,357	469,442	277,916 (net exports).

*Net Imports = Imports minus exports; Net Exports = Exports minus imports
Source: USDA, FAS, UN Trade Statistics, 6-digit data.

TABLE 3.—SWINE PRODUCTION (HEAD) AND PORK PRODUCTION (METRIC TONS) IN UNITED STATES AND MEXICO, 2004

United States		Mexico		Nayarit, MX	
Swine	Pork	Swine	Pork	Swine	Pork
60,000,000	9,302,759	15,350,000	1,150,000	49,000	4,080

Source: USDA, FAS, GAIN Report # MX6010, Mexico, Livestock and Products, Semiannual Report 2006.

[2] APHIS Risk Analysis on Importation of Classical Swine Fever (CSF) Virus from Nayarit, Mexico; Regional Evaluation Services, National Center for Import and Export, VS, APHIS, USDA; and USDA, FAS, GAIN Report # MX6010, Mexico, Livestock and Products, Semiannual Report 2006.

Economic Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The domestic entities most likely to be affected by our proposal to declare the Mexican State of Nayarit free of CSF are pork producers.

According to the 2002 Agricultural Census, there were about 66,036 hog and pig farms in the United States in that year, of which 93 percent received $750,000 or less in annual revenues. Agricultural operations with $750,000 or less in annual receipts are considered small entities, according to the Small Business Administration (SBA) size criteria.

We do not expect that U.S. hog producers, U.S. exporters of live hogs, or U.S. exporters of pork and pork products, small or otherwise, would be affected significantly by this proposed rule. This is because, for the reasons discussed above, the amount of live swine, pork, and other pork products imported into the United States from the Mexican State of Nayarit is likely to be small.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with our proposal to list the Mexican State of Nayarit as free of CSF, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) would be amended by adding the word ''Nayarit,'' after the word ''Chihuahua,''.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) would be amended by adding the word ''Nayarit,'' after the word ''Chihuahua,''.

§ 94.25 [Amended]

4. In § 94.25, paragraph (a) would be amended by adding the word ''Nayarit,'' after the word ''Chihuahua,''.

Done in Washington, DC this 25th day of January 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–1530 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. APHIS–2007–0001]

RIN 0579–AC28

Viruses, Serums, Toxins, and Analogous Products; Detection of Avian Lymphoid Leukosis Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning testing for avian lymphoid leukosis in veterinary biologics to specify that the test is for the detection of extraneous replicating avian leukosis virus; require such testing to be conducted using a procedure that will detect extraneous replicating avian leukosis virus and that is acceptable to the Animal and Plant Health Inspection Service; require firms to develop a procedure to test for lymphoid leukosis virus contamination in the case of vaccine virus cytopathic to chick embryo cell cultures; and specify the equivalent inoculum dose of vaccine to be used when testing certain specified chicken vaccines for lymphoid leukosis virus. These proposed changes would update the testing for lymphoid leukosis virus contamination by prescribing a test procedure that increases the probability of detecting atypical lymphoid leukosis viruses such as those recently found in a contaminated vaccine.

DATES: We will consider all comments that we receive on or before April 2, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0001 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your

comment (an original and three copies) to Docket No. APHIS–2007–0001, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0001.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1228; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) contain standard procedures and requirements that are used to establish the purity, safety, potency, and efficacy of veterinary biological products. The regulations in §§ 113.200 and 113.300 specify general requirements for killed virus vaccine and live virus vaccine, respectively. The purity requirements for avian origin vaccine prescribed under these regulations specify that bulk or final container samples from each serial of avian origin vaccine must be tested for lymphoid leukosis virus contamination. Lymphoid leukosis viruses are ubiquitous in chickens, causing the disease lymphoid leukosis, and are considered to be potential contaminants of all biological products propagated in substrates of chicken origin. Inoculation of chickens and, possibly, other animals with veterinary biologics contaminated with lymphoid leukosis viruses may cause neoplastic diseases. Six subgroups (A, B, C, D, E, and J) of lymphoid leukosis viruses have been identified in chickens, with subgroups A (most often) and B (less frequently) being associated with disease. In order to ensure that biological products propagated in substrates of chicken origin are not contaminated with lymphoid leukosis viruses, veterinary biologics licensees and permittees are required to test such products for contaminating lymphoid leukosis viruses in accordance with the test procedure specified in § 113.31 of the regulations. The test procedure specified in § 113.31 is designed to detect contamination due to extraneous replicating subgroup A and B lymphoid leukosis viruses which are most often associated with disease in chickens. Biological products found contaminated with lymphoid leukosis viruses are unsatisfactory.

Currently, the standard test procedure in § 113.31 of the regulations prescribes the complement-fixation (CF) test for detecting lymphoid leukosis viruses in bulk pooled material or final container samples of biological products propagated in substrates of chicken origin. A negative CF test is considered evidence that the product is free of contaminating lymphoid leukosis viruses.

Recently, however, in response to a reported finding of lymphoid leukosis virus contaminated vaccine, the Center for Veterinary Biologics and other laboratories, using an enzyme-linked immunosorbent assay (ELISA), detected lymphoid leukosis virus in 7 out of 129 serials of a commonly used chicken vaccine. The lymphoid leukosis virus contaminant had not been detected when the serials were tested using the CF test procedure specified in § 113.31 of the regulations. Prior to the reported finding, and confirmation of lymphoid leukosis virus contamination in the seven serials mentioned above, the CF test procedure prescribed in § 113.31 had been considered suitable for detecting previously known and/or classified lymphoid leukosis viruses. However, the failure of the CF test to detect lymphoid leukosis virus contamination in the vaccine suggests that the contaminant most likely is a previously unknown and unclassified subgroup A-like (atypical) lymphoid leukosis virus that cannot be detected using the standard CF test procedure prescribed in § 113.31, but can be detected using an ELISA for the detection of avian leukosis virus. The inability of the CF test to detect the lymphoid leukosis virus contamination that was later found using an ELISA test procedure indicates that the ELISA has a broader spectrum of specificity as compared to the CF test, and may be more suitable for detecting previously unclassified atypical lymphoid leukosis viruses.

The requirement to use the CF test procedure specified in § 113.31 of the regulations to test for contaminating lymphoid leukosis viruses was promulgated prior to the development of ELISA methodology. Subsequent to the development of ELISA methodology and the licensing of ELISA based avian leukosis virus test kits, APHIS has approved the use of licensed ELISA kits to test for contaminating lymphoid leukosis viruses in place of the CF test procedure. Such approvals were based on side-by-side testing of the two methods that found the licensed ELISA kits to be equivalent to the CF test procedure for detecting lymphoid leukosis virus contamination in biological products.

However, because the contaminated vaccine test results indicate that an ELISA will detect lymphoid leukosis virus contamination that cannot be detected using the CF test procedure, APHIS has concluded that the CF test procedure should no longer be specified for the detection of lymphoid leukosis viruses in § 113.31. In place of the CF test procedure, veterinary biologics licensees and permittees would be required to conduct a test that will detect extraneous replicating avian leukosis virus and that is acceptable to APHIS as specified in the product's filed Outline of Production.

We are proposing to change the title of § 113.31 from ''Detection of avian lymphoid leukosis'' to ''Detection of extraneous replicating avian leukosis virus'' to clarify the fact that the test is for the detection of ''extraneous replicating'' avian leukosis virus that causes the disease ''lymphoid leukosis'' in chickens. We would also amend the introductory text of the section, where the current regulations specify that the CF test shall be conducted, to state simply that a test that will detect extraneous replicating avian leukosis virus and that is acceptable to APHIS shall be conducted. We expect that most manufacturers would specify a licensed ELISA kit for such testing, but other methods may be available and could be used provided they are acceptable to APHIS.

In the case of biological product containing virus that has been propagated in substrates of chicken origin that cannot be tested for lymphoid leukosis virus contamination because the vaccine virus is cytopathic to chick embryo fibroblast cells, we would amend the regulations to require the individual firm(s) to specify a procedure to test such product for contaminating lymphoid leukosis viruses in the filed Outline of Production.

Currently, § 113.31 of the regulations provides that in the case of cytopathic vaccine virus, the test for contaminating

lymphoid leukosis viruses may be performed using a sample of another (alternative) vaccine prepared the same week from material harvested from each source flock used for the preparation of the product that contains the cytopathic (questionable) vaccine virus. Because both the questionable vaccine and the alternative vaccine would have been prepared using common-source avian origin substrate, the expectation was that if contaminating lymphoid leukosis viruses are not detected in the alternative vaccine, there is a strong probability that the questionable vaccine also is free of contaminating lymphoid leukosis viruses. However, as we sought to determine the source of the lymphoid leukosis virus found in the contaminated vaccine, we tested samples of another vaccine prepared the same week from material harvested from the same source flock(s) that provided the substrate used in the preparation of the contaminated vaccine. Because the substrate used to prepare both the contaminated vaccine and the vaccine used for the alternative test were derived from a common source, we expected the alternative vaccine to test positive for contaminating lymphoid leukosis viruses; however, none of the alternative vaccine samples tested positive for lymphoid leukosis viruses. These results indicate that testing an alternative vaccine for contaminating lymphoid leukosis viruses in place of a questionable vaccine does not ensure that a contaminant, if present, will be detected and, thus, should be discontinued. Therefore, when a vaccine cannot be tested for contaminating lymphoid leukosis viruses because the vaccine virus is cytopathic to the cells used for viral propagation, we are proposing to require veterinary biologics manufacturers to specify a procedure to test such vaccine for contaminating lymphoid leukosis viruses in the product's filed Outline of Production. The specified procedure would have to be acceptable to APHIS.

In addition, we propose to specify that the equivalent of 200 doses of vaccine must be used as inoculum when testing bursal disease vaccine, tenosynovitis vaccine, and reovirus vaccine for contaminating lymphoid leukosis viruses. The current standard requirement specifies that when vaccines are tested for lymphoid leukosis virus contamination, the equivalent of 200 doses of Newcastle disease vaccine or 500 doses of other vaccine for use in poultry, or 1 dose of vaccine for use in other animals, shall be used as inoculum. Subsequent to codifying the requirement to use the equivalent of 200 doses as inoculum when testing Newcastle disease vaccine for contaminating lymphoid leukosis viruses, we have identified additional poultry vaccines for which the equivalent of 200 doses should be used as inoculum when testing for contaminating lymphoid leukosis viruses. APHIS now proposes to amend § 113.31 by specifying that the equivalent of 200 doses also shall be used as inoculum when testing bursal disease vaccine, tenosynovitis vaccine, and reovirus vaccine for contaminating lymphoid leukosis viruses.

These amendments are being proposed in order to update the procedure used to detect lymphoid leukosis virus contamination in biological products and ensure that such products are free of material that adversely affects their safe use in animals.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations for detection of avian lymphoid leukosis to require that a test that will detect extraneous replicating avian leukosis virus and that is acceptable to APHIS shall be conducted on all biological products containing virus that has been propagated in substrates (starting material) of chicken origin. Lymphoid leukosis is a disease of chickens caused by avian leukosis viruses. Veterinary biologics containing virus that has been grown in substrates of chicken origin are at risk for contamination with avian leukosis viruses which, if present, are referred to as extraneous replicating avian leukosis virus. Inoculation of chickens, and possibly other animals, with vaccine contaminated with avian leukosis virus may cause neoplastic disease. This proposed rule, if adopted, would allow any valid method to be used for testing veterinary biologics for extraneous replicating avian leukosis virus, provided that it is acceptable to APHIS.

The proposed changes would affect all licensed manufacturers of veterinary biologics who are required to test for the detection of extraneous replicating avian leukosis virus. There are approximately 125 veterinary biologics establishments, and approximately 15 of these establishments produce product that would be affected by this proposed rule. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities. The proposed changes, however, would not impose any additional economic burden since the regulations already require vaccine propagated in substrates of chicken origin to be tested for extraneous replicating avian leukosis virus; currently, the regulations require firms to use the CF test procedure for such testing. This proposed rule would discontinue required use of the CF test and instead require a test that will detect extraneous replicating avian leukosis virus and that is acceptable to APHIS to be conducted. In addition, the proposed rule would require firms to specify a procedure to test for extraneous replicating avian leukosis virus when questionable vaccine cannot be tested because the vaccine virus is cytopathic to chick embryo fibroblast cells; and would specify using the equivalent of 200 doses as inoculum when testing bursal disease, tenosynovitis, and reovirus vaccines for contaminating lymphoid leukosis viruses. The overall effect of this action would be to update the standard procedure for detecting extraneous replicating avian leukosis virus in biological products by prescribing a test procedure that has a greater probability of detecting an atypical lymphoid leukosis virus such as was recently found in contaminated vaccine.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 113.31 would be revised to read as follows:

§ 113.31 Detection of extraneous replicating avian leukosis virus.

A test that will detect extraneous replicating avian leukosis virus and that is acceptable to the Animal and Plant Health Inspection Service (APHIS) shall be conducted on all biological products containing virus that has been propagated in substrates of chicken origin: *Provided,* An inactivated viral product will be exempt from this requirement if the licensee can provide data that demonstrates to APHIS that the agent used to inactivate the vaccine virus would also inactivate lymphoid leukosis virus.

(a) Propagation of extraneous lymphoid leukosis viruses shall be done in chick embryo cell cultures or other substrate acceptable to APHIS.

(1) Each vaccine virus cytopathic to the cell culture being used shall be effectively neutralized, inactivated, or separated so that minimal amounts of extraneous replicating lymphoid leukosis virus can be propagated during the specified growth period. If the product cannot be tested for extraneous replicating lymphoid leukosis virus because the vaccine virus cannot be effectively neutralized, inactivated, or separated, an alternative procedure acceptable to APHIS shall be specified in the filed Outline of Production.

(2) When cell cultures are tested, 5 mL of the final cell suspension as prepared for seeding of production cell cultures shall be used as inoculum. When vaccines are tested, the equivalent of 200 doses of cytopathic vaccine viruses, including Newcastle disease vaccine, bursal disease vaccine, tenosynovitis vaccine, and reovirus vaccine, or 500 doses of other vaccines for use in poultry, or 1 dose of vaccine for use in other animals shall be used as inoculum. Control cultures shall be prepared from the same cell suspension as the cultures for testing the vaccine.

(3) Uninoculated chick embryo fibroblast cell cultures shall act as negative controls. One set of chick fibroblast cultures inoculated with subgroup A virus and one set of chick fibroblast cultures inoculated with subgroup B virus shall act as positive controls A and B, respectively.

(4) The cell cultures shall be passed when necessary to maintain viability, and samples harvested from each passage shall be tested for group-specific antigen.

(b) A test that will detect extraneous replicating lymphoid leukosis virus and that is acceptable to APHIS shall be used.

(1) All test materials, including positive and negative controls, shall be stored at −60 °C or colder until used in the test.

(2) The test procedure, including the cutoff value indicative of a positive test for extraneous replicating lymphoid leukosis virus, shall be specified in a filed Outline of Production or Special Outline.

(3) The detection of extraneous replicating lymphoid leukosis virus at the first passage shall be considered suspicious and the sample shall be further subcultured and tested to determine the presence of extraneous replicating lymphoid leukosis virus.

(4) Biological products or primary cells that are found contaminated with lymphoid leukosis viruses are unsatisfactory. Source flocks from which contaminated material was obtained are also unsatisfactory.

Done in Washington, DC this 25th day of January 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–1528 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. APHIS–2006–0079]

RIN 0579–AC30

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Live Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations for certain live bacterial and viral vaccines by removing the requirement to retest the Master Seeds for immunogenicity 3 years after the initial qualifying immunogenicity test. In addition, we are proposing to amend the requirement concerning mouse safety tests prescribed for a biological product recommended for animals other than poultry. These proposed changes would update the standard requirements by eliminating unnecessary testing of Master Seed bacteria and viruses and other forms of bulk or completed biological product.

DATES: We will consider all comments that we receive on or before April 2, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0079 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0079, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0079.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, APHIS, USDA, 4700

River Road Unit 148, Riverdale, MD 20737–1228; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) contain standard procedures and requirements that are used to establish the purity, safety, potency, and efficacy of veterinary biological products. Current standard requirements in the regulations for certain live bacterial and viral vaccines require each lot of Master Seed virus or bacteria used for vaccine production to be tested for the ability to provoke an immune response (immunogenicity) prior to licensure. In addition, the regulations require such Master Seed virus and bacteria to be retested 3 years after completion of the initial immunogenicity test to confirm persistence of the ability to provoke an immune response.

The requirement to periodically confirm the immunogenicity of a Master Seed has been in place since the adoption of the master seed concept for vaccine production; and had been considered necessary by APHIS until such time that an accumulation of data derived from such confirmatory testing established the antigenic stability of Master Seed bacteria and viruses over extended periods of storage. APHIS' analysis of data submitted by veterinary biologics licensees over several years has shown that the immunogenicity of the Master Seed is not adversely affected over extended periods of storage. Therefore, the requirement to retest Master Seed bacteria and viruses for immunogenicity 3 years after completion of the initial immunogenicity test is no longer considered necessary and would be removed. The elimination of such testing would result in a reduction in testing costs for veterinary biologics licensees and permittees.

Mouse Safety Tests

Safety tests are conducted to ensure that veterinary biologicals are free from properties causing undue local or systemic reactions. When the mouse safety test is prescribed in a standard requirement or filed Outline of Production for veterinary biologicals, the current regulations in § 113.33 specify that vaccine must be tested by inoculating one group of eight mice intracerebrally with 0.03 mL of vaccine and a second group of eight mice intraperitoneally with 0.5 mL of vaccine. Recent data, however, show that inoculating mice subcutaneously with 0.5 mL of vaccine is as effective as intracerebral inoculation with 0.03 mL. Therefore, we are proposing to amend the regulations regarding the mouse safety test by removing the reference to intracerebral inoculation with 0.03 mL of vaccine and replacing it with a reference to subcutaneous inoculation with 0.5 mL of vaccine. The subcutaneous and intraperitoneal routes of inoculation are considered equally sensitive for the purposes of the mouse safety test. Therefore, we are also proposing to amend the regulations to provide that only one route of inoculation—either the subcutaneous route or intraperitoneal route—be used in the test, rather than two routes as is currently required, and that the test be performed on a single group of eight mice, rather than the two groups of eight currently required. Although this proposed change would reduce the level of testing required by the regulations, we do not anticipate that the reduction in the number of mice used in the safety test would result in an increased number of vaccine-associated local or systemic reactions.

These proposed amendments would update the standard requirements for veterinary biological products by eliminating test procedures which are no longer necessary to ensure the safety of veterinary biologics.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations for certain live bacterial and viral vaccines to eliminate the requirement to retest the Master Seed for immunogenicity 3 years after the initial qualifying immunogenicity test. In addition, this proposed amendment would update the regulations concerning mouse safety tests by requiring either intraperitoneal or subcutaneous inoculation of mice in place of the current requirement to inoculate mice intracerebrally and intraperitoneally. These proposed amendments, if adopted, would remove test procedures that do not provide additional assurance that such products are not worthless, contaminated, dangerous, or harmful.

This proposed rule would affect veterinary biologics licensees and permittees producing live bacterial and viral vaccines and/or conducting the mouse safety test. According to the 2006 Current Veterinary Biologics Product Catalog, there are approximately 122 licensed and 21 permittee veterinary biologics establishments. The majority of these establishments produce veterinary products and would be affected by this proposal. The entities are classified under North American Industrial Classification System (NAICS) code 325414, Biological Product Manufacturing, and NAICS code 541710, Research and Development in the Physical, Engineering and Life Sciences. The small entity size standard for both groups is 500 or fewer employees.

According to the Small Business Administration, most veterinary biologics establishments would be classified as small entities. In 2002, there were 296 establishments in the Biological Product Manufacturing subsector, 96 percent of which had fewer than 500 employees. However, APHIS does not have the 2006 information on the sizes of all potentially affected entities.

The proposed changes would reduce testing costs for those entities by eliminating the requirement to retest the Master Seed for immunogenicity 3 years after the initial qualifying immunogenicity test. The proposed changes would also reduce, by half, the number of mice used in mouse safety tests by requiring either intraperitoneal or subcutaneous inoculation of mice in place of the current requirement to inoculate mice both intracerebrally and intraperitoneally. By revising the mouse safety test, it would only be necessary to test mice by requiring inoculation either intraperitoneally or subcutaneously. Reducing the number of mice needed for inoculation would therefore decrease the total cost of laboratory testing.

This proposal would not impose any additional economic burden upon the establishments because it actually eliminates testing requirements for the Master Seed and reduces the number of mice, by half, to be tested. The overall effects of this action would be to reduce the costs associated with producing and testing veterinary and biological products. APHIS has been unable to quantify the potential cost savings, and welcomes public comment on the savings that would be afforded by the proposed rule. While the overall effect of this action would be to reduce the costs associated with producing and testing veterinary biological products, we do not expect the amount saved would represent a significant percentage of overall costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 113.8, paragraph (d) would be amended as follows:

a. By revising the heading to paragraph (d).

b. By removing paragraph (d)(1).

c. By removing the paragraph designation ''(d)(2)''.

§ 113.8 In vitro tests for serial release.

* * * * *

(d) *Extending the dating of a reference.* * * *

* * * * *

3. In § 113.33, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 113.33 Mouse safety tests.

* * * * *

(a) * * *

(1) Vaccine prepared for use as recommended on the label shall be tested by inoculating eight mice intraperitoneally or subcutaneously with 0.5 mL, and the animals observed for 7 days.

(2) If unfavorable reactions attributable to the product occur in any of the mice during the observation period, the serial or subserial is unsatisfactory. If unfavorable reactions which are not attributable to the product occur, the test shall be declared inconclusive and may be repeated: *Provided*, That, if the test is not repeated, the serial or subserial shall be declared unsatisfactory.

* * * * *

§§ 113.66, 113.68, and 113.69 [Amended]

4. In §§ 113.66, 113.68, and 113.69, paragraph (b)(6) would be removed and paragraph (b)(7) would be redesignated as paragraph (b)(6).

§ 113.67 [Amended]

5. In § 113.67, paragraph (b)(7) would be removed and paragraph (b)(8) would be redesignated as paragraph (b)(7).

§ 113.70 [Amended]

6. In § 113.70, paragraph (b)(5) would be removed.

§§ 113.71, 113.306, and 113.318 [Amended]

7. In §§ 113.71, 113.306, and 113.318, paragraph (b)(4) would be removed and paragraph (b)(5) would be redesignated as paragraph (b)(4).

§ 113.303 [Amended]

8. In § 113.303, paragraph (c)(6) would be removed.

§ 113.302, 113.304, 113.314, 113.315, 113.317, 113.327, 113.331, and 113.332 [Amended]

9. In §§ 113.302, 113.304, 113.314, 113.315, 113.317, 113.327, 113.331, and 113.332, paragraph (c)(4) would be removed and paragraph (c)(5) would be redesignated as paragraph (c)(4).

§ 113.305 [Amended]

10. In § 113.305, paragraphs (b)(1)(iii) and (b)(2)(iii) would be removed and paragraph (b)(2)(iv) would be redesignated as paragraph (b)(2)(iii).

§§ 113.308 and 113.316 [Amended]

11. In §§ 113.308 and 113.316, paragraph (b)(5) would be removed and paragraph (b)(6) would be redesignated as paragraph (b)(5).

§ 113.309 [Amended]

12. In § 113.309, paragraph (c)(9) would be removed and paragraph (c)(10) would be redesignated as paragraph (c)(9).

§ 113.310 [Amended]

13. In § 113.310, paragraph (c)(8) would be removed and paragraph (c)(9) would be redesignated as paragraph (c)(8).

§ 113.311 [Amended]

14. In § 113.311, paragraph (c)(7) would be removed and paragraph (c)(8) would be redesignated as paragraph (c)(7).

§ 113.312 [Amended]

15. In § 113.312, paragraphs (b)(5) and(b)(6) would be removed and paragraph (b)(7) would be redesignated as paragraph (b)(5).

§§ 113.313 and 113.328 [Amended]

16. In §§ 113.313 and 113.328, paragraph (c)(6) would be removed and paragraph (c)(7) would be redesignated as paragraph (c)(6).

§§ 113.325 and 113.326 [Amended]

17. In §§ 113.325 and 113.326, paragraph (c)(5) would be removed and paragraph (c)(6) would be redesignated as paragraph (c)(5).

§ 113.329 [Amended]

18. In § 113.329, paragraph (c)(5) would be removed and paragraphs (c)(6) and (c)(7) would be redesignated as paragraphs (c)(5) and (c)(6), respectively.

Done in Washington, DC, this 25th day of January 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–1531 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0973; FRL–8274–8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request to revise the State Implementation Plan (SIP) made by the state of Kansas to include updates to its Prevention of Significant Deterioration (PSD) of Air Quality rule. The Kansas revision adopts by reference provisions of 40 CFR 52.21 as in effect July 1, 2004, except for subsections with references to Clean Unit Exemptions, Pollution Control Projects, and the record keeping

provisions for the actual-to-projected-actual emissions projections. Kansas did not adopt the latter provisions because of the June 24, 2005, United States Court of Appeals for the District of Columbia Circuit's decision, which vacated the Clean Unit Exemption and Pollution Control Project provisions and remanded back to EPA the record keeping provisions for the actual-to-projected-actual emissions projections standard for when a source must keep certain project related records. If approved, EPA would incorporate the revisions into the Kansas SIP.

DATES: Comments must be received on or before March 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0973, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: grier.gina@epa.gov.*

3. *Mail:* Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0973. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Gina Grier at (913) 551–7078, or by e-mail at *grier.gina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Federal approval process for a SIP?
What is being addressed in this document?
What is the background for EPA's New Source Review (NSR) Reform rule?
What is Kansas's NSR Reform rule and what action has Kansas requested on the rule?
Have the requirements for approval of a SIP revision been met?
What action is EPA proposing?

What is the Federal approval process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the Clean Air Act (CAA or Act) are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

What is being addressed in this document?

We are proposing to approve the Kansas Department of Health and Environment's (KDHE) revision to Kansas Administrative Regulation (K.A.R.) 28–19–350, Prevention of Significant Deterioration of Air Quality. Kansas adopted the applicable provisions of 40 CFR 52.21, except for subsections that are not applicable to Kansas or are stayed, vacated, or remanded by Federal court order, or are reserved for future use.

The rules were submitted to EPA on July 25, 2006. The submission included comments on the rules made during the state's adoption process, the state's response to comments and other information necessary to meet EPA's completeness criteria. For additional information on completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

What is the background for EPA's New Source Review (NSR) Reform rule?

The 2002 NSR Reform rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS), also known as ''attainment areas'' and in areas for which there is insufficient information to determine whether the area meets the NAAQS, also known as, ''unclassifiable'' areas. Part D of Title I of the CAA, 42 U.S.C. 7501–7515, is the nonattainment New Source Review (NNSR) program, which applies in areas that are not in attainment of the NAAQS, also known as ''nonattainment areas.'' Collectively, the PSD and NNSR programs are referred to as the ''New Source Review''

or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, States must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied, to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decisions.

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of physical change or change in the method of operation.

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA's 1980 NSR rules (45 FR 5276 August 7, 1980). On June 24, 2005, the District of Columbia Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States*, 413 F.3d (DC Cir. 2005). In summary, the Court of Appeals for the District of Columbia vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from record keeping, *e.g.*, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding record keeping provisions.

What is Kansas's NSR Reform rule and what action has Kansas requested on the rule?

In this action, we propose approval of revisions to Kansas's Air Quality Regulation, K.A.R. 28–19–350, Prevention of Significant Deterioration of Air Quality, into the SIP. This rule incorporates by reference the Federal PSD program in 40 CFR 52.21, including the 2002 NSR Reform rules described above, with the exception of portions of the rule relating to provisions vacated or remanded by the court.

Under Part C of Title I of the CAA, states have the primary responsibility for developing a SIP and issuing permits subject to the emission limits and other control measures developed in the plan. NSR ensures the protection of air quality because it designates a specific plan customized to prevent significant deterioration of air quality from individual major source emitters of air pollutants, such as power plants, refineries or manufacturing facilities. The permit also requires the application of Best Available Control Technology (BACT) to new or modified facilities. The NSR permit program encompassed by K.A.R. 28–19–350 is for sources located in areas where the air is designated ''attainment'' or unclassifiable and meets the requirement to protect human health. A major stationary source is required to obtain a permit before it can begin construction or make a major modification if the modification or construction will increase emissions by an amount large enough to trigger NSR requirements.

A PSD permit places allowable limits on pollution emissions from a newly constructed or newly modified stationary source. As part of the PSD permitting process, Kansas completes required air quality modeling analysis of the project to ensure the project maintains compliance with the NAAQS. Kansas also tracks and controls the emission of air pollutants by calculating the maximum increase concentration allowed to occur above an established background level, known as a PSD increment.

The revision to K.A.R. 28–19–350 incorporates by reference the provisions of the EPA NSR reform rule referenced above. This includes (1) the new methodology for determining baseline actual emissions; (2) the option of using the actual-to-projected-actual emissions for determining emissions increases; and (3) the provisions relating to plant-wide applicability limits. It does not incorporate the provisions vacated or remanded by the court, described previously. In addition, the state revision adds titles to each subsection for ease of reading. Subsection (c) clarifies the term ''Administrator'' in the Federal rule, to indicate where it means Administrator of EPA and where it means KDHE, as separate from state agency administration. Subsection (h) specifies that the state construction approval requirements also apply to the PSD permit issued under the regulation. Subsection (k) ensures that the public notice of PSD permit actions state whether the action will adversely impact Federal class I areas.

Because the Kansas rule adopts by reference relevant portions of the Federal rule, EPA believes it meets the requirement of the CAA.

Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document that is part of this docket, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA proposing?

We propose to approve revisions to Kansas's Air Quality Regulation, K.A.R. 28–19–350, Prevention of Significant Deterioration of Air Quality.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 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 the proposed approvals in 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.*). 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).

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). 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 CAA. 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.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 24, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–1518 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF STATE

48 CFR Part 601

[Public Notice 5684]

RIN 1400–AB98

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes one change to the DOSAR. It revises the DOSAR to expand contracting authority to non-U.S. citizen locally employed staff, i.e., Foreign Nationals and Third Country Nationals. Presently, only U.S. citizens who are Government employees may be appointed as contracting officers.

DATES: The Department will accept comments from the public up to April 2, 2007.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *E-mail: ginesgg@state.gov.* You must include the RIN in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602.
- *Fax:* 703–875–6155.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State initiated a pilot program in which a non-U.S. citizen locally employed staff (LES) member at an Embassy was given contracting authority at $2,500 (the micro-purchase threshold). The pilot resulted in savings in time to process transactions, allowed the Contracting Officer at the Embassy additional time to concentrate on other procurement and non-procurement issues, and increased morale among LES staff through a sense of greater empowerment. Although the pilot did not identify specific cost or headcount savings, the Department believes that further dissemination of contracting authority at increased levels up to $25,000 presents an opportunity for overseas posts (Embassies and Consulates) to achieve reductions in cost and headcount while improving service, largely by providing management flexibility to reconfigure the work portfolios of overseas contracting officers. Approximately 97% of all overseas procurement transactions are below $25,000. Effective management controls will minimize the risks associated with providing contracting authority to non-U.S. citizen LES. These controls are similar to those currently used successfully in the purchase card program for similar transactions. They consist of:

- Review of LES transactions on a monthly basis by a U.S. citizen contracting officer;
- Determination and approval of adequate local conditions such as rule of law and level of corruption as well as the integrity of LES staff recommended for the contracting authority;
- Evaluation of LES delegated procurement by the Office of the Procurement Executive;
- Certification by the Ambassadors on an annual basis that the management controls are sufficient; and
- Time-limited contracting officer authority to LES to permit periodic revalidation of management controls.

Because the current DOSAR language states that all contracting officers must be U.S. citizens, a change to the regulation is required. Because the rulemaking process will take some time, the Department will select several additional pilot posts to continue the deployment process during the rulemaking timeframe.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates 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 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 601

Government procurement.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

Subchapter A—General

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 601 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

2. Section 601.603–3 is amended by revising paragraph (c) to read as set forth below:

601.603–3 Appointment.

* * * * *

(c) *Non-Federal employees.* Only United States Government employees shall be appointed as contracting officers. For acquisitions at $25,000 and below only, this includes locally employed staff (*i.e.*, Foreign Service Nationals and Third Country nationals). Personal services contractors are not eligible for appointment as DOS contracting officers.

* * * * *

Dated: January 23, 2007.

Corey M. Rindner,

Procurement Executive, Department of State.

[FR Doc. E7–1534 Filed 1–30–07; 8:45 am]

BILLING CODE 4710–24–P

Notices

Federal Register
Vol. 72, No. 20
Wednesday, January 31, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 25, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Form FNS–388, State Issuance and Participation Estimates.

OMB Control Number: 0584–0081.

Summary of Collection: Section 18(b) of the Food Stamp Act of 1977, as amended August 14, 1979 by Pubic Law 96–58, requires that ''In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year.'' Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS–388 report to obtain monthly Statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month.

Need and Use of the Information: The FNS–388 report provides the necessary data for an early warning system to enable the Department to fulfill the requirements of Section 18(b) of the Food Stamp Act. In addition, the data is used to (1) validate the Annual Food Stamp Household Characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the reconciliation points' FNS–46 issuance data (for electronic benefit transfer (EBT), cash-out, and alternative issuance) for indication of accountability problems. FNS has also used the project area data to determine where to demonstrate pilot projects to test a school-based FSP outreach initiative.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Monthly.

Total Burden Hours: 5,243.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–1478 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0184]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of cancellation of public meeting.

SUMMARY: We are advising producers and users of veterinary biological products, and other interested individuals, that the 14th public meeting on veterinary biologics previously scheduled to be held on March 28 and 29, 2007, is canceled.

FOR FURTHER INFORMATION CONTACT: Dr. Byron E. Rippke, Director, Policy, Evaluation, and Licensing, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 1, 2006 (71 FR 69530, Docket No. APHIS–2006–0184), we gave notice that we would be holding a public meeting on Wednesday, March 28, and Thursday, March 29, 2007, in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA. The purpose of the meeting was to provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. Due to circumstances beyond our control, we are forced to cancel the meeting. We regret any inconvenience caused by the cancellation.

Done in Washington, DC, this 25th day of January 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–1529 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC02

National Forest System Land Management Planning Directive for Wilderness Evaluation

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency final directive.

SUMMARY: The Forest Service is issuing a final directive to Forest Service Handbook 1909.12, chapter 70. Chapter 70 establishes procedures for wilderness evaluation when carrying out national forest land management planning regulations at 36 CFR part 219, subpart A, published in the **Federal Register** on January 5, 2005 (70 FR 1023). This directive provides consistent overall guidance to Forest Service line officers and employees in identifying and evaluating potential wilderness areas when developing, or revising land management plans for units of the National Forest System.

DATES: This directive is effective January 31, 2007.

ADDRESSES: Copies of the directive are available on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsh/1909.12/1909.12_70.doc* or on a compact disc (CD). Copies of the directive on a CD can be obtained by contacting Regis Terney by e-mail (rterney@fs.fed.us), by phone at 1–866–235–6652 or 202–205–0895, or by mail at Regis Terney, USDA Forest Service, Mailstop 1104, EMC, 3 Central, 1400 Independence Avenue, SW., Washington, DC 20050–1104.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–0895.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department adopted final planning regulations for the National Forest System (NFS) at 36 CFR Part 219, subpart A (70 FR 1023) (also referred to as the 2005 planning rule). The 2005 planning rule provides broad programmatic direction in developing and carrying out land management planning. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives system (36 CFR 219.1(c)).

The Forest Service directives consist of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Generally, the FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is generally the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

Need for Direction

Procedural and technical details associated with implementing the 2005 planning rule are needed by NFS units to begin consistent plan amendments or revisions across all NFS units to prevent confusion and to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

Public Participation

On March 23, 2005, the Forest Service issued 12 interim directives to FSM 1330, 1900, and 1920 and FSH 1909.12 asking for public comment (70 FR 14637). In addition, on August 8, 2005, the Forest Service issued an interim directive (ID) 1909.12–2005–10 to FSH 1909.12 to revise ID 1909.12–2005–8, issued March 23, 2005 to correct a mistake at section 71.12 (70 FR 45647). On September 7, 2006, the Forest Service issued an interim directive combining, with no change, the direction previously issued in ID 1909.12–2005–8 and ID 1909.12–2005–10.

This notice of issuance involves a final amendment for FSH 1909.12, chapter 70—Wilderness Evaluation. Directives to FSMs 1900 and 1920 and FSH 1909.12, chapters zero code, 10, 20, 30, 40, 50, 60 and 80 were issued on January 31, 2006 (71 FR 5124).

Comments were submitted by mail, facsimile, and electronically. During the 90-day comment period (ending on June 21, 2005), the agency received 69 original responses and 8,727 copies of one form letter that commented on wilderness evaluation. These responses were analyzed by the Content Analysis Group and documented in a Content Analysis Report. Of the 69 original responses, the Forest Service received responses from 59 individuals and 10 organizations.

Response to Comments on Wilderness Evaluation

Potential Wilderness Areas

Comment: The Forest Service should not substitute the phrase ''potential wilderness areas'' for the phrase ''roadless areas'' in the Forest Service directives' terms because the term is confusing and an attempt to limit examination of roadless areas only to evaluation of their potential for wilderness. Roadless areas have their own status as areas that warrant protection and the planning process should not be limited to protecting only those areas recommended for wilderness designation. Roadless areas not recommended for wilderness will be lost to road building and timber harvest that will destroy their roadless character forever.

Response: The term ''potential wilderness areas'' was substituted for ''roadless areas'' in the interim directives to stress the reason these areas are identified and evaluated. Many public and internal comments were received on this issue. In the final directive the term ''potential wilderness areas'' is used to avoid confusion with the term ''inventoried roadless area'' used in the Roadless Area Conservation Rule (36 CFR 294.11, 66 FR 3244, January 12, 2001). The Roadless Area Conservation Rule defined ''inventoried roadless areas'' as areas identified in a set of inventoried roadless area maps in the November 2000 Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2 or subsequent update or revision of those maps. The Roadless Area Conservation Rule definition is different from the criteria for ''potential wilderness areas'' defined at section 71.1 of the final directive. The two areas (inventoried roadless areas and potential wilderness areas) may have common boundaries; however, often the areas are different.

Specific Criteria

Comment: The Forest Service should include specific criteria for inventory and evaluation of roadless areas and require a thorough review of all areas of each national forest, grassland, or prairie, including the 58.5 million acres of previously inventoried roadless areas identified in the Roadless Area Conservation Rule or the RARE II inventory. This new inventory is needed to ensure that areas are included that may have been missed in past efforts.

Response: Criteria for identifying lands to evaluate for wilderness potential are specified in the guidance in FSH 1909.12, chapter 70. The intent

is to identify and evaluate all National Forest System (NFS) lands that meet the definition of wilderness in section 2(c) of the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) The inventory process outlined in chapter 70 of the handbook requires a thorough review of not only those areas that were identified in previous inventories, but also other areas that may meet the criteria. This ''inventory'' of areas is updated during land management plan revision, and each area meeting inventory criteria is then evaluated following the policy in FSM 1923 and the procedural guidance in FSH 1909.12, chapter 70. Based on the evaluation, some potential wilderness areas may be administratively recommended for wilderness designation. But, only the Congress can designate an area as wilderness.

Inventory

Comment: The Forest Service should include in the roadless area inventory all unroaded areas greater than 1,000 acres in size.

Response: The criteria for inventory do not include any absolute size limit on what areas can be in the inventory. Areas less than 5,000 acres can be considered if they meet several criteria for wilderness characteristics and manageability. The intent is to identify and evaluate all NFS lands that meet the definition of wilderness in section 2(c) of the Wilderness Act.

Criteria for Wilderness

Comment: The Forest Service should revise the Forest Service directives' criteria for wilderness inventory and evaluation. Some criteria about evidence of past disturbance, such as old mining roads or new routes created illegally by off-road vehicle users or watershed treatments (FSH 1909.12, sec. 71.11) should not be used to eliminate areas from the roadless inventory. The Wilderness Act does not require pristine conditions for designation and that use of criteria such as ''sights and sounds'' coming from outside the area are erroneous and not in line with the will of Congress. The section on capability should be cut out entirely, including references to solitude, sights and sounds, challenge, and recreation.

Response: The directive has been revised to require that all areas meet the statutory definition of wilderness to be considered for the inventory of potential wilderness (FSH 1909.12, sec. 71). This includes providing opportunities for solitude or a primitive and unconfined type of recreation. All specific references to sights and sounds as ''inventory criteria'' have been removed. The capability analysis includes an evaluation of an area's ability to provide outstanding opportunities for solitude or primitive and unconfined recreation, consistent with the definition of wilderness in the Wilderness Act. Evaluating the opportunity for solitude appropriately includes isolation from sights, sounds, the presence of others, development, and evidence of humans when analyzing an potential wilderness area (FSH 1909.12, sec. 72.1).

Definition

Comment: The definition of wilderness in the Wilderness Act of 1964, section 2(c) should be in FSH section 71.

Response: That requirement was in the policy section of the interim directive at FSM 1923 so there is no need to repeat it in chapter 70 of FSH 1909.12. But, because of public and internal comment, and to make it clear that the Forest Service is identifying lands that could potentially be considered as additions to the National Wilderness Preservation System, the requirement for satisfying the definition of wilderness found in section 2(c) of the Wilderness Act has been added back into section 71.

Pending Wilderness

Comment: The Forest Service should allow potential wilderness areas to be managed as wilderness study areas until wilderness designation is achieved or settled by Congress.

Response: The term ''wilderness study area'' is a specific term used in the Eastern Wilderness Act of 1975 (16 U.S.C. 1132(note)) and other statutes. To clarify, direction has been added at FSH 1909.12, sec. 71. All areas that meet the definition of wilderness (sec. 2(c) of the Wilderness Act) and the criteria in FSM 1923 and FSH 1909.12, chapter 70 are evaluated for wilderness suitability in land management plan revisions. Those areas administratively recommended for wilderness or wilderness studies are not available for any use or activity that may reduce their wilderness potential. Not all areas evaluated will be found suitable for wilderness.

Wilderness Character

Comment: The Forest Service should clarify when and how evaluation for wilderness could take place outside the planning process. FSM 1923 implies that this could happen.

Response: There was policy direction and guidance in the interim directives at FSM 1923.12 and section 73.2 of FSH 1909.12, chapter 70 about the requirements for proposals resulting from wilderness studies not incorporated in land management plans, including legislatively mandated studies. The direction and guidance remains part of the amended directives in FSM 1923 and FSH 1909.12, chapter 70. Such a study could be directed by Congress.

Boundaries for Potential Wilderness Areas

Comment: The Forest Service should draw boundaries for roadless areas or potential wilderness areas to the edge of impact. Boundaries should be on a road, rather than buffered some distance back from the road.

Response: The directive has been revised to specify that boundaries of areas being considered for the inventory of potential wilderness be at prominent natural or semi-permanent human-made features to help ease on-the-ground identification (FSH 1909.12, secs. 71.12 and 72.1). And, the directions state that boundaries of areas administratively recommended for wilderness designation may be adjusted. This includes setting boundary lines with a setback from features such as roads, trails, dams, powerlines, pipelines, and bridges. Such setback areas are frequently needed to provide for the operation, administration, and management of such features.

Definition of Terms

Comment: The Forest Service should clarify the meanings of the terms ''road,'' ''unroaded,'' and ''roadless'' as used in the Forest Service directives' wilderness review provisions. Old jeep trails and other routes that are no longer maintained should not be considered ''improved'' roads and their presence should not be used to exclude areas from the roadless inventory.

Response: The term ''unroaded'' is not used in the final directive. The first step in the evaluation of potential wilderness areas is to identify and inventory all areas within National Forest System (NFS) lands that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act. Areas of potential wilderness identified in this process are called potential wilderness areas. The final amendment to the directive refers to forest roads using the new agency definition at Title 36, Code of Federal Regulations, Part 212—Administration of the Forest Transportation System, section 212.1. A forest road is defined as a road wholly or partly within or adjacent to and serving the NFS that the Forest Service determines is necessary for the protection, administration, and use of the NFS and the use and development of its resources. One of the criteria that must be met to include an

area on the inventory is that it does not contain forest roads (36 CFR 212.1) or other permanently authorized roads, except as permitted in areas east of the 100th meridian.

Areas To Be Evaluated

Concern: The Forest Service directives should require that all areas be evaluated according to the criteria described in section 72.41 of its handbook, including those areas east of the 100th meridian.

Response: The handbook guidance has been corrected at section 72.4 so that it applies to all areas evaluated for their wilderness potential.

Overview of Changes to Content of Chapter 70—Wilderness Evaluation

The final directive recodes the chapter (parent text) from a 1-digit chapter to a 2-digit chapter. Interim directive (ID) 1909.12–2005–8, ID 1909.12–2005–10, and ID 1909.12–2006–1 were issued using the 2-digit coding scheme. The final directive revises and updates the direction previously contained in the parent text. In addition, the final directive incorporates direction with adjustments made from comments on the Interim Directive 1909.12–2005–8 (ID). The digest contained within the final directive conveys the changes effected in agency policy and procedures. The major changes between the ID and the final directive are described below:

Section 71, paragraph 1, of the final directive adds direction on the statutory definition of wilderness, and adds at paragraph 2 direction about the term ''potential wilderness area'' and explains what the identification and inventory of potential wilderness areas means. In addition paragraph 2, adds a sentence to clarify the difference in terminology between lands east and west of the 100th meridian. Paragraph 3 was added to recognize the uniqueness of each area and the use of local knowledge and judgment in the inventory process.

In section 71.1, the introductory paragraph clarifies that areas qualify for placement on the inventory if they meet either criteria 1 and 3 or 2 and 3. In addition, the areas may have improvements if they meet the criteria in section 71.11, and for areas east of the 100 meridian they must also meet the criteria in 71.12. Clarifies the intent of enumerated paragraph 2, explaining that it is not necessary to meet all three criteria within paragraph 2. At paragraph 2, removes the terms ''physiography or vegetation'' and adds the term ''physical terrain.'' Revises enumerated paragraph 3, the third criterion concerning roads, from ''they do not contain improved roads maintained for travel by standard passenger-type vehicles'' * * * to ''they do not contain forest roads (36 CFR 212.1) or other permanently authorized roads.'' The term ''forest roads'' is defined by the new agency definition at Title 36, Code of Federal Regulations, Part 212—Administration of the Forest Transportation System, § 212.1. That is a ''forest road'' is a road wholly or partly within or adjacent to and serving the National Forest System (NFS) lands that the Forest Service determines is necessary for the protection, administration, and use of the NFS and the use and development of its resources.

Within section 71.12, changes the caption to ''Criteria for Potential Wilderness East of the 100th Meridian.'' The amendment incorporates direction on criteria for areas east of the 100th meridian (formerly in ID) with changes to the introductory paragraph, enumerated paragraph 5, and other editorial changes. At paragraph 1, the final directive clarifies that the criteria in section 71.12 are in addition to the criteria in sections 71.7 and 71.11. At enumerated paragraph 5, and revises the wording to be consistent with that at section 71.1 concerning forest roads.

Within section 72.1 revises the principal wilderness characteristics from those described in the ID (environment, challenge, outdoor recreation opportunities, special features, manageability) to those described in the 1964 Wilderness Act: (1) Natural; (2) undeveloped; (3) outstanding opportunities for solitude or primitive and unconfined recreation; (4) special features and values; and (5) manageability. At enumerated paragraph 5, incorporates wording from section 7.21 of parent text pertaining to how boundaries affect the manageability of an area (wording had been removed by the ID). However, at enumerated paragraph 5, did not incorporate the previously coded paragraph d (formerly in section 7.21 of parent text) about ''boundaries acting as a shield.''

Within section 73.3 removes the following unnecessary explanatory information on public hearings previously contained in the ID (formerly in section 7.33 of parent text): ''Congress, in legislation subsequent to the Wilderness Act, has considered it necessary to expressly provide for public involvement by reference to section 3(d) of the original act. This section applied to those areas that, on the effective date of the Wilderness Act, were described as primitive. Therefore, there is no statutory requirement that review of selected areas that may have likelihood for wilderness designation comply with the public participation provisions of section 3(d) of the Act. However, the fact that Congress, in designating wilderness study areas, has required hearings does imply a desire for public participation in a hearing or some comparable proceeding, such as a public meeting, in order to obtain comment about wilderness recommendations while developing or revising a land management plan.'' Other changes were made throughout the document for clarity.

Regulatory Certifications

Environmental Impact

This final directive provides the detailed direction to agency employees necessary to carry out the provisions of the final 2005 planning rule adopted at 36 CFR part 219 governing land management planning. Section 31.12 of FSH 1909.15 (57 FR 43208; Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that this final directive falls within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

Regulatory Impact

This directive has been reviewed under USDA procedures. The final directive would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. The directive would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, the directive would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, the directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that this final directive will not have a significant

economic impact on a substantial number of small entities as defined by the act.

No Takings Implications

This final directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that it would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

This final directive has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that it does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This final directive has been reviewed under Executive Order 12988, Civil Justice Reform. This final directive will direct the work of Forest Service employees and is not intended to preempt any state and local laws and regulations that might be in conflict or that would impede full implementation of this directive. The directive would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the effects of this final directive on state, local, and tribal governments, and on the private sector have been assessed and do not compel the expenditure of $100 million or more by any state, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The agency has considered this final directive under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the final directive conforms with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the states; and would 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. Moreover, this final directive addresses the land management planning process on national forests, grasslands, or other units of the National Forest System, which do not directly affect the states.

Consultation and Coordination With Indian Tribal Governments

This final directive does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore, advance consultation with tribes is not required.

Controlling Paperwork Burdens on the Public

This final directive does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Conclusion

This final directive provides consistent interpretation of the 2005 planning rule for line and staff officers, and interdisciplinary teams. Therefore, the agency can fulfill its commitment to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

The full text of this handbook is available on the World Wide Web at *http://www.fs.fed.us./im/directives*. Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at *http://www.fs.fed.us*.

Dated: December 21, 2006.

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. E7–1554 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Chugach National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Chugach National Forest will begin charging a fee for the overnight use and occupancy of new campsites and a fee for rental of the new group use pavilion at the Childs Glacier Recreation Area. Projected fees will range from $10 to $30 per night for existing walk in and new campsites and $75 and $150 per day for the new group use pavilion. No Campgrounds currently exist on the Cordova Ranger District. The Childs Glacier Recreation Area redevelopment project, 2005–2006, will provide this new facility for public use. Funds from the rental will be used for the continued operation and maintenance of Childs Glacier Recreation Area.

DATES: Childs Glacier Campground will become available for use August, 2007.

ADDRESSES: Forest Supervisor, Chugach National Forest, 3301 ''C'' Street, Suite 300, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Robert Behrends, Public Services Staff Officer, Cordova Ranger District, 907–424–4729.

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

Childs Glacier Recreation Area is located on the 700,000 acre Copper River Delta and is the most visited site on the Cordova Ranger District. The site is situated in a unique setting beside a large glacier where ice chunks frequently calve into the world renowned Copper River. Currently campground rental on the Chugach National Forest ranges from $10–$22 per night and $130 per day for pavilion rental. A projected range of fees from $10 to $30 per night for camping and $75 to $150 per day for the pavilion is both reasonable and acceptable for a new campground and group use facility providing a unique recreation experience in a dynamic setting in Alaska.

Dated: January 24, 2007.

Joe Meade,

Chugach National Forest Supervisor.

[FR Doc. 07–407 Filed 1–30–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Measuring Innovation in the 21st Century Economy Advisory Committee; Notice of Public Meeting

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Department of Commerce (DOC) is announcing the first meeting of the Measuring Innovation in the 21st Century Economy Advisory Committee. The meeting is open to the public. Seating at the meeting will be on a first-come, first-served basis. Interested parties may register on the Advisory Committee Web site: *http://www.innovationmetrics.gov*.

DATES: The meeting will be held on Thursday, February 22, 2007, from approximately 2 p.m. to 6 p.m. On-site sign-in begins at noon. Pre-registration is encouraged but not required.

ADDRESSES: The meeting will be held in the Vista Ballroom at The Wyndham Washington Hotel, 1400 M Street, NW., Washington DC. The Wyndham telephone number is 202–429–1700.

FOR FURTHER INFORMATION CONTACT: Elizabeth E.R. Anderson, Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230: *facsimile:* 202–482–0432 or Jacque Mason, ESA Communications and Advisory Committee Liaison, Room 4855, telephone: 202–482–5641, or online: *http://www.innovationmetrics.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Secretary of Commerce determined that the establishment of the Measuring Innovation in the 21st Century Economy Advisory Committee (the ''Committee'') was in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on new or improved measures of innovation in the economy that will help explain how innovation occurs in different sectors of the economy, how it is diffused across the economy, and how it impacts economic growth and productivity.

The Committee consists of fifteen members appointed by the Secretary of Commerce and is composed of individuals from business and academia. The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Charter was filed under the Federal Advisory Committee Act.

The meeting is physically accessible to people with disabilities. Individuals requiring special accommodations at this meeting including sign language interpretation or other auxiliary aids should contact Jacque Mason at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made. The meeting will be videotaped and made public on the Committee Web site within one month after the meeting date.

Elizabeth ''E.R.'' Anderson,

Deputy Under Secretary for Economic Affairs.

[FR Doc. 07–427 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–838]

Clad Steel Plate from Japan; Final Results of the Expedited Sunset Review (Second Review) of the Antidumping Duty Order

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

SUMMARY: On October 2, 2006, the Department of Commerce (the Department) initiated the second sunset review of the antidumping duty order on clad steel plate from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic interested parties, and no response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Nichole Zink or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0049 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2006, the Department of Commerce initiated a sunset review of the antidumping duty order on clad steel plate from Japan pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 71 FR 57921 (October 2, 2006) (*Notice of Initiation*). The Department received a notice of intent to participate from the domestic parties, Mittal Steel USA (Mittal Steel) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (USW), within the deadline specified in 19 CFR 351.218(d)(1)(i). Mittal Steel claims interested party status under section 771(9)(C) of the Act as a domestic manufacturer of clad steel plate. USW claims interested party status under section 771(9)(D) of the Act as a certified union or recognized union group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of clad steel products.

The Department received a complete substantive response from Mittal Steel within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive a substantive response from respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(iii)(C), the Department determined that it was appropriate to conduct an expedited 120-day sunset review of this antidumping duty order.

Scope of the Order

The scope of this order is all clad[1] steel plate of a width of 600 millimeters

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (e.g., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any

(mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel–base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all–inclusive.

Clad steel plate within the scope of this order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Clad Steel Plate from Japan'' (Decision Memo) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic versions of the Decision Memo are identical in content.

other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electrocladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C) (2) (e).

Final Results of Review

The Department determines that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of dumping at the rates listed below:

Producers/Exporters	Margin (percent)
The Japan Steel Company	118.53
All Others	118.53

Notification regarding Administrative Protective Order

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

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 25, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–1571 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Kunj Forgings (Kunj). The period of review (POR) covers February 1, 2005, through January 31, 2006. We preliminarily determine that Kunj made sales of subject merchandise at less than normal value (NV) in the United States during the POR. If these preliminary results are adopted in the final results of this new shipper review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise for which the importer–specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities cited.

EFFECTIVE DATE: January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994). On February 28, 2006, we received requests for new shipper reviews from Kunj Forgings Pvt. Ltd. (Kunj), Micro Forge (India) Ltd. (Micro), Pradeep Metals Limited (Pradeep), and Rollwell Forge, Ltd. (Rollwell) for the period February 1, 2005, through January 31, 2006. We initiated the reviews on April 6, 2006. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews* 71 FR 17439 (April 6, 2006). On September 29, 2006, we rescinded the reviews with respect to Micro, Pradeep, and Rollwell. *See Certain Forged Stainless Steel Flanges from India: Notice of Partial Rescission of New Shipper Reviews*, 71 FR 27468 (September 29, 2006).

On October 3, 2006, we extended the time limit for the preliminary results of this new shipper review to no later than January 25, 2007. *See Stainless Steel Flanges From India: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review*, 71 FR 58372 (October 3, 2006).

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such

as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Tariff Act), from December 11, 2006, through December 14, 2006, we verified information provided by Kunj. We used standard verification procedures, including the examination of relevant sales, cost, and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report, on file in the CRU located in room B–099 in the main Department of Commerce building.

Bona Fides Analysis

Consistent with the Department's practice, we investigated the *bona fides* nature of the sales that Kunj made during the POR. Based on our investigation in the *bona fide* nature of the sales, the questionnaire responses Kunj submitted, and our verification thereof, as well as our preliminary determination that Kunj was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Kunj's sales were made on a *bona fide* basis. For a complete discussion of our analysis, *see* the Department's January 25, 2007, memorandum to the file ''Analysis of the Bona Fide Nature of Kunj's Sales During the Period of Review,'' on file in room B–099 of the Department of Commerce building.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States by Kunj were made at less than NV, we compared the U.S. export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted–average prices for NV and compared these to the prices of individual EP transactions. We found that for all U.S. sales there were no contemporaneous home market sales that passed the Department's twenty percent difference–in-merchandise (difmer) test. (For an explanation of our difmer analysis, *see* the memorandum to the file, ''Analysis of Data Submitted By Kunj Forgings Pvt., Ltd., in the 2005–2006 New Shipper Review of Stainless Steel Flanges from India,'' dated January 25, 2007 (analysis memorandum).) Therefore, we used constructed value (CV) as the basis for normal value. We describe below our calculation of NV, CV, and EP.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products described by the Scope of the Order section, above, which were produced and sold by Kunj in the home market, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. We made comparisons using the following five model match characteristics: (1) Grade; (2) Type; (3) Size; (4) Pressure rating; (5) Finish.

Export Price

In accordance with section 772(a) of the Tariff Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For Kunj's sales to the United States, we used EP in accordance with section 772(a) of the Tariff Act because its merchandise was sold directly to the first unaffiliated purchaser prior to importation, and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on the prices charged to the first unaffiliated customer in the United States. We used invoice date as the date of sale. We based EP on the packed FOB Indian port prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including domestic inland freight and domestic brokerage and handling.

Normal Value

A. Viability

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), we compared Kunj's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C)(iii) of the Tariff Act. Based on Kunj's reported home market and U.S. sales quantities, we determine that the volume of aggregate home market sales during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR. Accordingly, we find that Kunj had a viable home market. Therefore, we based NV on home market sales to unaffiliated purchasers made in the usual quantities and in the ordinary course of trade. *See* the January 25, 2007, analysis memorandum for a further discussion of home market viability.

B. Price–to-Price Comparisons

As indicated above, we compared U.S. sales with contemporaneous sales of the foreign like product in India. As noted, we considered stainless steel flanges identical based on the following five criteria: grade, type, size, pressure rating, and finish. As with EP, we used invoice date as the date of sale.

In calculating the net unit price, we used the gross unit price as it appeared on the invoice for each sale, rather than Kunj's reported gross unit price which (as we first discovered at the verification) was net of various unexplained expenses. We also made an adjustment to gross unit price for Kunj's reported late delivery discounts. We

made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. We adjusted for differences in the circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made these COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Home market direct selling expenses consisted of warranty expenses, bank charges, and imputed credit. U.S. direct selling expenses consisted of imputed credit and bank charges. Finally, we made adjustments, where appropriate, for physical differences between the U.S. models and the home market models to which it was being compared.

Constructed Value

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV because, as indicated above under the section ''Comparisons to Normal Value,'' we were unable to find a contemporaneous comparison market match for any of the U.S. sales. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit, as required by 19 CFR 351.401(b)(1). In calculating the cost of materials, we denied Kunj's claim for an offset to material costs for revenue generated by sales of scrap because Kunj did not adequately support either the amount of the offset nor its means of valuing the scrap sales price. *See* verification report at 33. In accordance with section 772(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by Kunj in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted–average comparison market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. We made the COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. The COS adjustments for CV were the same as those for price–to-price comparisons. *See* ''Price–to-Price Comparisons'' (above).

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, we obtained information from Kunj about the marketing stages involved in its U.S. and home market sales, including a description of its selling activities in the respective markets. Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade the functions and activities should be dissimilar.

Kunj reported one channel of distribution and one LOT in the home market contending that all home market sales were to end users. *See* Kunj's November 6, 2006, submission, at 18. After examining the record evidence provided by Kunj, we preliminarily determine that a single LOT exists in the home market.

Kunj further contends it provided substantially the same level of customer support on its U.S. EP sales to distributors/importers as it provided on its home market sales to end users. This support included manufacturing to order, and making arrangements for freight and insurance. *See* Kunj's May 8, 2006, submission at A–13. The Department has determined that we will find sales to be at the same LOT when the selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412 (c)(2). We find Kunj performed virtually the same level of customer support services on its U.S. EP sales as it did on its home market sales.

The record evidence supports a finding that in both markets and in all channels of distribution Kunj performs essentially the same level of services. Therefore, based on our analysis of the selling functions performed on EP sales in the United States, and its sales in the home market, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. Accordingly, we preliminarily find that no level of trade adjustment is appropriate for Kunj.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review we preliminarily find that a weighted–average dumping margin of 1.52 percent exists for Kunj for the period February 1, 2005, through January 31, 2006.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of new shipper review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 5 days after the date of submission of case briefs and written comments. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues

raised in any such written comments or at a hearing, within 90 days of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates based on the total amount of antidumping duties calculated for the examined sales made during the POR divided by the total quantity (in kilograms) of the examined sales. Upon completion of this review, where the assessment rate is above *de minimis*, we shall instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP fifteen days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit rate will be effective upon publication of the final results of this new shipper review for shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act. For subject merchandise produced and exported by Kunj, the cash deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero. This cash deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: January 25, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–1575 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Notice of Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review: Honey from Argentina

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

EFFECTIVE DATE: January 31, 2007.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0469, respectively.

On November 24, 2006, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on honey from Argentina, covering the period December 1, 2004, through December 31, 2005, and the following exporter: Patagonik S.A. *See Honey From Argentina: Preliminary Results of New Shipper Review*, 71 FR 67850 (November 24, 2006). On December 15, 2006, the **Federal Register** published a correction notice due to typographical errors in the original preliminary results notice. *See Corrections Honey From Argentina: Preliminary Results of New Shipper Review*, 71 FR 75614 (December 15, 2006). The final results are currently due on February 14, 2007.[1]

SUPPLEMENTARY INFORMATION:

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

[1] The November 24, 2006, **Federal Register** Notice stated the Department would issue final results within 120 days of publication of the Preliminary Results. The Notice should have read that the Department will issue the final results within 90 days after the date on which the preliminary results were issued. *See* 19 CFR 351.214(i)(1). The Department hereby corrects this inadvertent error.

As a result of extraordinarily complicated issues raised in the review segment, specifically the multiple issues raised by petitioner with regard to the *bona fide* nature of the sale as well as issues regarding the beekeepers' costs, it is not practicable to complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until April 15, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). Because April 15 falls on a Sunday, the deadline for the completion of the final results is April 16, 2007, the next business day.

This notice is issued and published in accordance with section 751(a)(2)(B) of the Act.

Dated: January 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–1461 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: On April 10, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from the Republic of Korea (Korea) (71 FR 18074). This review covers five producers/exporters of the subject merchandise to the United States. The period of review (POR) is July 1, 2004, through June 30, 2005. We are rescinding the review with respect to eight companies because they had no shipments of subject merchandise to the United States during the POR.

Based on our analysis of the comments received, we have made changes in the margin calculation for DaiYang Metal Co., Ltd. (DMC), a respondent in this review. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Brianne Riker, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0656 and (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following five producers/exporters: Boorim Corporation (Boorim), Dae Kyung Corporation (Dae Kyung), Dine Trading Co., Ltd. (Dine), DMC, and Dosko Co., Ltd. (Dosko).

On April 10, 2006, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on SSSSC from Korea. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074 (April 10, 2006) (*Preliminary Results*).

Prior to the preliminary results, the following companies informed the Department that they had no shipments to the United States during the POR: BNG Steel Co. (BNG), Hyundai Corporation (Hyundai), NIC International Co., Ltd. (NIC), Pohang Iron and Steel Co., Ltd. (POSCO), Samkyung Corporation (Samkyung), Sammi Corporation (Sammi), Samwon Precision Metals Co., Ltd. (Samwon), and Sun Woo Tech Company (Sun Woo). We reviewed U.S. Customs and Border Protection (CBP) data and confirmed that there were no entries of subject merchandise from any of these companies. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for BNG, Hyundai, NIC, POSCO, Samkyoung, Sammi, Samwon, and Sun Woo. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

We invited parties to comment on our preliminary results of review. In May 2006, we received case briefs and rebuttal briefs from the petitioners (*i.e.*, Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc., and the United Steelworkers) and DMC.

Scope of the Order

The products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 millimeters in width and less than 4.75 millimeters in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (**E.G.**, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: 1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; 2) sheet and strip that is cut to length; 3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 millimeters or more); 4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 millimeters); and 5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold-reduced), in coils, of a width of not more than 23 millimeters and a thickness of 0.266 millimeters or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product that is used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 millimeters, and with a mass of 225 kilograms or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of two millimeter depth. The material must exhibit residual stresses of two millimeters maximum deflection, and flatness of 1.6 millimeters over 685 millimeters length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

more than one percent, manganese of no more than one percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and seven to 10 percent cobalt, with the remainder of iron, in widths 228.6 millimeters or less, and a thickness between 0.127 and 1.270 millimeters. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1,390 degrees Celsius and displays a creep rupture limit of four kilograms per square millimeter at 1,000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and seven to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1,700 Mpa and ultimate tensile strengths as high as 1,750 Mpa after aging, with elongation percentages of 3 percent or less in 50 millimeters. It is generally provided in thicknesses between 0.635 and 0.787 millimeters, and in widths of 25.4 millimeters. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Period of Review

The POR is July 1, 2004, through June 30, 2005.

Partial Rescission of Review

As noted above, BNG, Hyundai, NIC, POSCO, Samkyoung, Sammi, Samwon, and Sun Woo had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with CBP data. *See* the November 9, 2005, memorandum to the file from Brianne Riker, entitled ''Placing U.S. Customs and Border Protection Data on the Record of the 2004 - 2005 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from the Republic of Korea.'' Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to these companies. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127, 53128 (Sept. 9, 2003).

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether DMC made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*.

We found that 20 percent or more of DMC's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we found that DMC made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

following producer/exporters: Boorim, Dae Kyung, Dine, and Dosko. We find that it continues to be appropriate to apply facts available to these respondents. Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

On August 19, 2005, the Department requested that Boorim, Dae Kyung, Dine, and Dosko respond to the Department's antidumping duty questionnaire. The deadline to file a response was September 27, 2005. The Department did not receive a response from Boorim, Dae Kyung, Dine, or Dosko. On November 4, 2005, the Department placed a memorandum on the record with information regarding delivery confirmation of the questionnaires to each company. *See* the November 4, 2005, memorandum to the file from Brianne Riker entitled, ''Placing Information on the Record of the 2004–2005 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Korea.'' Thus, because these companies did not respond to the Department's questionnaire, as in the preliminary results, the Department must use facts otherwise available with regard to Boorim, Dae Kyung, Dine, and Dosko, pursuant to sections 776(a)(2)(A) and (C) of the Act of the Act. *See Preliminary Results*, 71 FR at 18076.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Boorim, Dae Kyung, Dine, and Dosko did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's questionnaire. Therefore, an adverse inference is warranted in selecting facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as adverse facts available (AFA), information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (Aug. 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less–than-fair–value (LTFV) investigation or in any administrative review of a specific order to respondents who have failed to cooperate with the Department. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064, 40066 (July 14, 2006); Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products from the People's Republic of China, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum at the ''Facts Available'' section.

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 58.79 percent, which was the rate alleged in the petition, as adjusted at the initiation of the LTFV investigation, to Boorim, Dae Kyung, Dine, and Dosko. This rate was assigned in a previous segment of this proceeding and is the highest rate determined for any respondent in any segment of this proceeding. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279 (Aug. 28, 2001). The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). We continue to find that the information upon which this margin is based has sufficient probative value to satisfy the requirements of section 776(c) of the Act. *See Preliminary Results*, 71 FR at 18077.

Neither Boorim, Dae Kyung, Dine, Dosko nor any other interested party submitted comments regarding the Department's preliminary corroboration analysis for purposes of the final results. Therefore, we have continued to assign to exports of the subject merchandise by Boorim, Dae Kyung, Dine, and Dosko the rate of 58.79 percent.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculation for DMC. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted–average margin percentages exist for the period July 1, 2004, through June 30, 2005:

Manufacturer/Producer/ Exporter	Margin Percentage
Boorim Corporation	58.79
Dae Kyung Corporation	58.79
DaiYang Metal Co., Ltd.	3.77
Dine Trading Co., Ltd. ..	58.79
Dosko Co., Ltd.	58.79

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), because we have the reported entered value of DMC's U.S. sales, we have calculated importer–specific assessment rates for DMC based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. For Boorim, Dae Kyung, Dine, and Dosko, we will instruct CBP to liquidate entries at the rates indicated above. The Department will issue appraisement instructions directly to CBP. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States, as well as any companies for which we are rescinding the review based on claims of no shipments. In such instances, we will instruct CBP to liquidate unreviewed entries at the All Others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSSSC from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or in the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.49 percent, the All Others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice 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 antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix Issues in Decision Memo

1. Constructed Export Price (CEP) Offset
2. Offset for Countervailing (CVD) Duties

3. U.S. Indirect Selling Expense (ISE) Ratio

4. U.S. Date of Sale
5. Home Market Sale Date of Sale
6. Home Market Early Payment and Quantity Discounts
7. Home Market Credit Expenses
8. Whether to Apply an Adverse Inference to DMC's Reported Yield Information

9. DMC's Hot Coil Purchases

[FR Doc. E7–1462 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Public Meeting on the Influence of European Standards in the Middle East and North Africa

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Engage stakeholders in a dialogue on the increased use of European standards in the Middle East and North Africa and market access for U.S. exporters. Invite public comment on this subject.

SUMMARY: The use of European standards in the Middle East and North Africa is growing. The European Union (EU) is providing technical assistance and building ties to harmonize regulations and standards so as to facilitate trade between the EU and these regions. This meeting will provide U.S. industry an opportunity to exchange their experiences and express their views on this subject.

DATES: The date of the meeting is Thursday, February 15, 2007.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *E-mail: Jennifer.Derstine@mail.doc.gov.*
- *Fax:* 202–482–0878.
- *Mail:* U.S. Department of Commerce, Room 2029B, 14th and Constitution Avenue, NW., Washington, DC 20230.
- *Hand Delivery/Courier:* U.S. Department of Commerce, Room 2029B, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Derstine, Room 2029B, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–1870.

SUPPLEMENTARY INFORMATION: For more than ten years the European Commission has offered technical assistance to a broad group of countries in institution building, developing regulatory and administrative infrastructure, and support for conformity assessment, market surveillance, and metrology organizations. Europe's financial and technical support makes countries more

open to using European standards and facilitates two-way trade between these markets. Ties between the EU and specific markets in the region are also being solidified through partnership agreements with CEN, the European Committee for Standardization, and through affiliate membership in CENELEC, the European Committee for Electrotechnical Standardization. CEN's Partner Standardization Body (PSB) agreements, which some Middle Eastern and North African countries are considering signing, typically have a clause that requires signatories to withdraw conflicting national standards from the market. Israel is considering a partnership agreement with CEN and an affiliation with CENELEC. Egypt and Tunisia are the only other Middle East or North African countries known to have signed a partnership agreement with CEN. Tunisia is also an affiliate of CENELEC.

The Department of Commerce cordially invites all interested stakeholders to attend a public meeting on the presence of European standards in the Middle East and North Africa. The meeting is an opportunity for interested parties to provide information and input to the U.S. government on how this trend in standardization affects market access for U.S. goods in the region. Key government officials working directly on this issue from various agencies will be in attendance.

Date: Thursday, February 15, 2007.

Time: 10 a.m.–12 p.m.

Where: U.S. Department of Commerce, 14th and Constitution Avenue, NW.

To gain access to the Department of Commerce, please RSVP by noon on Wednesday, February 14, 2007, to Jennifer Derstine at (202) 482–1870 or *Jennifer.Derstine@mail.doc.gov.*

The agenda will be provided at the meeting. Further information is available on the Department of Commerce Standards Initiative Web site at: *http://www.trade.gov/standards.*

Dated: January 25, 2007.

Jennifer Derstine,

Senior International Trade Specialist.

[FR Doc. E7–1521 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or sanctuary) is seeking applicants for the following vacant seat on its Sanctuary Advisory Council (council): Education Primary. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. The Education Primary seat, which was vacated by the previously appointed representative before the end of the term, should expect to serve until February 2008.

DATES: Applications are due by February 23, 2007.

ADDRESSES: Application kits may be obtained from the following Web address; *http://www.montereybay.noaa.gov/sac/2007/recruit07v1/011607covlet.html,* or through the Sanctuary office at 299 Foam Street, Monterey, CA 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Paul Chetirkin, 299 Foam Street, Monterey, CA 93940, (831) 647–4210, *paul.chetirkin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, State and Federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: January 23, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 07–411 Filed 1–30–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice of advisory board meeting.

SUMMARY: The Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) will hold the fifth public meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR). The VBDR was established at the recommendation of the National Research Council report, entitled ''Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency.'' The report recommended the need to establish an advisory board that will provide suggestions for improvements in dose reconstruction and claim adjudication procedures. The goal of the VBDR is to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans.

Radiation dose reconstruction has been carried out by the Department of Defense under the Nuclear Test Personnel Review (NTPR) program since the 1970s. DTRA is the executive agent for the NTPR program which provides participation data and actual or estimated radiation dose information to veterans and the VA.

Board members were selected to fulfill the statutory requirements mandated by Congress in Section 601 of Public Law 108–183. The Board was appointed on June 3, 2005, and is comprised of 16 members. Board members were selected to provide expertise in historical dose reconstruction, radiation health matters, risk communications, radiation epidemiology, medicine, quality management, decision analysis and ethics in order to appropriately enable the VBDR to represent and address veterans' concerns.

The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), PL 92–463, which sets forth standards for the formation and conduct of government advisory committees.

DATES: Wednesday, March 7, 2007, from 7:30 a.m.–12:30 p.m. and 3 p.m.–5:15 p.m. with a public comment session from 1:30 p.m.–3 p.m., and Thursday, March 8, 2007, from 8 a.m.–10 a.m. and 11:15 a.m.–12 p.m. with a public comment session from 10:15 a.m.–11:15 a.m.

ADDRESSES: Tuscany Suites and Casino, 255 East Flamingo Road, Las Vegas, Nevada 89169.

Agenda: On Wednesday, the meeting will open with an introduction of the Board. The following briefings will be presented: How a Typical Dose Reconstruction is Performed in Accordance With the NTPR Standard Operating Procedures'' by Mr. John Stiver; ''Interactive Radio-Epidemiological Tables and Its Use in Adjudication'' by Dr. David Kocher; ''The Use of Interactive Radio-Epidemiological Program by the Department of Veterans Affairs'' by Dr. Neil Otchin; ''Veterans' View Regarding VBDR, Dose Reconstruction and Claim Compensation Programs'' by Mr. R. J. Ritter; ''NTPR Dose Reconstruction and Veterans Communication Activities'' by Dr. Paul Blake; and ''VA Radiation Claims Compensation Program for Veterans'' by Mr. Thomas Pamperin. On Thursday, the four subcommittees established during the inaugural VBDR session will report on their activities since November 2006. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures'', the ''Subcommittee on VA Claims Adjudication Procedures'', the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program'', and the ''Subcommittee on Communication and Outreach.'' The Board will close with a discussion of the Subcommittee reports, future business and meeting dates.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction hotline at 1–866–657–VBDR (8237).

SUPPLEMENTARY INFORMATION: May be found at *http://vbdr.org.*

Dated: January 25, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–1532 Filed 1–30–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

US Air Force Academy Board of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting via teleconference on February 8, 2007. The purpose of the meeting is to review morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

For the general public, a teleconference room will be set up in the Pentagon, Room 5E225. Members of the public wishing to attend must arrive no later than one hour prior to the start of the meeting. Entry to the Pentagon will be through the Pentagon Metro entrance. Two forms of photo identification (ID) are required for building entry, one of which must be a state- or federal-issued picture ID.

The meeting will be open to the public. Public attendance at this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the teleconference room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements should be no longer than two type-written pages and must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information. Written statements can be submitted to the Designated Federal Officer at the address detailed below, at any point, however, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The Designated Federal Officer will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this

notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during this BoV meeting shall be made available upon request.

After review of written comments, the BoV Chairperson and Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this BoV meeting or a future meeting. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(c), section 10(3) of FACA, and this paragraph. The Designated Federal Officer and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issue for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the Designated Federal Officer and Chairperson.

DATES: The U.S. Air Force Academy Board of Visitors will hold a meeting via teleconference on February 8, 2007.

FOR FURTHER INFORMATION CONTACT: For further information or to attend this BoV meeting, contact Major Glenn Mayes, Chief, USAFA Programs Assessment, Directorate of Airman Development and Sustainment, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 697–8650.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–1492 Filed 1–30–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation as a Museum/Memorial, Submarine ex-DOLPHIN (AGSS–555)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) hereby gives notice of the availability for donation, under the authority of 10 U.S.C. Sect. 7306, of the diesel-powered submarine ex-DOLPHIN (AGSS–555), for use as a static museum/memorial for public display. The ex-DOLPHIN was decommissioned and struck from the Naval Vessel Register on January 15, 2007, and is located in San Diego, CA, its historic homeport. It is in the best interest of the Government to limit consideration of potential donees to entities that will provide permanent berthing in San Diego for public display of ex-DOLPHIN, thus recognizing the submarine's service in its historic homeport, while avoiding the DON's need to move the vessel to another location pending completion of the donation process. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code that will provide permanent berthing and display the vessel in San Diego.

The transfer of a vessel for donation under 10 U.S.C. Sect. 7306 shall be made at no cost to the United States Government. The donee will be required to maintain the vessel as a static display in a condition that is satisfactory to the Secretary of the Navy.

A letter of intent will be required within 30 days from the date of this notice and all donation applications must be received within six months from the date of this notice. The DON will foreclose consideration of donation of ex-DOLPHIN to any entity that does not submit a letter of intent to the DON within 30 days of the date of this notice.

Prospective donees must submit a letter of intent to the Navy Inactive Ships Program office within 30 days of this **Federal Register** notice. The letter of intent must:

a. Identify the specific vessel sought for donation;

b. Include a statement of the proposed use for the vessel;

c. Identify the proposed permanent berthing location;

d. If the applicant is not a State, commonwealth, or possession of the United States, or a political subdivision or municipal corporation thereof, or the District of Columbia, it must provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

e. If the applicant asserts that it is a corporation or association whose charter or articles of agreement denies it the right to operate for profit, it must provide a properly authenticated copy of the charter, certificate of incorporation, and a copy of the organization's by-laws;

f. Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the application to represent the organization and to sign on its behalf for the purpose of obtaining a vessel; and

g. Provide written affirmation that the prospective donee can submit a complete ship donation application to the DON, compliant with the DON application requirements, within six months of this **Federal Register** notice.

Upon receipt of the letter of intent, the DON will contact the prospective donee(s) to ensure a full understanding of the application requirements, which are located at *http://www.navsea.navy.mil/NDP.*

Qualified organizations who submit a letter of intent for ex-DOLPHIN (AGSS–555) must submit a complete application to the DON within six months of this notice, comprised of a business/financial plan, a technical plan (includes a towing plan, mooring plan, maintenance plan, and environmental plan), a curatorial/museum plan, and a community support plan (includes information concerning support from the community and benefit to the Navy). The application must address the following areas:

a. *Business/Financial Plan:* The Business/Financial Plan must detail the estimated start-up and operating costs, and provide detailed evidence of firm financing adequate to cover these costs. Start-up costs include towing, mooring (this includes but not limited to the cost of acquiring and improving facilities, and dredging if required), ship restoration, museum development, and meeting environmental requirements (including permitting fees and expenses). Operating costs are those costs associated with operating and maintaining the vessel as a museum/memorial, including rent, utilities, personnel, insurance, periodic dry-docking, etc. Firm financing means available funding to ensure the first five years of operation and future stability for long-term operation. This can include pledges, loans, gifts, bonds (except revenue bonds), funds on deposit at a financial institution, or any combination of the above. The applicant must also provide income projections from sources such as individual and group admissions, facility rental fees and gift shop revenues sufficient to cover the estimated operating expenses.

b. *Technical:* The technical plan is comprised of a Towing Plan, Mooring Plan, Maintenance Plan, and Environmental Plan.

The Towing Plan describes how the vessel will be prepared for tow and safely towed from its present location to the permanent display site proposed by the applicant. The Towing Plan must

include a completed draft checklist of applicable requirements based on Appendix H of the U.S. Navy Tow Manual, which can be found at *http://www.supsalv.org/pdf/towman.pdf.*

The Mooring Plan describes how the vessel will be secured at its permanent display site during normal and extreme weather conditions (including the 100-year storm event) to prevent damage to the vessel, its mooring system, the pier, and surrounding facilities. It will also provide evidence of availability of a facility for permanent mooring of the vessel, either by ownership, existing lease, or by letter from the facility owners indicating a statement of intent to utilize such facilities. It must also address any requirement to obtain site-specific permits and/or municipal approvals required for the facility, to include but not limited to, Port Authority and Army Corps of Engineers approvals/permits, where required. The mooring location must be acceptable to the DON and not obstruct or interfere with navigation.

The Environmental Plan describes how the applicant will comply with all Federal, State, and local environmental and public health and safety regulations and permit requirements. The applicant must also provide information necessary for the Navy to complete an environmental assessment of the Donation as required by the National Environmental Policy Act, including the impact of the Donation on the natural and man-made environment, local infrastructure, and evaluation of the socio-economic consequences of the donation.

The Maintenance Plan must describe plans for long-term and short-term maintenance of the vessel, including preservation and periodic maintenance schedule, underwater hull inspections, emergency response and fire/flood/intrusion control, pest control, security, periodic dry-docking, and the qualifications of the maintenance team.

c. *The Curatorial/Museum Plan includes two parts:* A Curatorial Plan and a Historic Management Plan. The Curatorial Plan must describe the qualifications for a professional curator (and curator staff, if necessary). The plan must also describe how the museum will collect and manage artifacts, including a statement of purpose and description of access, authority, and collection management responsibilities. The Historic Management Plan must describe how the museum will display the vessel and exhibits, including a description of the historical context of the ship, vessel restoration plans, historical subject matter that will be displayed with the vessel, and exhibit display plans.

d. The Community Support Plan must include evidence of local support. Evidence of regional support should also be provided. This includes letters of endorsement from adjacent communities and counties, cities or States. Also describe how the location of the vessel will encourage public visitation and tourism, become an integral part of the community, and how the vessel will enhance community development. The Community Support Plan must also describe the benefit to the DON, including but not limited to, addressing how the prospective donee may support DON recruiting efforts, the connection between the Navy and the proposed berthing location, how veterans associations in the area are willing to support the vessel, how the prospective donee will honor veterans' contributions to the United States, and how the exhibit will commemorate those contributions and showcase Naval traditions.

The relative importance of each area that must be addressed in the Donation application is as follows: Business/Financial Plan and Technical Plan are the most important criteria and are equal in importance. Within the Technical Plan, the Mooring Plan is of greatest importance, and the Towing Plan, Maintenance Plan, and Environmental Plan are individually of equal importance but of lesser importance to the Mooring Plan. The Curatorial/Museum Plan and Community Support Plan are of equal importance, but of lesser importance than the aforementioned plans.

Evaluation of the application(s) will be performed by the Navy to ensure the application(s) are compliant with the minimum acceptable application criteria and requirements. In the event of multiple compliant applications, the DON will perform a comparative evaluation of the applications to determine the best-qualified applicant. The adjectival ratings to be used for each criterion include: Outstanding, Good, Satisfactory, Marginal, and Unsatisfactory. The Secretary of the Navy, or his designee, will make the final Donation decision.

Additional information concerning the application process and requirements are found on the DON Ship Donation Web site, *http://www.navsea.navy.mil/ndp.* The complete application must be submitted in hard copy and electronically on a CD to the Navy Inactive Ships Program office within six months of this **Federal Register** notice. In the absence of a viable donation application, the DON reserves the right to remove ex-DOLPHIN from donation consideration and proceed with disposal of the vessel.

FOR FURTHER INFORMATION AND SUBMISSION OF SHIP DONATION APPLICATIONS, CONTACT: Commander, Program Executive Office Ships (PEO SHIPS), PMS333, Navy Inactive Ships Program, ATTN: Ms. Gloria Carvalho (PMS 333G), c/o Columbia Research Corp., 1201 M Street, SE., Suite 010, Washington, DC 20003, telephone number 202–781–0485.

Dated: January 24, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–1497 Filed 1–30–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6)

Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 24, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Revision.
Title: Study of Education Data Systems and Decision Making.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.
Reporting and Recordkeeping Hour Burden:
Responses: 1,034.
Burden Hours: 1,207.
Abstract: The purpose of the study is to examine the prevalence, use, and outcomes of education data systems for accountability, assessment, and instructional improvement purposes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3263. 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. E7–1457 Filed 1–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 24, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Safe and Drug Free Schools

Type of Review: New.
Title: Student Drug-Testing Grantee Survey.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 84.
Burden Hours: 1,700.
Abstract: This collection will provide information about implementation progress by school-based student drug-testing program grantees.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3006. 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. E7–1458 Filed 1–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 24, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Private School Universe Survey.

Frequency: Biennially.

Affected Public: Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 35,520.

Burden Hours: 8,347.

Abstract: The purposes of this data collection are to generate biennial data on the total number of private schools, teachers, and students; and to build an NCES universe frame of private schools to serve as a sampling frame for NCES surveys that include private schools. This survey is an ongoing project to improve NCES universe and sample data on private schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3268. 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. E7–1459 Filed 1–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 2, 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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 24, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: The Effectiveness of the Alabama Mathematics, Science and Technology Initiative (AMSTI).

Frequency: Monthly; Annually, Trainer log.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,233.

Burden Hours: 746.

Abstract: This study is a group randomized controlled trial by the Regional Educational Laboratory for the Southeast and its subcontractors to test the effectiveness of the Alabama Mathematics, Science and Technology Initiative (AMSTI). This study is needed so that the Alabama State Department of Education (ALSDE), following the requirements of NCLB, can make decisions about this initiative based on scientific data regarding the program's effectiveness at improving student achievement. The evidence from this experiment will be used by ALSDE and the Alabama legislature as a consideration in deciding about program continuation, expansion, and improvement.

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 3231. 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. E7–1460 Filed 1–30–07; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting (amended).

Date and Time: Thursday, February 8, 2007, 10 a.m.–1 p.m.

Place: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

Agenda: The Commission will receive an update on the Interim Voting System Laboratory Accreditation Program; The Commission will consider whether to terminate the interim program and will receive an update on the full Voting System Laboratory Accreditation Program; The Commission will receive an update on the EAC audit process and hear presentations from state officials on their experiences with the audit process; The Commission will receive a presentation of the research findings regarding voter identification requirements. The Commission will consider other administrative matters.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Donetta L. Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 07–438 Filed 1–29–07; 11:20 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES AND TIMES: February 13, 2007 from 8:30 a.m. to 4:30 p.m., February 14, 2007 from 8:30 a.m. to 3 p.m.

ADDRESSES: Doubletree Hotel Orlando, At the Entrance to Universal Orlando, 5780 Major Boulevard, Orlando, FL 32819, (407) 351–1000, *http://www.doubletree.com/en/dt/hotels/index.jhtml?ctyhocn=MCOUNDT*.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–8668 or Harriet Foster at (202) 586–4541; E-mail: *harriet.foster@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Receive update on USDA—DOE collaboration.
- Receive update on the status of the fiscal year 2007 USDA—DOE joint Biomass R&D solicitation.
- Receive update on DOE activities from the Designated Federal Officer (DFO).
- Presentation on feedstocks analysis efforts.
- Possible media event regarding the updated Vision.
- Provide input on draft updated Roadmap.
- Discuss Analysis subcommittee business.
- Discuss Policy subcommittee business, including comments and proposed annual recommendations from the Policy Gap Analysis document.
- Discuss Communications subcommittee business.
- Review progress presentations from Florida and Southeastern-area Biomass R&D projects funded by the USDA—DOE joint solicitation.
- Discuss recommendations for fiscal year 2007.
- Review 2007 Work Plan.
- Discuss Biomass R&D Planning Opportunities.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Neil Rossmeissl at 202–586–8668 or the Biomass Initiative at 202–586–4541 or *harriet.foster@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 24, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–1504 Filed 1–30–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC07–538–001, FERC 538]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 24, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received one comment in response to an earlier **Federal Register** notice of October 19, 2006 (71 FR 61736–61737) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by February 26, 2007.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07–538–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC 538 ''Gas Pipeline Certificates: Initial Service.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0061.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the Statutory provisions of sections 7(a), 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). The reporting requirements contained in this collection of information are used by the Commission to determine whether a distributor applicant can economically construct and manage its facilities. Requests are made to the Commission by individuals or entities to have the Commission, by order, direct a natural gas pipeline to extend or improve its transportation facilities, and sell gas to an individual, entity or municipality for the specific purpose indicated in the order, and to extend the pipeline's transportation facilities to communities immediately adjacent to the municipality's facilities or to territories served by the natural gas company. In addition, the Commission reviews the supply data to determine if the pipeline company can provide the service without curtailing certain of its existing customers. The flow data and market data are also used to evaluate existing and future customer requirements on the system to find if sufficient capacity will be available. Likewise, the cost of facilities and the rate data are used to evaluate the financial impact of the cost of the project to both the pipeline company and its customers. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 156.

5. *Respondent Description:* The respondent universe currently comprises 85 companies (on average) subject to the Commission's jurisdiction. However, the Commission receives on average filings from only one respondent.

6. *Estimated Burden:* 240 total hours, 1 respondents (average), 1 response per respondent, and 240 hours per response (average).

7. *Estimated Cost Burden to respondents:* 240 hours/2080 hours per years × $122,137 per year = $14,093. The cost per respondent is equal to $14,093.

Statutory Authority: Statutory provisions of sections 7(a), 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w).

Magalie R. Salas,

Secretary.

[FR Doc. E7–1484 Filed 1–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–23–012]

Consolidated Edison Company of New York, Inc. (Complainant) v. Public Service Electric and Gas Company (Respondent) and PJM Interconnection, L.L.C. (Respondent) and New York Independent System Operator, Inc. (Respondent); Notice of Filing

January 24, 2007.

Take notice that on January 19, 2007, Consolidated Edison Company (Con Edison), separately, and PJM Interconnection, L.L.C., New York Independent System Operator, Inc., and the Public Service Electric and Gas Company (PSEG), jointly, filed a third report regarding the effectiveness of the protocol used to implement grandfathered transmission contracts between Con Edison and PSEG, pursuant to the Commission's May 18, 2005 Protocol Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 February 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1485 Filed 1–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–32–000]

Massachusetts Municipal Wholesale Electric Company, Complainant v. ISO New England, Inc., Respondent; Notice of Complaint

January 24, 2007.

Take notice that on January 23, 2007, the Massachusetts Municipal Wholesale Electric Company (MMWEC) on behalf of the Town of Ashbumham, Boylston, Groton, Holden, the City of Holyoke, the Towns of Littleton, Paxton, Shrewsbury, Sterling, Templeton, West Boylston, the City of Westfield, and the Towns of Hingham, Hull Mansfield, and North Attleborough (collectively, the Towns) tendered for filing a complaint against ISO New England, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 12, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1483 Filed 1–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 24, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–155–000.

Applicants: Consumers Energy Company; Entergy Nuclear Palisades, LLC.

Description: Consumers Energy Company and Entergy Nuclear Palisades, LLC submit a Response to Request for Information, pursuant to the Commission's 12/27/06 order.

Filed Date: 1/12/2007.

Accession Number: 20070112–5065.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 31, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1088–039; ER03–674–006.

Applicants: WPS Energy Services, Inc.; Quest Energy, LLC.

Description: WPS Energy Services, Inc. and Quest Energy, LLC submit a Notice of Change of Status for Market-Based Rate Authorization.

Filed Date: 1/17/2007.

Accession Number: 20070117–5015.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 7, 2007.

Docket Numbers: ER00–2268–021; ER99–4124–017; ER99–4122–021.

Applicants: Pinnacle West Capital Corporation; Arizona Public Service Company; APS Energy Services Company, Inc.

Description: Pinnacle West Capital Corp, Arizona Public Service Co and APS Energy Services Co, Inc submit a notice of non-material change in status of generation capacity.

Filed Date: 1/19/2007.

Accession Number: 20070123–0133.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER01–1807–025; ER01–2020–022.

Applicants: Carolina Power & Light Company; Florida Power Corporation.

Description: Carolina Power and Light Co. submits its Energy Imbalance Revenues Refund Report pursuant to the Commission's 5/21/03 Order.

Filed Date: 1/22/2007.

Accession Number: 20070122–5001.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER02–1472–008; EL02–88–005; EL03–3–004; EL03–4–003; ER02–1151–007; EL03–5–003; ER02–1069–007; EL03–13–003; ER02–2243–006.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc agent for Entergy Arkansas, Inc et al. submits a compliance filing consisting of revised Interconnection and Operating Agreement with Wrightsville Power Facility, LLC et al., pursuant to the Commission's 12/18/06 order.

Filed Date: 1/17/2007.

Accession Number: 20070123–0125.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 7, 2007.

Docket Numbers: ER03–719–005; ER03–720–005; ER03–721–005; ER98–830–014.

Applicants: New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company; Millennium Power Partners, L.P.

Description: New Athens Generating Co, LLC et al., submits a notice of non-material change in status.

Filed Date: 1/19/2007.

Accession Number: 20070123–0086.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER04–925–014.

Applicants: Merrill Lynch Commodities, Inc.

Description: Merrill Lynch Commodities, Inc. submits a change in status, pursuant to the Commission's order issued 7/20/04.

Filed Date: 1/22/2007.

Accession Number: 20070123–0136.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER05–1410–003; EL05–148–003.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revisions to its PJM OATT and the Reliability Assurance Agreement among Load-Serving Entities.

Filed Date: 1/22/2007.

Accession Number: 20070123–0131.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER06–731–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to its OAT&EMT, pursuant to the Commission's 12/21/06 order.

Filed Date: 01/22/2007.

Accession Number: 20070123–0134.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER06–1218–003.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC in compliance with FERC's 12/22/06 Order, submits revisions to Schedule 1 of the Amended and Restated Operating Agreement.

Filed Date: 1/22/2007.

Accession Number: 20070123–0132.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER06–1432–002.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Co. submits additional information, pursuant to the Commission's order issued 12/20/06.

Filed Date: 1/19/2007.

Accession Number: 20070123–0135.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER07–95–002.

Applicants: Midwest Independent Transmission System Operator, Inc.; Michigan Electric Transmission Company, LLC.

Description: Michigan Electric Transmission Co, LLC et al., submits revised tariff sheets to FERC Electric Tariff, Third Revised Vol. No. 1.

Filed Date: 1/22/2007.

Accession Number: 20070123–0137.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER07–122–001.

Applicants: Interstate Power & Light Company; Alta Vista, Iowa; Dundee, Minnesota; Grafton, Iowa; Guttenburg, Iowa; Hanover, Illinois; Sabula, Iowa; West Point, Iowa; Jo-Carroll Energy, Inc.

Description: Interstate Power and Light Company et al., submits an Explanatory Statement and Settlement Agreement concerning its wholesale rates.

Filed Date: 1/22/2007.

Accession Number: 20070123–0088.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER07–253–001.

Applicants: E.ON U.S. LLC.

Description: E.ON U.S., LLC on behalf of Louisville Gas and Electric Company et al. submits amended Umbrella Point-to-Point Service Agreements w/East Kentucky Power Cooperative pursuant to letter order issued on 12/21/06.

Filed Date: 1/22/2007.

Accession Number: 20070123–0130.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER07–447–000.

Applicants: California Independent System Operator, Inc.

Description: California Independent System Operator, Inc. submits a request for waiver of tariff provision.

Filed Date: 1/19/2007.

Accession Number: 20070123–0087.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER07–449–000.

Applicants: Ritchie Energy Products, LLC

Description: Ritchie Energy Products, LLC submits a Notice of Cancellation of First Revised Sheet 1 to their market-based rate tariff.

Filed Date: 1/22/2007.

Accession Number: 20070123–0139.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER07–450–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits its proposed revisions to Attachment P contained in its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 01/22/2007.

Accession Number: 20070123–0138.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–16–000.

Applicants: MDU Resources Group, Inc.

Description: MDU Resources Group, Inc. submits an application for authority to issue short-term debt securities in the aggregate principal amount of up to $310,000,000 in the form of one or more promissory note.

Filed Date: 1/22/2007.

Accession Number: 20070123–0141.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E7–1481 Filed 1–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2692–041.

c. *Date Filed:* November 29, 2006.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* The proposed development is located on Lake Nantahala in Macon County, North Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Services, Duke Energy Carolinas, LLC, P.O. Box 1006, Charlotte, NC 28201, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8764.

j. *Deadline for filing comments and or motions:* February 26, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2692–041) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power is seeking Commission approval to lease 0.56 acre of land within the project boundary for a commercial/non-residential marina which will consist of one cluster dock with 22 docking locations, including two slips designated for fueling, for use by the general public.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title *''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE''*, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments in the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1482 Filed 1–30–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8111–9]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC) of Arlington, VA, and its subcontractor, to access information which has been submitted to EPA under section(s) 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than March 2, 2007.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Pam Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 202-564-8956; fax number: 202-564-8955; e-mail address: *pamela.moseley@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific

entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2003–0004. Publicly available docket materials are available electronically at *http://www.regulations.gov* or, if only available in hard copy, at the OPPT Docket in the EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under contract number EP-W-07-021, contractor SRC of 2451 Crystal Drive, Suite 804, Arlington, VA and its subcontractor, BeakerTree Corporation of 13402 Birch Bark Court, Fairfax, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in reviewing Premanufacture Notices (PMNs). They will also assist in preparing chemical reviews for the TSCA New Chemicals Review Program. This includes preparing documents to be used for Chemical Review Search Strategy and Structure Activity Team meetings. The contractors require access to current and past cases to fulfill these duties.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP-W-07-021, SRC and BeakerTree will require access to CBI submitted to EPA under section(s) 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. SRC and BeakerTree personnel will be given access to information submitted to EPA under section(s) 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section(s) 4, 5, 6, and 8 of TSCA that EPA may provide SRC and BeakerTree access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and the SRC site located at 2451 Crystal Drive, Suite 804, Arlington, VA.

SRC and BeakerTree will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA CBI Protection Manual*.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2010, unless such access is extended.

SRC and BeakerTree personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: January 18, 2007.

Brion Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E7–1412 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8112–1]

Access to Confidential Business Information by Lockheed-Martin Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Lockheed-Martin Services, Inc. of Cherry Hill, NJ and its subcontractors, to access information which has been submitted to EPA under section(s) 4, 5, 6, 7, 8, 12, and 13 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than March 2, 2007.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Pam Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 202-564-8956; fax number: 202-564-8955; e-mail address: *pamela.moseley@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2003–0004. Publicly available docket materials are available electronically at *http://www.regulations.gov* or, if only available in hard copy, at the OPPT Docket in the EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed

due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under contract number 68-W-04-005, contractor Lockheed-Martin Services, Inc of 2339 Route 70 West, Floor 3W, Cherry Hill, NJ and its subcontractors Bearing Point, of 1676 International Drive, McLean, VA; Intervise, of 12 South Summit Avenue, Suite 100, Gaithersburg, MD; McDonald Bradley, of 2250 Corporate Park Drive, Suite 500, Herndon, VA; and Subsidium, of 115 Chester Street, Front Royal, VA; will assist the Office of Pollution Prevention and Toxics (OPPT) in Management Systems architecture design, integration, testing and development. They will also assist with project management, scheduling, and support of the Enterprise Content Management System (ECMS).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-W-04-005, Lockheed-Martin Services, Inc. and its subcontractors will require access to CBI submitted to EPA under section(s) 4, 5, 6, 7, 8, 12, and 13 of TSCA to perform successfully the duties specified under the contract. Lockheed-Martin Services, Inc. and its subcontractor personnel will be given access to information submitted to EPA under section(s) 4, 5, 6, 7, 8, 12, and 13 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section(s) 4, 5, 6, 7, 8, 12, and 13 of TSCA that EPA may provide Lockheed-Martin Services, Inc. and its subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Lockheed-Martin Services, Inc. and its subcontractors will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA CBI Protection Manual*.

Clearance for access to TSCA CBI under this contract may continue until January 8, 2009, unless such access is extended.

Lockheed-Martin Services, Inc. and its subcontractors personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: January 18, 2007.

Brion Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E7–1431 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0007; FRL–8112–8]

Monocarbamide Dihydrogen Sulfate (Urea Sulfate); Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide monocarbamide dihydrogen sulfate (Urea sulfate), and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide monocarbamide dihydrogen sulfate (Urea sulfate) through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments must be received on or before April 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0007, 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–2007–0007. 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: Bentley C. Gregg, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8178; fax number: 703-308-7070; e-mail address:*gregg.bentley@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register**date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of monocarbamide dihydrogen sulfate (Urea sulfate); also known as Enquik, reassessed one existing exemption from the requirement for a tolerance, and on June 27, 2005, reached a tolerance reassessment decision for this low risk pesticide. Urea sulfate is used primarily as an active ingredient in herbicides and desiccants on agricultural crops. The Agency has determined that urea sulfate readily degrades to urea and sulfate ions in the environment and in the human body. The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for monocarbamide dihydrogen sulfate (Urea sulfate), known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the monocarbamide dihydrogen sulfate (Urea sulfate) also known as Enquik, TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the monocarbamide dihydrogen sulfate (Urea sulfate) tolerances included in this notice.

Although the monocarbamide dihydrogen sulfate (Urea sulfate) TRED was signed on June 27, 2005, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the summary of labeling changes, appendices, and other relevant information, have been added to the monocarbamide dihydrogen sulfate (Urea sulfate) TRED document. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. Therefore, for the sake of accuracy, the Agency also has included the appropriate error corrections, amendments, and clarifications. None of these additions or changes alter the conclusions documented in the June 27, 2005 monocarbamide dihydrogen sulfate (Urea sulfate) TRED. All of these changes are described in detail in an errata memorandum which is included in the public docket for monocarbamide dihydrogen sulfate (Urea sulfate).

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like monocarbamide dihydrogen sulfate (Urea sulfate), which pose no risk concerns, affect few stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the monocarbamide dihydrogen sulfate (Urea sulfate) TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Monocarbamide dihydrogen sulfate (Urea sulfate), however, poses no risks that require mitigation. The Agency therefore is issuing the monocarbamide dihydrogen sulfate (Urea sulfate) TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for monocarbamide dihydrogen sulfate (Urea sulfate). Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review was to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 23, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–1435 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0372; FRL–8112–7]

Fluometuron Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide fluometuron. The Agency's risk assessments and other related documents also are available in the fluometuron Docket. Fluometuron is a phenylurea herbicide that is used only on cotton. EPA has reviewed fluometuron through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Kylie Rothwell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8055; fax number: 703-308-8005; e-mail address:*rothwell.kylie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0372. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, fluometuron under section 4(g)(2)(A) of FIFRA. Fluometuron is a phenylurea herbicide that is used only on cotton. EPA has determined that the data base to support reregistration is substantially complete and that products containing fluometuron are eligible for reregistration provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing fluometuron.

EPA was required to review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the fluometuron tolerances included in this notice.

Although the fluometuron RED was signed on September 28, 2005, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the list of additional generic data

requirements, summary of labeling changes, appendices, and other relevant information, have been added to the fluometuron RED document. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. Therefore, for the sake of accuracy, the Agency also has included the appropriate error corrections, amendments, and clarifications. None of these additions or changes alter the conclusions documented in the September 28, 2005, fluometuron RED.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, fluometuron was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for fluometuron.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Opportunities for public comment were offered at the initial docket opening in April 2005 and as this decision was being developed. Further, issues related to fluometuron were resolved through consultations with stakeholders. The Agency therefore is issuing the fluometuron RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), required EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption met the requirements of section 408(b)(2) or (c)(2) of FFDCA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 24, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–1517 Filed 1–30–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 25, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 10.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic cable service and associated rates after its request for certification has been denied or revoked, may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–1525 Filed 1–30–07; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on 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.: 011223–035.

Title: Transpacific Stabilization Agreement.

Parties: APL Co. Pte. Ltd./American President Lines, Ltd.; COSCO Container Lines Company Ltd.; Evergreen Marine Corporation (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add CMA–CGM, S.A. as a party to the agreement.

Agreement No.: 011223–036.

Title: Transpacific Stabilization Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; COSCO Container Lines Co., Ltd.; Evergreen Marine Corporation (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment substitutes COSCO Container Lines (Hong Kong) Co., Ltd. for COSCO Container Lines Co., Ltd. as a party to the agreement. The parties request expedited review.

Agreement No.: 011325–037.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment substitutes COSCO Container Lines (Hong Kong) Co., Ltd. for COSCO Container Lines Co., Ltd, as a party to the agreement. The parties request expedited review.

Agreement No.: 011987.

Title: WHL/PIL Slot Exchange and Sailing Agreement.

Parties: Wan Hai Lines and Pacific International Lines (Pte)Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street; 46th Floor; Los Angeles, CA 90013.

Synopsis: The agreement authorizes the parties to charter slots to each other and coordinate their sailings in the trades between Asia, including China, Hong Kong, Taiwan, and South Korea, and the West Coast of the United States.

By Order of the Federal Maritime Commission.

Dated: January 26, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–1538 Filed 1–30–07; 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 part 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

EDM International Logistics, Inc., 2225 W. Commonwealth Ave., Suite 219, Alhambra, CA 91803, Officers: Liu Hong, Vice President (Qualifying Individual), Xiandi Zhang, Director.

WW Messenger & Shipping Co. Inc., 51 Main Street, Orange, NJ 07050, Officer: Wesley D. Weekes, CEO (Qualifying Individual).

United Express Lines, 2223 Robinson Street, #A, Redondo Beach, CA 90278, Officer: Imad Jack Harfouch, President (Qualifying Individual).

CIC Trading Group Inc., 6985 NW 82 Avenue, Miami, FL 33166, Officers: Jaime Ahues, President (Qualifying Individual), Carmen Ahues, Secretary.

PNL Logistics, Inc., 111 N. Atlantic Blvd., Suite 353–A, Monterey Park, CA 91754, Officers: Michael Tsang, President (Qualifying Individual), Jason Tsang, Secretary.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Hilltop Logistics Inc., 8622 Bellanca Ave., Suite #1, Los Angeles, CA 90045, Officers: Pei Yang, President (Qualifying Individual), Steve Lok, Secretary.

Fastway Moving and Storage Inc. dba Fastway Moving, 4 Gill Street, Suite D, Wobum, MA 01801, Officer: Leonardo P. Abuquerque, Vice President (Qualifying Individual).

Logos Logistics Inc., 3605 Long Beach Blvd., Suite #227, Long Beach, CA 90807, Officers: Young D. An (aka Diane An), Secretary (Qualifying Individual), Chung Mo An, President.

Oriental Air & Sea Transport (SFO), Inc., 1717 Oakland Rd., San Jose, CA 95131, Officer: Kenneth C. Wong, President (Qualifying Individual).

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicants

VALCAD Construction, L.L.C., 3351 FM 780, Ferris, TX 75125, Officer: Yvette A. Parra, Vice President (Qualifying Individual).

Atlas Logistics USA Inc., 2401 E. Atlantic Blvd., Pompano Beach, FL 33062, Officers: Frank Granizo, Vice President (Qualifying Individual), Mark A. Granizo, President.

Dated: January 22, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–1565 Filed 1–30–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 15, 2007.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. George W. Connell, Radnor, Pennsylvania, to acquire voting shares of Bryn Mawr Bank Corporation, Bryn Mawr, Pennsylvania, and thereby acquire Bryn Mawr Trust Company, Bryn Mawr, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Brenda Morris Griner, to acquire additional voting shares of First Federal Bancorp and thereby indirectly acquire additional voting shares of First Southern Bank, all of Columbia, Mississippi.

Board of Governors of the Federal Reserve System, January 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–1536 Filed 1–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0197]

TC Group L.L.C., Riverstone Holdings LLC, Carlyle/Riverstone Global Energy and Power Fund II, L.P., and Carlyle/Riverstone Global Energy and Power Fund III, L.P.; Analysis of Proposed 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 February 26, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TC Group, et al., File No. 061 0197,'' 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: Dennis F. Johnson, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

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 January 25, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/01/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

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (''Consent Agreement'') with TC Group, L.L.C. (''Carlyle''), Riverstone Holdings LLC (''Riverstone''), Carlyle/Riverstone Global Energy and Power Fund II, L.P. (''CR–II''), and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (''CR–III''). The proposed Consent Agreement remedies the anticompetitive effects that otherwise would be likely to result from the acquisition described herein.

On August 28, 2006, Kinder Morgan, Inc. (''KMI'') announced that it had entered into a definitive merger agreement pursuant to which a group of investors, including CR–III, a private equity fund managed and controlled by Carlyle and Riverstone, and Carlyle Partners IV, L.P. (''CP–IV''), an affiliate of Carlyle, would acquire all outstanding shares of KMI for approximately $22 billion, including the assumption of approximately $7 billion of debt (the ''Acquisition'').

Carlyle and Riverstone have worked together to form, manage, and operate several private equity funds that focus on energy-related investments. One of these funds is CR–III, which, through the Acquisition, will acquire approximately 11.3% of the equity in KMI. In addition, CP–IV will also acquire approximately 11.3% of the equity in KMI. Another fund that is jointly controlled and managed by Carlyle and Riverstone, CR–II, holds interests in various energy firms, including, as relevant here, a 50% interest in the general partner that controls Magellan Midstream Partners, L.P. (''Magellan''), a midstream terminal and pipeline company that competes

[1] The comment must be accompanined 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).

with KMI in various terminaling and pipeline operations.

Without some form of relief, the proposed Acquisition is likely to result in anticompetitive effects from combining KMI and Magellan under Carlyle and Riverstone. KMI and Magellan compete directly with each other in at least eleven terminal markets in the southeastern United States. These markets include: Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. In addition, KMI and Magellan are two of only three significant ''independent'' (*i.e.* not owned by a refiner) terminaling companies in the Southeast. A reduction in competition, particularly competition among independent terminaling companies, may result in higher prices of gasoline and other light petroleum products, reduced supply, or other anticompetitive effects in these markets.

CR–II has representatives on Magellan's board and has significant veto power over Magellan's activities. Carlyle and CR–III also will have the right to appoint one director each to the eleven-member KMI board. Carlyle and Riverstone therefore may have the ability to reduce competition between the terminals owned by KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

The proposed Consent Agreement effectively remedies these possible anticompetitive effects by, among other things, prohibiting CR–II from having representation on any Magellan board, prohibiting the Respondents from influencing or attempting to influence Magellan's business activities, and requiring that Respondents implement firewalls designed to prevent the exchange of competitively sensitive information between Magellan and KMI.

I. The Proposed Respondents and Other Relevant Entities

A. Carlyle and Riverstone

Founded in 1987, Carlyle is a private equity firm based in Washington, DC, with more than $44.3 billion under management. Carlyle invests in buyouts, venture and growth capital, real estate, and leveraged finance in Asia, Australia, Europe, and North America, focusing on aerospace and defense, automotive and transportation, consumer and retail, energy and power, healthcare, industrial, technology and business services, and telecommunications and media. Carlyle's investors include public and private institutional investors and high net worth individuals.

Founded in 2000, Riverstone Holdings LLC is a $6 billion private investment firm that invests solely in the energy and power sectors. Riverstone has partnered with Carlyle to create a series of energy-focused investment funds, which include CR–II and CR–III.

Carlyle and Riverstone launched CR–II in 2002, and in the last four years the fund has invested more than $1 billion in transactions in the energy and power sector. Currently, CR–II holds interests in more than a dozen energy firms, including Magellan. In 2005, Carlyle and Riverstone launched CR–III, with more than $3.8 billion in capital. CR–III, through the Acquisition, proposes to acquire shares that would constitute approximately 11.3% of KMI. CP–IV, another fund controlled and managed by Carlyle, also plans to acquire shares that would constitute approximately 11.3% of KMI, so that Carlyle and Riverstone together would hold approximately 22.6% of the equity of KMI.

B. KMI

KMI is one of the largest energy transportation, storage, and distribution companies in North America. Through various operating affiliates, KMI owns or operates pipelines that transport natural gas, crude oil, petroleum products and carbon dioxide, and terminals that store, transfer, and handle energy products such as gasoline and other light petroleum products, including terminals in the southeastern United States. KMI holds the general partner interest of Kinder Morgan Energy Partners, L.P. (''KMP''), which is one of the largest publicly traded energy limited partnerships in the United States.

C. Magellan

Magellan Midstream Partners, L.P., is a publicly traded limited partnership that is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include an 8,500 mile petroleum products pipeline system, including petroleum product terminals serving the mid-continent region of the United States, and other inland petroleum products terminals located in the southeastern United States, mostly along the Colonial Pipeline. Magellan has a complex organizational structure. CR–II holds a 50% interest in MGG Midstream Holdings GP, LLC—the general partner that ultimately controls Magellan—as well as certain limited partnership interests. Interests affiliated with Madison Dearborn Partners (''MDP''), another investment firm, hold the other 50% interest. CR–II and MDP have the right to designate two representatives each on a four-member Board of Managers, and each has veto power over actions taken by the Board of Managers. CR–II and MDP also have two directors each on the boards of the other general partners that control Magellan.

II. Market Structure and Competitive Effects

Relevant markets in which to analyze the effects of the Acquisition are the terminaling of gasoline and other light petroleum products in eleven metropolitan areas in the southeastern United States, including Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. Terminals are essential to the efficient flow of gasoline and other products from refineries to retail stations and have no effective substitutes. A terminal is the only method of safely and economically receiving, storing, and distributing bulk supplies of gasoline and other refined products in the large quantities needed for delivery to retail stations. Large quantities of gasoline and other light petroleum products can be shipped economically over long distances only by means of pipelines or marine vessels, not by trucks. Local deliveries to retail stations and commercial accounts, however, can be handled effectively only by tank trucks. Terminals serve as the link between pipelines that transport products from refineries and local modes of transportation.

Terminals typically serve limited geographic areas. Although the size of a terminal's service area may vary from one metropolitan area to another based on the relative proximity of terminals, traffic congestion, natural barriers, and other factors impacting tank truck delivery, terminals often are clustered near each other and compete primarily to supply a nearby metropolitan area. The eleven local metropolitan areas in which both KMI and Magellan own terminals are relevant geographic markets in which to assess the possible effects of the Acquisition.

Each of the eleven markets already is either moderately or highly

concentrated prior to the Acquisition, and an acquisition that combines KMI and Magellan through partial common ownership or control would significantly increase those levels of concentration. Moreover, KMI and Magellan are two of only three major independent terminaling systems in the Southeast—the third being TransMontaigne. Independent shippers and marketers frequently depend on independent terminals to obtain competitive access to certain markets because proprietary terminals are sometimes either not available to them or only available on a limited basis. In a number of the relevant markets, KMI and Magellan are either the only independent terminals available or two of a small number of independent terminals in service.

As a result, a direct combination of KMI and Magellan would remove a significant supplier of terminal services in markets where customers have few competitive alternatives. The combination would make the exercise of unilateral market power more likely because many customers view KMI's and Magellan's terminals as their first and second choices, and the other suppliers in the market are likely to be either incapable of replacing or unwilling to replace the competition lost as a result of the combination. Indeed, there is evidence that when customers have few independent terminal options, they can have difficulty obtaining storage and terminaling services and pay higher prices for those services that are available. Such a transaction also would increase the likelihood of coordinated interaction because of the small number of competitors remaining in many of the markets at issue and because the transaction would remove one of the few remaining independent participants that may serve as an important competitive influence.

Although the proposed transaction will not directly merge KMI and Magellan, it will have the effect of combining the two companies through partial common ownership. Carlyle and Riverstone, through their funds, will acquire a combined 22.6% interest in KMI, in addition to their existing 50% interest in the general partner controlling Magellan. After the transaction, it is likely that Carlyle and Riverstone would reduce competition between KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

III. Entry

Entry into the market for terminaling of gasoline and other light petroleum products in each of the identified markets in the southeastern United States is unlikely to deter or counteract the likely anticompetitive effects. Entry is difficult and time-consuming and potential entrants would face substantial barriers in the form of permit requirements and land use restrictions.

IV. Terms of the Proposed Agreement Containing Consent Orders

The proposed Consent Agreement effectively remedies the Acquisition's alleged anticompetitive effects by, among other things, prohibiting representatives of Carlyle or Riverstone from serving on any of the Magellan boards, prohibiting Carlyle and Riverstone from exerting control or influence over Magellan as long as they hold an interest in or can influence KMI, and requiring Respondents to set firewalls to prevent the exchange of competitively sensitive non-public information. The purpose of the Consent Agreement is to ensure that KMI and Magellan are operated independently of, and in competition with, each other, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

A. Proposed Respondents' Current and Future Magellan Investments Must Be Passive

In order to achieve the purposes of the Consent Agreement, Paragraph II.A. of the Commission's proposed Decision and Order (''Order'') prohibits the proposed Respondents from consummating the Acquisition unless and until (1) they have removed all of their appointed or elected agents from all Magellan boards, and (2) they have agreed with MDP that they will remove such directors and will no longer have the right to have any representation on any Magellan board. Paragraph II.B of the proposed Order provides that as long as either Carlyle, Riverstone, or CR–III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, the proposed Respondents shall not: (1) Elect or appoint a director to any Magellan board, (2) have a director on any Magellan board, (3) influence or attempt to influence, directly or indirectly, Magellan (with exceptions that would allow Respondents to monitor certain actions of their partner MDP in Magellan entities that are not directly involved in the operation or management of the entities engaged in Magellan's terminaling business), or (4) receive or attempt to receive non-public information about Magellan. CR–II has agreed with MDP to modify their partnership agreement to effectuate the removal of CR–II's representatives on the Magellan boards, to ensure that CR–II does not have the ability through the general partnership agreement to elect or appoint a director to any Magellan board, and to otherwise comply with the terms of the Order.

Paragraph II.B of the Order further provides that as long as either Carlyle, Riverstone, or CR–III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, Carlyle, Riverstone, and CR–II shall: (1) Not discuss with, or provide, disclose or otherwise make available to KMI or any KMI director any non-public information relating to Magellan, (2) prohibit any Magellan director from discussing with, or providing, disclosing or otherwise making available to KMI or any KMI director, directly or indirectly, any non-public information relating to Magellan; and (3) institute procedures and requirements throughout the various entities of the proposed Respondents to ensure that non-public information is protected as required by the proposed Order. This prohibition, however, would not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., who are principals with Riverstone, from serving as a director on any KMI board. Although these individuals have served on Magellan boards in the past, they are not currently directors of Magellan and have not been Magellan directors for several years. As a result, any direct non-public information they might have about Magellan from serving on the board in the past is out of date and would be competitively insignificant. In addition, such individuals still are prohibited from divulging such information to KMI or other KMI directors.

B. KMI Information and Investment Limitations

The Order also limits the flow of non-public KMI information to Magellan and places restrictions on the proposed Respondents' additional investments in KMI. Specifically, paragraph II.C. of the proposed Order provides that Carlyle, Riverstone, and CR–III shall: (1) Not discuss with, or provide, disclose or otherwise make available to, Magellan, any non-public information relating to KMI; (2) prohibit all KMI directors from discussing with, or providing,

disclosing or otherwise making available to Magellan, any non-public information relating to KMI; and (3) institute procedures and requirements throughout the various entities of the proposed respondents to ensure that non-public information is protected as required by the proposed Order.

Paragraph II.D. provides that, for the time period that Carlyle or Riverstone holds, directly or indirectly, any interest in Magellan, Carlyle and Riverstone shall not, without providing thirty days advance written notification, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition. This prior notice gives the Commission the opportunity to analyze additional purchases of KMI by the proposed Respondents that may change the economic incentives of the proposed Respondents. Advance notice is not required in certain limited situations where investments are effectively passive or where the Respondents' relative ownership interests would not change. In such situations, the Respondents must provide notification under Paragraph II.E. within ten days after such acquisitions.

C. Implementation Monitor

To assure that the firewall provisions of Paragraphs II.B. and II.C. of the Order are properly implemented and enforced, the Order requires an Implementation Monitor to monitor these obligations. Pursuant to Paragraph IV, Mr. Kevin Sudy, an Associate Director at Navigant Consulting, will be appointed as the Implementation Monitor and shall serve until such time as he reports to the Commission that the parties have established adequate procedures under the terms of the proposed Order and the Commission notifies the parties that such procedures are acceptable. The Commission reserves the right subsequently to reinstate the monitor as necessary and appropriate to ensure compliance by Respondents with the terms of the proposed Order. The Implementation Monitor is important to assuring compliance with the firewall provisions of the Order.

D. Notice Provisions

Paragraph II.E. requires the proposed Respondents to provide the Commission with written notice within ten days if they (1) no longer hold any interest in Magellan, other than a wholly passive investment, (2) no longer hold any interest in Magellan, (3) no longer hold any interest in KMI or no longer have the ability to influence or have representation at KMI, (4) acquire interest in interest in KMI through a passive investment fund, or (5) acquire any interest in Magellan.

Paragraph III of the proposed Order requires the proposed Respondents to send notice of the Order, Complaint, and Analysis to Aid Public Comment in this matter to certain persons likely to have competitively sensitive information subject to this Order or likely to be impacted by the firewall provisions of the Order, including persons on the Magellan and KMI Boards of Directors, and other persons involved in the Acquisition of KMI.

Paragraph V.A. requires periodic reports until the Implementation Monitor and the Commission are satisfied that the firewalls are properly established and adequately protect the flow of non-public information as required by the Order. Paragraph V.B. requires annual reports until the Order terminates in ten years.

Paragraph VI requires the proposed Respondents to give the Commission prior notice of certain events that may change their obligations under the Order.

E. Additional Provisions

Paragraph VII allows the Commission to have access to personnel and documents at the offices of the proposed Respondents with proper notice for purposes of determining or securing compliance with this Order.

Paragraph VIII provides that the Order shall terminate after ten years.

V. The Order to Maintain Assets

The Commission has also issued an Order to Maintain Assets in this proceeding, which effectively requires the proposed Respondents to adhere to the terms of the proposed Order during the time period leading up to their proposed Acquisition of equity interests in KMI.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order to aid the Commission in its determination of whether it should make final the proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.

By direction of the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

Donald S. Clark,

Secretary.

[FR Doc. E7–1479 Filed 1–30–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0220; 60-Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension.

Title of Information Collection: Voluntary Academic and Industry Partner Surveys to Implement Executive Order 12862 and 5 U.S.C. 305 for the Dept. of Health and Human Services.

Form/OMB No.: 0990–0220.

Use: The Office of Acquisition Management Policy (OAMP) under the Assistant Secretary for Administration and Management (ASAM) and the Office of Grants (OG) under the Assistant Secretary for Resources and

Technology (ASRT), Office of the Secretary, Department of Health and Human Services (HHS) request that the Office of Management and Budget (OMB) extend its existing approval under Clearance No. 0990–0220 for HHS to undertake voluntary surveys of HHS' partners in academia and industry (e.g., Principal Investigators, business offices, and vendors) through January 31, 2010. To comply with Executive Order 12862, Setting Customer Service Standards (the EO), HHS again plans to systematically survey its grant recipients and contractors to compile their evaluations of the Department's grants and procurement processes, and to improve the way we conduct business with them.

These voluntary surveys will continue to be a collaborative effort, with OAMP and OG providing leadership, oversight, and a methodology; and the HHS Operating Divisions (OPDIVs) conducting the surveys for their own operations. Each OPDIV will conduct web-based surveys of its partners to obtain feedback for improving business processes. The grant recipients and contractors to be surveyed are sufficiently familiar with the Department and its OPDIVs to make this feedback extremely useful. These surveys will give OAMP, OG, and each of the OPDIVs an opportunity to understand and evaluate grant and procurement quality standards, as well as to incorporate best industry or public sector standards into OPDIV practices.

Frequency: Reporting every 3 years.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government.

Annual Number of Respondents: 2133.

Total Annual Responses: 2133.

Average Burden per Response: 10.75 minutes.

Total Annual Hours: 382.

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 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology, Office of Resources Management, *Attention:* Sherrette Funn-Coleman (0990–0220), Room 537–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: January 23, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–1464 Filed 1–30–07; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Joan Karr, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit—NEW—Division for Heart Disease and Stroke Prevention (DHDSP), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under Part C (Centers for Disease Control and Prevention) of the Statement of Organization Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 72842–72843, dated December 7, 2005), the Division for Heart Disease and Stroke Prevention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention was established. This Division plans, directs, and coordinates programs to reduce morbidity, risk factors, costs, disability, mortality, and disparities associated with heart disease, stroke, and other cardiovascular disease outcomes. Under this Division, formative research was conducted to identify effective interventions and promising practices for preventing heart disease and stroke at the work site. In 2005, this research resulted in the development of a Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit. The toolkit provides state programs with suggestions about which health benefits, services, and interventions can improve employee cardiovascular health, prevent heart disease and stroke, and reduce related costs. The second phase of this project focuses on disseminating and evaluating the Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit.

As part of the Toolkit evaluation, the CDC has employed contractor support to design and conduct a Web-based survey of State Health Departments to gather information on their experiences with the Toolkit. The contractor will collect and analyze all data from this survey. The CDC has also contracted to make revisions to the Toolkit based on results of this survey, ongoing feedback from the States, and feedback from employers through interviews.

There are no costs to respondents except their time to complete the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
Web-based survey on CVH Toolkit ..	State Heart Disease and Stroke Programs.	51	1	0.5	25.5

Dated: January 25, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–1489 Filed 1–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Enhancing Public Health Practice Related to Birth Defects and Developmental Disabilities, Request for Application (RFA) DD07–002 and Cooperative Agreement for a National Research and Training Organization for People With Developmental and Other Disabilities, RFA DD07–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned SEP:

Time and Date: 1 p.m.–4 p.m., March 19, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA DD07–002, ''Cooperative Agreement for Enhancing Public Health Practice Related to Birth Defects and Developmental Disabilities,'' and RFA DD07–003, ''Cooperative Agreement for a National Research and Training Organization for People with Developmental and other Disabilities.''

Contact Person for More Information: Juliana Cyril, PhD, Associate Director for Policy and Peer Review, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone 404.639.4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–1501 Filed 1–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned Federal advisory committee.

Times and Dates: 8:30 a.m.–4:30 p.m., February 28, 2007. 8:30 a.m.–1 p.m., March 1, 2007.

Place: SpringHill Suites Atlanta Buckhead, 3459 Buckhead Loop, NE., Atlanta, Georgia 30326, telephone 404/844–4800, fax 404/844–4801.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 80 people.

Purpose: The Secretary is authorized by the Public Health Service Act, Section 399G, (42 U.S.C. 280f, as added by Pub. L. 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters to Be Discussed: Agenda items include: Presentation of draft report on evidence-based fetal alcohol spectrum disorders (FASD) community-based prevention strategies with deliberations by the Task Force; presentation on U.S. Preventive Services Task Force report on alcohol use screening and behavioral counseling interventions; report on work of Post-exposure working group regarding recommendations for future directions in FASD policy and research; updates from the Interagency Coordinating Committee on FAS, the CDC and other Federal agencies, and liaison representatives; and scheduling of the next meeting.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Mary Kate Weber, M.P.H., Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., (E–86), Atlanta, Georgia 30333, telephone 404/498–3926, fax 404/498–3550.

The Acting Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–1493 Filed 1–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

Correction: This notice was published in the **Federal Register** on December 8, 2006, Volume 71, Number 236, page 71175–71176. The matters to be discussed have changed.

Matters To Be Discussed: The agenda will include discussions on influenza vaccine; immunization safety; update on use of rotavirus vaccine; update on use of HPV vaccine; update on use of herpes zoster (shingles) vaccine; vaccine supply; Japanese encephalitis and other flavivirus vaccines (e.g., yellow fever vaccine); diphtheria, tetanus, pertussis, polio, Haemophilus B [Hib] combination vaccine (Pentacel®); evidence-based recommendations; and agency updates. Vaccine for Children votes will be on hepatitis A post exposure prophylaxis, influenza and Pentacel. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Demetria Gardner, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–6258.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–1490 Filed 1–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 71 FR 69211, dated November 30, 2006) is amended to reflect the establishment of the Extramural Research Program Office within the National Center for Injury Prevention and Control, coordinating Center for Environmental Health and Injury Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: After the functional statement for the *Office of Communication Resources (CTC14), Office of the Director (CTC1), National Center for Injury Prevention and Control (CTC),* insert the following:

Extramural Research Program Office (CTC16). The Extramural Research Program Office (ERPO) plans, develops, coordinates, and evaluates extramural research activities in cooperation with centers, divisions, and offices within the Coordinating Center for Environmental Health and Injury Prevention. In carrying out its mission, the ERPO: (1) Directs the Extramural research program by planning, coordinating, developing, implementing, monitoring, and evaluating extramural research that is designed to address center priorities; (2) participates with divisions and offices within the center to establish research priorities for the center; (3) provides scientific leadership in the areas of extramural research supported by the center; (4) promotes and prepares initiatives to stimulate extramural research in relevant priority areas; (5) coordinates and conducts in-depth external peer review and secondary program relevance review of extramural research applications by use of consultant expert panels; (6) makes recommendations to the center director on award selections and staff members serve as the program officials in conjunction with CDC grants management and policy officials to implement and monitor the scientific, technical, and administrative aspects of awards; (7) facilitates scientific collaborations between external and internal investigators; (8) disseminates and evaluates extramural research progress, findings, and impact; and (9) assists the Office of Chief Science Officer, CDC, in developing extramural research policies and oversees the implementation of those policies within the center.

Dated: January 9, 2007.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 07–417 Filed 1–30–07; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0136]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Interstate Shellfish Dealers Certificate'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 13, 2006 (71 FR 60545), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0021. The approval expires on January 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1549 Filed 1–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–07–4300]

Memorandum of Understanding Between the United States Food and Drug Administration and the Veterans Health Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Veterans Health Administration. The purpose of this MOU is to enhance knowledge and efficiency by providing for the sharing of information and expertise related to the review and use of FDA-regulated drugs, biologics, and medical devices between the two agencies. The goals of the collaboration are to explore ways to: Further enhance information sharing efforts through more efficient and robust interagency activities; promote efficient utilization of tools and expertise for product risk identification, validation, and analysis; and build infrastructure and processes that meet the common needs for evaluating the safety, efficacy, and utilization of drugs, biologics, and medical devices.

DATES: The agreement became effective January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Shuren, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: January 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

FDA # 225-07-4300

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND THE VETERANS HEALTH ADMINISTRATION

1. A MEMORANDUM OF UNDERSTANDING (MOU) TO SHARE INFORMATION

The Food and Drug Administration (FDA) as part of the Department of Health and Human Services and the Veterans Health Administration (VHA) as part of the Department of Veterans Affairs, both United States Federal Government entities and hereinafter also referred to as "Federal partners", agree to share information related to the review and use of FDA-regulated drugs, biologics, and medical devices, as defined by the Federal Food, Drug and Cosmetic Act (*see* 21 U.S.C. 321) and the Public Health Service Act (*see* 42 U.S.C. 262).

2. MOU PURPOSE AND GOALS

The purpose of the MOU is to enhance knowledge and efficiency by providing for the sharing of information and expertise between the Federal partners. The goals of the collaboration are to explore ways to:

a. Further enhance information sharing efforts through more efficient and robust inter-agency activities.

b. Promote efficient utilization of tools and expertise for product risk identification, validation and analysis.

c. Build infrastructure and processes that meet the common needs for evaluating the safety, efficacy, and utilization of drugs, biologics, and medical devices.

3. MOU PROGRAM AREAS AND RESPONSIBILITIES/ACTIVITIES

a. Each Federal partner will establish a single Agency liaison to facilitate the actions carried out under this MOU. Ideally, the liaisons will be organizationally aligned under the Office of the FDA Commissioner and the VHA Office of the Under Secretary for Health.

b. VHA and FDA agree to attend an initial meeting to establish the specific procedures and safeguards necessary to implement this MOU. The initial meeting will take place within 30 days of signing and approval of this MOU. Periodic meetings will be scheduled thereafter on a quarterly basis. VHA and FDA agree not to share information under this MOU unless, and until, adequate procedures and safeguards agreed upon by both Federal partners are established and implemented.

c. VHA and FDA agree that the initial request for information will be made by and transmitted to the Agency liaisons designated according to Section 3.a. of this MOU. Subsequent communications pertaining to that issue may occur between other staff as approved by the liaisons.

d. FDA and VHA agree that either may decide not to share information or expertise in response to a particular request for information made according to the procedures established under Section 3.b., or to limit the scope of information and expertise sharing in response to a particular request. A decision not to share information in response to a specific request may be based on several factors, including, for example, the amount of resources necessary to fulfill the request, the reasonableness of the request, the responding Federal partner's priorities, or legal restrictions. In the event both partners can not reach consensus on a decision to share or not share information, the issue will be referred to the FDA Deputy Commissioner for Operations and the VHA Under Secretary for Health for a final decision.

e. FDA and VHA agree to establish reasonable timelines for responding to information requests and to refer instances of delays to the Agency liaisons for resolution.

f. FDA and VHA recognize that information transmitted between them in any medium and from any source, that contains any of the following types of information must be protected from unauthorized disclosure: (1) confidential commercial information, such as the information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (e.g., Trade Secrets Act (18 U.S.C. § 1905), the Privacy Act (5 U.S.C. § 552a), the Freedom of Information Act (5 U.S.C. § 552), 38 U.S.C. § 5701, 38 U.S.C. § 5705, 38 U.S.C. § 7332, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191).

g. FDA and VHA agree to promptly notify the other Federal partner of any actual or suspected unauthorized disclosure of information shared under this MOU.

4. SAFEGUARDING & LIMITING ACCESS TO SHARED INFORMATION

The procedures established under Section 3.b. must include proper safeguards against unauthorized use and disclosure of the information exchanged under this MOU. Proper safeguards shall include the adoption of policies and procedures to ensure that the information shared under this MOU shall be used solely in accordance with Trade Secrets Act [18 U.S.C. § 1905], the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], the Privacy Act of 1974, as amended [5 U.S.C. § 552a], the Freedom of Information Act [5 U.S.C. § 552], and their implementing regulations, as well as the HIPAA Privacy Rule [45 C.F.R. Parts 160 and 164]. The VHA and FDA shall establish

appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the information and to prevent unauthorized access to the information provided by the other Federal partner.

Access to the information shared under this MOU shall be restricted to authorized FDA and VHA employees, agents and officials who require access to perform their official duties in accordance with the uses of the information as authorized in this MOU. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards required to protect the information, and (3) the administrative, civil and criminal penalties for noncompliance contained in applicable Federal laws. VHA contractors, their subcontractors and agents requiring the access to the information shared under this agreement will be required to sign a business associate agreement.

If an agency that has received information under this MOU receives a Freedom of Information Act (FOIA) request for the shared information, it will refer the request to the information-sharing agency for it to respond directly to the requestor regarding the releasability of the information. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

5. RESTRICTION ON USE OF INFORMATION

All information provided by the Federal partners shall be used solely for the purposes outlined in Section 2. If either Federal partner wishes to use the information provided by the other Federal partner under this MOU for any purpose other than those outlined above, the requesting agency shall make a written request to the other agency describing the additional purposes for which it seeks to use the information. If the agency receiving this request determines that the request to use the information provided hereunder is acceptable, it shall provide the requesting agency with written approval of the additional use of the information.

6. EFFECT OF MOU ON EXISTING STATUTES AND REGULATIONS

FDA and VHA agree to take actions under this collaboration that are consistent with existing laws and regulations, and that nothing in the MOU shall be construed as changing the current requirements under the statutes and regulations administered and enforced by VHA and FDA, including but not limited to: title 38 of the United States Code, the Public Health Service Act, and the Federal Food, Drug, and Cosmetic Act. Further, nothing contained in this MOU constitutes a mandate or a requirement imposed on either FDA or VHA that is additional to the mandates or requirements imposed on VHA or FDA by Federal statutes and regulations.

FDA # 225-07-4300

7. PLANNED RESOURCES FOR MOU

a. FDA and VHA will designate respective liaisons to oversee the administration of, and adherence to, the content of this MOU. These liaisons shall include one or more designated individuals from FDA's Office of the Commissioner and VHA's Office of the Under Secretary for Health; from FDA's CDER, CDRH and CBER, and VHA's Pharmacy Benefits Management Strategic Healthcare Group.

b. FDA and VHA will make reasonable efforts to provide the necessary staff to implement this MOU in an efficient and effective manner.

8. ASSESSMENT MECHANISMS

FDA and VHA staff involved in implementing the MOU will provide regular and consistent oversight and reevaluation of all terms and conditions contained herein.

9. TERM OF MOU

This MOU becomes effective upon the signature of both Federal partners and the implementation of the procedures and safeguards agreed upon by both Federal partners described in Section 3 and will remain in effect for 3 years from that date. This agreement may be modified by mutual consent or terminated by either party upon 60 days written notice. This agreement may be modified by mutual consent or terminated by either party immediately upon written notice in the event that a Federal statute is enacted or regulations are issued by either Federal partner that materially affect this MOU.

10. SIGNATURES OF VHA AND FDA APPROVING OFFICIALS

Andrew C. von Eschenbach

Andrew C. von Eschenbach, MD
Commissioner of Food and Drugs
Department of Health and Human Services

1/23/2007
Date

Michael J. Kussman

Michael J. Kussman, MD, MS, MACP
Acting Under Secretary for Health
Department of Veterans Affairs

16 January 2007
Date

[FR Doc. 07–421 Filed 1–30–07; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; California Health Interview Survey 2007

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Sept. 11, 2006, p. 53456 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed collection

Title: California Health Interview Survey 2007.

Type of Information Collection Request: NEW.

Need and use of Information Collection: The NCI has sponsored three Cancer Control Modules in the California Health Interview Survey (CHIS), and will be sponsoring a fourth to be administered in 2007. Other federal government agencies have co-sponsored previous cycles of the survey.

The CHIS is a telephone survey designed to provide population-based, standardized health-related data to assess California's progress in meeting Healthy People 2010 objectives for the nation and the state. The CHIS samples designed to provide statisticically reliable estimates statewide, for California counties, and for California's ethnically and racially diverse population. Initiated by the UCLA Center for Health Policy Research, the California Department of Health Services, and the California Public Health Institute, the survey is funded by a number of public and private sources. It was first administered in 2001 to 55,428 adults, 5,801 adolescents, and 12,802 children; subsequently in 2003 to 42,043 adults, 4,010 adolescents, and 8,502 children; and in 2005 to 43,020 adults, 4,029 adolescents, and 11,358 children. These individuals are a representative sample of California's non-institutionalized population living in households.

CHIS 2007, is the fourth bi-annual survey, is planned for administration to 48,000 adult Californians and 4,000 adolescents. The cancer control module, which is similar to that administered in CHIS 2001, CHIS 2003, and CHIS 2005, will allow NCI and other Federal agencies to examine various health- and disease-related topics. Examples include patterns and (when fielded in multiple years) trends in breast cancer screening, diet, physical activity, obesity, tobacco control and other disease risk factors, disease outcomes, discrimination, and neighborhood cohesion.

Because California is the most populous and the most racially and ethnically diverse state in the nation, the CHIS 2007 sample will yield adequate numbers of respondents in key ethnic and racial groups, including African Americans, Latinos, Asians, and American Indian/Alaska Natives. The Latino group will include large numbers of respondents in the Mexican, Central American, South American, and other Latino subgroups; the Asian group will include large numbers of respondents in the Chinese, Filipino, Japanese, Vietnamese, and Korean subgroups. NCI and other Federal agencies will use the California and National Health Interview Survey (CHIS, NHIS) data to conduct comparative analyses and better estimate cancer risk factors and screening among racial/ethnic minority populations. The CHIS sample size also permits NCI and other federal agencies to obtain estimates for ethnic subdomains of the population for which NHIS has insufficient numbers for analysis.

Frequency of Response: One-time.

Affected public: Individuals or households.

Types of Respondents: U.S. adults (persons 18 years of age and older) and adolescents (persons of age 12–17 for whom the adult respondent is the parent or legal guardian of the adolescent residing in the household).

The annual reporting burden is as follows:

Estimated Number of Respondents: 48,000 Adults and 4,000 Adolescents.

Estimated Number of Response per Respondent: 1.

Average Burden Hours per Response: .1202 for Adults and .0134 for Adolescents.

Estimated Total Burden Hours Requested: 5,778 for Adults and 53.8 for Adolescents. The annualized cost to respondents is estimated at $98,629.451. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE A.—ANNUALIZED BURDEN ESTIMATES FOR CHIS 2007 DATA COLLECTION

Type of respondent	Estimated number of respondents	Estimated number or responses per respondent	Average burden hour per response	Estimated total annual burden hours
Adult Pilot	150	1	.1200	18.0
Adult Survey	48,000	1	.1200	5760.0
Adolescent Pilot	15	1	.0134	.2
Adolescent Survey	4,000	1	.0134	53.6
Total				5831.8

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Nancy Breen, Ph.D., Project Officer, Applied Research Program, Division of Cancer Control and Population Sciences NCI, NIH, EPN 4005, 6130 Executive Boulevard MSC 7344. Bethesda, Maryland 20852–7344, or call the non-toll-free number 301–696–8500 or E-mail your request, including your address to *breenn@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 23, 2007.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 07–406 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Consumer Liaison Group

The National Cancer Institute (NCI) the Federal Government's primary agency for cancer research, is seeking nominations for four (4) new members of the NCI Director's Consumer Liaison Group (DCLG) which will be appointed in July, 2007. The DCLG helps NCI to identify appropriate advocates to serve on its program and policy advisory committees.

The National Cancer Institute (NCI) formed the NCI Director's Consumer Liaison Group (DCLG) in 1998 to advise and make recommendations to the NCI Director, from the perspective and viewpoint of cancer consumer advocates, on a wide variety of issues, programs, and research priorities. The DCLG gives cancer advocates a channel to voice their views and concerns. The DCLG is a 16-member chartered federal advisory committee that works with NCI to ensure that those who experience the burden of cancer also help to shape the course of the NCI's research to eradicate it. Specifically the DCLG members:

- Help develop and establish processes, mechanisms and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussion issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programming and research priorities.
- Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements: NCI looks for strong, highly qualified candidates who fulfill the following eligibility criteria:

- Demonstrate involvement in the cancer experience as a cancer survivor, a caregiver to someone who has cancer, or as a professional or volunteer who works with cancer survivors, patients, or caregivers;
- Have a constituency with which she/he regularly communicates on cancer issues and with which she/he is able to serve as a conduit for information, both to and from NCI.

Nominees who meet the minimum eligibility requirements will be evaluated further based on the following qualities:

- Cancer advocacy experience; ability to represent all cancer survivors;
- Possession of strong leadership, communication, and collaboration skills;
- Ability to advise on broad cross cutting cancer issues;
- Ability to facilitate dialogue between NCI and the cancer advocacy community.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda, MD.

Characteristics of the DCLG. In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are balanced to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Racial and ethnic balance
- A broad mix of cancer sites
- Expertise with advocacy organizations (local, regional, or national)
- Geographical diversity
- Gender
- Age diversity

Selection Process. A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. Individuals may nominate themselves. All nominees are screened for eligibility, and then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI who selects the DCLG members. The original members of the DCLG endorsed this process and the criteria developed to evaluate the applications of potential DCLG members, and this process is used to select future members.

To receive a nomination package for the DCLG, send your name, advocacy/voluntary organization affiliation (if any), address, phone number and E-mail information to: Palladian Partners, Inc., Attn: DCLG 2007 Selection Process, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, Phone: (301) 650–8660, Fax: (301) 650–8676.

Nominations must be postmarked by March 30, 2007.

Dated: January 23, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 07–400 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 27, 2007, 12 p.m. to February 27, 2007, 4 p.m., National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 which was published in the **Federal Register** on December 28, 2006, 71 FR 78214.

The meeting notice is changed to reflect the change in the name of the committee from ''SBIR Topic 230 (Phases I & II)'' to ''SBIR, Synthesis Stable Isotope-Labeled Steroids as Internal Standards.'' The meeting is closed to the public.

Dated: January 23, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–401 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee 1—Career Development.

Date: February 27–28, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8113, MSC 8328, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technologies for Molecular Analysis of Cancer.

Date: March 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Room 8053, Bethesda, MD 20892, 301–435–1822, *githenss@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, TW06–006 ''International Tobacco and Health Research and Building Capacity.''

Date: March 20–21, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7987, *lovingeg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 23, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–402 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, February 23, 2007, 8:30 a.m. to February 23, 2007, 3 p.m., Embassy Suites Hotel Washington Convention Ctr., Washington, DC 20001 which was published in the **Federal Register** on January 12, 2007, FR 07–100.

The February 23, 2007 Meeting Panel Name was changed from Modified Hemoglobin Production to VAD Technologies. The meeting is closed to the public.

Dated: January 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–397 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, February 20, 2007, 2 p.m. to February 20, 2007, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 12, 2007, FR 07–100.

The February 20, 2007 Meeting Panel Name was changed from VAD Technologies to Modified Hemoglobin Production. The meeting is closed to the public.

Dated: January 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–398 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–43, Review R03, F30.

Date: February 12, 2007.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–35, Review R21.

Date: March 1, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–39, Review R21.

Date: March 5, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–36, Review R21.

Date: March 8, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–33, Review R03s.

Date: March 14, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–37, Review R21.

Date: March 14, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 23, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–399 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.

Date: February 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

Date: February 22–23, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C.

Date: February 28–March 1, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–0660.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A.

Date: March 8–9, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Queens Anne Hotel, 1590 Sutter Street at Octavia, San Francisco, CA 94109.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 23, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–403 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Allergy and Infectious Diseases Special Emphasis Panel; System Approach to Immunity and Inflammation.

Date: February 12–13, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mercy R. Prabhudas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Allergen & T-Cell Reagent Resources for the Study of Allergic Diseases.

Date: February 15–16, 2007.

Time: February 15, 2007, 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.

Time: February 16, 2007, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Sujata Vijh, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 23, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–404 Filed 1–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2006–63, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2007, and ending March 31, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning January 1, 2007, and ending March 31, 2007.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	033107	8	8	7

Dated: January 25, 2007

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E7–1477 Filed 1–30–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Disaster Assistance Registration.

OMB Number: 1660–0002.

Abstract: Disaster Assistance Registration is a program used to provide financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other financial means.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 1,718,291.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 394,760.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, *Attention:* Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before March 2, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management and Privacy, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 25, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–1499 Filed 1–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1675–DR]

Kansas; Amendment No. 1 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 Kansas (FEMA–1675–DR), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 7, 2007:

Cheyenne, Clark, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Logan, Meade, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Rawlins, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stanton, Stevens, Thomas, Trego, Wallace, and Wichita Counties for Public Assistance Categories C–G (already designated for Public Assistance Categories A and B [debris removal and emergency protective measures], including direct Federal assistance.)

Cheyenne, Decatur, Greeley, Logan, Morton, Rawlins, Sherman, Stanton, Thomas, Wallace, and Wichita Counties for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period (already designated for Public Assistance Categories A and B [debris removal and emergency protective measures], including direct Federal assistance.)

(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. E7–1455 Filed 1–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Pipeline Security Awareness (CD–1) Effectiveness Assessment

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act.

DATES: Send your comments by April 2, 2007.

ADDRESSES: Comments may be mailed or delivered to Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Kletzly at the above address, or by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

As prescribed by the President in Homeland Security Presidential Directive 7 (HSPD–7), the Department of Homeland Security (DHS) was tasked to protect our nation's critical infrastructure and key resources (CI/KR). Through the National Infrastructure Protection Plan (NIPP), DHS gives a guidance and direction as to how the Nation will secure its infrastructure. Furthermore, HSPD–7 and the NIPP assigned the responsibility for infrastructure security in the transportation sector to TSA. To this effect, the NIPP further tasks each sector to build security partnerships, set security goals and to measure their effectiveness. Through its Corporate Security Review Program, TSA has conducted reviews of numerous pipeline systems in which various aspects of each company's security program are analyzed. Through this review process, TSA has determined that improved security awareness training for pipeline company employees would be useful. The OMB control number assigned to the Corporate Security Review Program is 1652–0036. To increase the security awareness levels across the pipeline industry, TSA plans to develop and distribute a Security Awareness Training compact disk (CD–1) to interested pipeline companies. In order to measure the effectiveness of CD–1 on raising company security awareness, TSA will solicit voluntary feedback from pipeline companies seeking to utilize the CD–1.

In order to participate, interested companies may respond to TSA's announcements regarding the CD–1 availability and ordering instructions through all applicable pipeline industry Web sites. The CD–1 training will be available to all pipeline companies upon request to TSA. Participation in the feedback survey will also be voluntary to those pipeline companies that requested and received the CD.

TSA will collect the feedback regarding CD–1 performance via online survey, which will be managed by a contracted third-party survey company. The survey results will be used to guide TSA on future pipeline transportation security initiatives. TSA plans to conduct the data collection over a two- to three-year period in order to allow for

maximum distribution and use of CD–1 throughout the industry, and for participating companies to complete full training cycles.

Description of Data Collection

TSA will ask participating companies that complete the Security Awareness Training CD–1, to log on to a TSA-managed secure Web site to provide feedback on the effectiveness of the training.

Respondent companies may respond with feedback in one of two ways: (1) They may choose to submit one subjective, corporate response as to the employee participation levels or effectiveness of the CD–1 (i.e., the CD–1 significantly increased the security awareness levels for a majority of Company X's employees); or (2) they may provide objective information based on their company's own survey of its employees. For metrics purposes, TSA will also request that participating companies provide the total number of company employees, the number of employees who have completed the CD–1 training, and the numbers of projected employees that will complete the training in the future. In many cases, a single company may own more than one pipeline transmission or local distribution system, thus, a single CD–1 and corresponding effectiveness survey responses may represent more than one individual pipeline system. In order to discern the total number of pipeline companies utilizing the CD–1, TSA will inquire as to the number of individual pipeline systems that will be using the CD–1, in the event a parent company is requesting the CD. However, because participation in the CD–1 training and providing feedback in voluntary (that is, some companies that may utilize the CD–1 may not provide feedback), the TSA metrics will be based solely on companies that provide feedback.

In order for interested companies to submit information, TSA will set up a separate file for each company on the secure Web site into which each company can provide feedback. TSA will provide each company or individual pipeline system with a password in order to access their individual company or system file. Companies/individual systems may access and update the information contained within their file at any time. The name of the participation company or point or contact information will be collected only for the purpose of setting up the company feedback file and for identify verification when companies log onto the Web site.

Use of Results

The primary use of this information is to allow TSA to assess the effect of the CD–1 project on raising the baseline level of security awareness within the pipeline industry. The secondary purpose of this information is for TSA to obtain, based on individual company input, an indication of CD–1 user participation and employee participation levels throughout the pipeline industry.

Frequency

Most companies administer their security awareness training curriculum on an annual or biannual cycle. Therefore, a company would provide TSA sufficient feedback approximately every two years. Typically, companies will generate quarterly or annual reports on employee training progress. Thus, companies may submit updated feedback between one and four times per year, which TSA equates to an average frequency for this collection of two times per year. The time companies expend to respond to this collection will vary slightly depending on whether a company chooses to submit an overall company subjective opinion response provided by a knowledgeable corporate official, or an objective response based on results of its own training feedback survey. However, if a company chooses to submit one overall company opinion, it is likely that a person with some familiarity with the company's security posture will be responsible for providing the feedback survey. Regardless of whether a company submits an objective response based on the results of its own training course survey, or an opinion of one corporate official, the only time expenditure required would result from electronically entering the requested information on the TSA survey Web site. This is because the information gathered will already be in the possession of the company and therefore, impart no additional burden on the respondent.

Out of approximately 2,200 individual pipeline companies, TSA estimates that on an annual basis an average of 300 companies will provide feedback on the CD–1. TSA estimates the average hour burden per response per pipeline company or system will be approximately 20 minutes. Assuming that, on average, a company will update their feedback twice per year, TSA estimates the total annual hour burden will be 40 minutes per pipeline company or system. Therefore, TSA estimates the total annual hour burden will be approximately 200 hours per year for all pipeline industry participants [300 companies × 40 minutes = 200 hours].

Dated: Issued in Arlington, Virginia, on January 23, 2007.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. 07–369 Filed 1–30–07; 8:45 am]

BILLING CODE 9110–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6678–A2, AA–6678–F, AA–6678–K, AA–6678–L; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Levelock Natives, Limited. The lands are in the vicinity of Levelock, Alaska, and are located in:

Seward Meridian, Alaska

T. 10 S., R. 44 W.,
Sec. 35.
Containing 640.00 acres.

T. 11 S., R. 44 W.,
Sec. 20.
Containing 640.00 acres.

T. 12 S., R. 44 W.,
Sec. 18.
Containing 374.95 acres.

T. 13 S., R. 44 W.,
Sec. 3.
Containing 496.88 acres.

T. 13 S., R. 45 W.,
Secs. 25, 35 and 36.
Containing 1,881.97 acres.

T. 12 S., R. 46 W.,
Secs. 12 and 13;
Secs. 23 to 26, inclusive;
Sec. 36.
Containing 4,446.85 acres.

T. 13 S., R. 46 W.,
Secs. 3, 4, and 9.
Containing 1,920.00 acres.
Aggregating 10,400.65 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Levelock Natives, Limited. Notice of the decision will also be published four times in the Bristol Bay Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by

the decision shall have until March 2, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–1500 Filed 1–30–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14887–A, F–14887–A2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Lime Village Company. The lands are in the vicinity of Lime Village, Alaska, and are located in:

Seward Meridian, Alaska

T. 13 N., R. 32 W.,
Sec. 1.
Containing 590.89 acres.

T. 14 N., R. 32 W.,
Secs. 30 to 36, inclusive.
Containing 3,957.36 acres.

T. 14 N., R. 33 W.,
Sec. 25, 26, and 36.
Containing 1,782 acres.

T. 15 N., R. 36 W.,
Sec. 1.
Containing 560 acres.

T. 16 N., R. 36 W.,
Sec. 26;
Secs. 29 to 36, inclusive.
Containing 5,032.15 acres.
Aggregating 11,922.40 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Lime Village Company. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 2, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Charles Lovely,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–1569 Filed 1–30–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14918–A, F–14918–A2; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Pilot Station, Incorporated. The lands are in the vicinity of the Native village of Pilot Station, Alaska, and are located in:

Seward Meridian, Alaska

T. 23 N., R. 72 W.,
Secs. 2 to 11, inclusive;
Secs. 15 to 20, inclusive;
Secs. 29, 30, and 31.
Containing 10,090.72 acres.

T. 23 N., R. 73 W.,
Secs. 13, 14, and 15;
Secs. 21 to 24, inclusive.
Containing 3,650.52 acres.

T. 19 N., R. 76 W.,
Secs. 10, 11, and 12.
Containing 1,262.52 acres.
Aggregating 15,003.76 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Pilot Station, Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication in the **Federal Register** to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Kara Marciniec,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–1503 Filed 1–30–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations and Environmental Assessment and Floodplain Statement of Findings for the DM Murdock Deep #1 Well by Kindee Oil and Gas Texas, LLC, Padre Island National Seashore, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Plan of Operations and Environmental Assessment and Floodplain Statement of Findings for a 30-day Public Review at Padre Island National Seashore.

SUMMARY: Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, of a Plan of Operations submitted by Kindee Oil and Gas Texas, LLC, for the DM Murdock Deep #1 Well in Padre Island National Seashore, Kenedy County, Texas. Additionally, the NPS has prepared an Environmental Assessment and Floodplain Statement of Findings for this proposal.

DATES: The above documents are available for public review and comment through March 2, 2007.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Colin Campbell, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. The documents are also available at the Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/.*

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Echols, Chief, Division of Science and Resources Management, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173, ext. 223, e-mail at *Darrell_Echols@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice was first published on July 28, 2006. The documents are still available for public review and comment. If you wish to comment on the Plan of Operations, Environmental Assessment, and draft Floodplain and Wetland Statements of Findings, you may mail comments to the name and address below or post comments online at *http://parkplanning.nps.gov/.* This environmental assessment will be on public review for 30 days. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including 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.

Dated: January 18, 2007.

Colin W. Campbell,

Superintendent, Padre Island National Seashore.

[FR Doc. 07–414 Filed 1–30–07; 8:45 am]

BILLING CODE 4312–CD–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 348 and 350 (Second Review); 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

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, and the antidumping finding on cut-to-length carbon steel plate from Taiwan, as well as revocation of countervailing duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Mexico, Spain, and Sweden, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission further determines that revocation of the antidumping duty orders on corrosion-resistant steel from Germany and Korea and the countervailing duty order on corrosion-resistant steel from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Finally, the Commission determines that revocation of the antidumping duty orders on corrosion-resistant steel from Australia, Canada, France, and Japan, as well as the countervailing duty order on corrosion-resistant steel from France, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on November 1, 2005 (70 FR 62324, October 31, 2005), and determined on February 6, 2006, that it would conduct full reviews (70 FR 8874, February 21, 2006). Notice of the scheduling of the Commission's reviews and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 30, 2006 (71 FR 16178). The hearings were held in Washington, DC, on October 17 and 19, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 25, 2007. The views of the Commission are contained in USITC Publication 3899 (January 2007), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review).*

By order of the Commission.

Issued: January 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–1560 Filed 1–30–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0006]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Charlotte R. Lane and Stephen Koplan dissenting with respect to corrosion-resistant steel from Australia, Canada, France, and Japan.

to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 2, 2007. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 respondents at 6 hours per self-evaluation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 48,000 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–1511 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0005]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 2, 2007. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State or Local Government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State

or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of ''places of public accommodation'' and ''commercial facilities.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 respondents per year at 32 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 320 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–1512 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0004]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 2, 2007. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection*: Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities (''program accessibility''). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a ''transition plan'' setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 respondents at 8 hours per transition plan.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,000 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–1513 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0009]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Title II of the Americans with Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 2, 2007. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–1514 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 002–2007]

Privacy Act of 1974; Removal of Four Systems of Records Notices

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), Criminal Division (CRM), is removing the published notices of four Privacy Act systems of records: ''General Litigation and Legal Advice Section, Criminal Division, Central Index File and Associated Records, JUSTICE/CRM–004,'' last published on December 11, 1987 at 52 FR 47190; ''Index to Names of Attorneys Employed by the Criminal Division, U.S. Department of Justice, Indicating the Subject of the Memoranda on Criminal Matters They Have Written, JUSTICE/CRM–005,'' last published on December 11, 1987 at 52 FR 47191; ''Name Card File on Criminal Division Personnel Authorized to Have Access to the Central Criminal Division Records, JUSTICE/CRM–007,'' last published on December 11, 1987 at 52 FR 47192; and, ''Weekly Statistical Report, JUSTICE/CRM–023,'' last published on January 10, 1980 at 45 FR 2195.

These system notices are unnecessary because both the systems and the actual records have all been determined to no longer meet any business need of the Criminal Division. In each case the records were destroyed pursuant to the National Archives and Records Administration General Records Schedule 23.

Therefore, the notices for the above-named systems of records are removed from the Department's listing of Privacy Act systems of records notices, effective on the date of publication of this notice in the **Federal Register**.

Dated: January 22, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. E7–1562 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 003–2007]

Privacy Act of 1974; Modification of System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice proposes to modify the Departmentwide system of records entitled, ''Department of Justice Regional Data Exchange System (RDEX)'' DOJ–012, previously published in full text in the **Federal Register** on July 11, 2005, (70 FR 39790), and amended on December 2, 2005 (70 FR 72315).

This system is being modified as follows:

The portions of the system of records notice entitled, CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, CATEGORIES OF RECORDS IN THE SYSTEM, PURPOSE OF THE SYSTEM, RETENTION AND DISPOSAL, SYSTEM MANAGERS AND ADDRESSES, and RECORD SOURCE CATEGORIES are being modified to reflect that information in RDEX includes criminal law enforcement information from certain state and local law enforcement agencies that participate in the RDEX system under memoranda of understanding (MOU) with the Department of Justice. The MOU sets forth policy and procedures for the sharing of law enforcement information by the contributing parties, including for the maintenance, responsibility, and use of shared information. The MOU provides that each contributing party retains sole responsibility of and exclusive control over the content of the information that it contributes to RDEX and establishes strict limitations on the access to information contributed by the parties.

This modification is necessary to reflect the inclusion of certain state and local law enforcement information that

furthers the law enforcement sharing initiatives that are the basis of the RDEX system. The RDEX system is part of the Department's Law Enforcement Information Sharing Program (LEISP). The RDEX system includes this information to facilitate regional sharing initiatives which serves to further the LEISP's principal purpose of ensuring that criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by March 12, 2007. The public, OMB, and Congress are invited to submit any comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, United States Department of Justice, Washington, DC, 20530–0001 (Room 1400, National Place Building), Facsimile Number 202–307–1853.

In accordance with 5 U.S.C. 552a(r), the Department is providing a report of this modification to OMB and appropriate Members of Congress.

Dated: January 25, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE

DOJ–012

SYSTEM NAME:

Department of Justice Regional Data Exchange System (RDEX).

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include individuals who are referred to in potential or actual cases or matters of concern to the Federal Bureau of Prisons (BOP), the United States Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), as well as individuals referred to in law enforcement information contributed by certain state and local law enforcement agencies that participate in the RDEX system under memoranda of understanding with the Department of Justice. Because the system contains audit logs regarding queries, individuals who use the system to conduct such queries are also covered.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of unclassified criminal law enforcement records collected and produced by the BOP, the USMS, the ATF, the DEA, the FBI, and certain state and local law enforcement agencies, including: investigative reports and witness interviews from both open and closed cases; criminal event data (e.g., characteristics of criminal activities and incidents that identify links or patterns); criminal history information (e.g., history of arrests, nature and disposition of criminal charges, sentencing, confinement, and release); and identifying information about criminal offenders (e.g., name, address, date of birth, birthplace, physical description). The system also consists of audit logs that contain information regarding queries made of the system.

* * * * *

PURPOSE OF THE SYSTEM:

This system is maintained for the purpose of ensuring that Department of Justice criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security. RDEX furthers this purpose by consolidating certain law enforcement information from other Department of Justice systems, as well as certain state and local law enforcement information, in order that it may more readily be available for sharing with other law enforcement entities.

* * * * *

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with all applicable statutory and regulatory requirements.

* * * * *

SYSTEM MANAGERS AND ADDRESSES:

[Replace first paragraph with the following:]

For the RDEX system generally and for state and local information: Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

[Other system managers remain the same.]

* * * * *

RECORD SOURCE CATEGORIES:

Records in RDEX come directly from the criminal law enforcement files and records systems of the participating Department of Justice components (ATF, BOP, DEA, FBI, and USMS), as well as certain state and local law enforcement agencies participating in the RDEX system under memoranda of understanding with the Department of Justice.

* * * * *

[FR Doc. E7–1567 Filed 1–30–07; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,747]

Aerotek Staffing Agency, Kentwood, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 11, 2007 in response to a worker petition filed by the State Agency on behalf of workers at Aerotek Staffing Agency, Kentwood, Michigan, working on-site at D–M–E Company, a subsidiary of Milacron, Inc., Charlevoix, Michigan.

The petitioning group of workers is covered by an active amended certification (TA–W–60,301), which expires on November 8, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of January, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1470 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,719]

Avondale Mills, Inc., Townsend Plant, Graniteville, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 9, 2007, in response to a petition filed by a State agency representative on behalf of workers of Avondale Mills, Inc., Townsend Plant, Graniteville, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of January, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1474 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,409]

Davis International, Okolona, MS; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 2, 2007, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Alternative Trade Adjustment Assistance (ATAA).

The workers of Davis International, Okolona, Mississippi were certified eligible to apply for Trade Adjustment Assistance (TAA) and denied to apply for ATAA on December 5, 2006. The denial notice will be soon published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The group eligibility criteria for the ATAA program that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

The initial ATAA investigation revealed that no workers at the subject firm were 50 years of age or older during the relevant time period and thus criterion (1) has not been met.

In the request for reconsideration, the petitioner stated that he was part of the petitioning worker group and that he was also over the age of 50 during the relevant time period.

A company official was contacted to confirm the age of all the employees of the subject firm during the relevant time period. The company official did acknowledge the fact that the worker who submitted the request for reconsideration is over the age of 50 and that she made a mistake omitting him from the petitioning worker group during the initial investigation. The official further stated that this worker was the only employee over the age of 50 or older at the subject firm during the relevant time period.

When assessing eligibility for ATAA, the Department makes its determinations based on the requirements as outlined in Section 222 of the Trade Act. In particular, the Department considers the relevant employment data for the facility where the petitioning worker group was employed in order to establish whether criterion 1 has been met. For this purpose, the term ''significant number'' means five percent of the adversely affected workforce or 50 workers, whichever is less, or at least three workers in a firm with less than 50 adversely affected workers.

As the total number of workers 50 years of age or older was one employee during the relevant period, criterion (1) of the eligibility requirements for ATAA has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 17th day of January, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1469 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,640]

National Apparel, LLC, San Francisco, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2006 in response to a petition filed on behalf of workers of National Apparel, LLC, San Francisco, California.

The petition regarding the investigation has been deemed invalid. The petition, filed by three workers, did not contain the signatures of the petitioners. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1473 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of January 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/15/07 and 1/19/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60762	Specialty Filaments, Inc. (Wkrs)	Middlebury, VT	01/16/07	01/11/07
60763	Enkeboll Co, Inc. (The) (State)	Carson, CA	01/16/07	01/05/07
60764	Lear Corporation (Wkrs)	Madisonville, KY	01/16/07	01/12/07
60765	Woodhead (Comp)	Northbrook, IL	01/16/07	01/05/07
60766	Travel Tags (State)	Inver Grove Heights, MN	01/16/07	01/12/07
60767	Portola Tech International (Comp)	WoonSocket, RI	01/16/07	12/22/06
60768	IDT Corporation (Wkrs)	Newark, NJ	01/16/07	01/15/07
60769	Airfoil Technologies International (State)	Compton, CA	01/16/07	12/28/06
60770	Regal Cutting Tools, Inc. (Wkrs)	Roscoe, IL	01/16/07	12/15/06
60771	Burlington House Weaving Plant & BH Pioneer Plant (Comp).	Reidsville, NC	01/16/07	01/15/07
60772	Harve Benard (Union)	Clifton, NJ	01/16/07	01/12/07
60773	Klausener Furniture Industries, Inc. (Comp)	Asheboro, NC	01/16/07	01/16/07
60774	Rayloc, Inc. (State)	Stephenville, TX	01/17/07	01/16/07
60775	Oxbow Machine Products, Inc. (Comp)	Livonia, MI	01/17/07	01/11/07
60776	Kirchmer Corporation (SEIU)	Golden Valley, MN	01/17/07	01/15/07
60777	J and M Plating, Inc. (State)	Albion, MI	01/17/07	01/12/07
60778	Northern Expediting Corporation (Comp)	Union, NJ	01/17/07	01/09/07
60779	Kitty Sportswear Corp (Wkrs)	Freeport, NY	01/17/07	01/16/07
60780	Cer-Tek (State)	El Paso, TX	01/17/07	01/09/07
60781	Hearth and Home Technologies (Wkrs)	Colville, WA	01/17/07	01/12/07
60782	Emsig Manufacturing Corp. (Wrks)	Long Island City, NY	01/17/07	01/03/07
60783	Lear Corporation (UNITE)	Carlisle, PA	01/17/07	01/16/07
60784	Victaulic Company of America (Wkrs)	New Village, NJ	01/18/07	01/17/07
60785	Transportation Reseach Center, Inc. (Wkrs)	East Liberty, OH	01/18/07	12/29/06
60786	Hanes Brands, Inc. (State)	Ponce, PR	01/18/07	01/17/07
60787	Ravenwood Specialty Services, Inc. (AFL–CIO).	Ravenswood, WV	01/18/07	01/17/07
60788	Heatilator, Inc., Div. of HON Ind. (Wkrs)	Mt. Pleasant, IA	01/18/07	01/16/07
60789	WestPoint Home Transportation (Comp)	Valley, AL	01/19/07	01/19/07
60790	Model Crafts LLC (Wkrs)	Bogalusa, LA	01/19/07	01/18/07
60791	Vintage Virandah (State)	Marion, AR	01/19/07	01/18/07
60792	Dexter Centerless Grinding LLC (Comp)	Ann Arbor, MI	01/19/07	01/09/07
60793	Weyerhaeuser (WCIW)	Aberdeen, WA	01/19/07	01/02/07

[FR Doc. E7–1471 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,480]

Tyco Electronics, Tyco Printed Circuits Group Now Known as TTM Technologies, Inc., Dallas, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 17, 2005, applicable to workers of Tyco Electronics, Tyco Printed Circuits Group, Dallas, Oregon. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11704).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed circuit boards.

New information shows that in October 2006, TTM Technologies, Inc. purchased the Tyco Printed Circuit Group of Tyco Electronics and is now known as TTM Technologies. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for TTM Technologies, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Tyco Electronics, Tyco Printed Circuits Group, now known as TTM Technologies who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–56,480 is hereby issued as follows:

All workers of Tyco Electronics, Tyco Printed Circuits Group, now known as TTM Technologies, Dallas, Oregon, who became totally or partially separated from employment on or after February 1, 2004, through February 17, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of January 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1472 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,797]

Via Information Tools Incorporated, Troy, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2007 in response to a petition filed on behalf of workers of VIA Information Tools Incorporated, Troy, Michigan.

The petition regarding the investigation has been deemed invalid. The petition was signed by one dislocated worker. A petition filed by workers requires three (3) signatures. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1468 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The DOL, 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: Fair Labor Standards Act Recordkeeping Requirements. 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 April 2, 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 Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.*, sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206–207; 211–212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. See, 29 U.S.C. 213, *et al.* The DOL has promulgated Regulations 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of Regulations 29 CFR parts 505, 519, 520, 525, 530, 548, 551, 552, 553, and 570 to supplement the part 516 requirements and to provide for the maintenance of records relating to various FLSA exemptions and special provisions.

This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The DOL seeks approval for the extension of this information collection in order to carry out its responsibility to enforce the provisions of the FLSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Fair Labor Standards Act Recordkeeping Requirements.

OMB Number: 1215–0017.

Affected Public: Business of other for-profit; Individuals or households; Farms; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Frequency: Weekly.

Annual Respondents: 8,864,534.

Annual Responses: 11,177,669.

Average Time per Recordkeeping: 5 minutes.

Total Burden Hours: 988,108.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

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. E7–1486 Filed 1–30–07; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 28, 2007, 11545 Rockville Pike, Rockville, Maryland in Room T–2B3.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 28, 2007—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the new SRP Section 15.9, ''BWR Stability,'' and Section 15.0, ''Accident Analyses—Introduction.'' The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 25, 2007.

Eric A. Thornsbury,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E7–1541 Filed 1–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Materials, Metallurgy, and Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy, and Reactor Fuels will hold a meeting on February 22, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 22, 2007—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the NRC staff's proposed Revisions to SRP Section 4.2, ''Fuel Designs.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, representatives of the nuclear industry, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301/415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 25, 2007.

Eric A. Thornsbury,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E7–1543 Filed 1–30–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–357]

WTO Dispute Settlement Proceeding Regarding United States—Subsidies and Other Domestic Support for Corn and Other Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on January 8, 2007, Canada requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') regarding U.S. domestic support measures for corn and other agricultural products. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS357/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before February 28, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0705@ustr.eop.gov*, with ''Corn Subsidy (Canada) (DS357)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For

documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: David Yocis, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–6150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Canada

In its consultation request, Canada raises three major groups of issues. First, Canada asserts that domestic support provided by the United States to producers of corn has caused and threatens to cause serious prejudice to the interests of Canada by causing and threatening to cause price suppression in the Canadian market for corn, in breach of Article 5(c) and 6.3(c) of the WTO *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement''). The domestic support programs identified by Canada include direct payments, counter-cyclical payments, and marketing loans under the Farm Security and Rural Investment Act of 2002 (''FSRI Act''), production flexibility contracts and marketing loans under the Federal Agriculture Improvement and Reform Act of 1996 (''FAIR Act''), market loss assistance (''MLA'') payments under a number of legislative enactments from 1998 to 2001, and export credit guarantees provided under the Agricultural Trade Act of 1978, the General Sales Manager (''GSM–102'') program, and the Supplier Credit Guarantee Program (''SCGP'').

Second, Canada claims that support for corn and other agricultural products not included in the U.S. WTO schedule of agricultural export subsidy commitments provided under the Agricultural Trade Act of 1978, the GSM–102 program, and the SCGP, are export subsidies prohibited under Articles 3.1(a) and 3.2 of the SCM Agreement and provided in violation of Articles 3.3, 8, 9.1, and 10.1 of the WTO *Agreement on Agriculture.*

Third, Canada alleges that the United States has provided support to domestic agricultural producers in excess of U.S. commitments with respect to the Aggregate Measurement of Support (''AMS'') as described in Article 6.2 of the WTO *Agreement on Agriculture* and the U.S. WTO schedule of commitments. According to Canada, the calculation of the U.S. AMS should include direct payments and counter-cyclical payments under the FSRI Act for each of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds, as well as production flexibility contracts under the FAIR Act and MLAs for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice. Canada considers that, if such payments are included in the calculation of the U.S. AMS, the United States would be in breach of Article 3.2 of the *Agreement on Agriculture* for domestic support provided in each of the years 1999, 2000, 2001, 2004, and 2005.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0705@ustr.eop.gov*, with ''Corn Subsidy (Canada) (DS357)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter —

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''Submitted in Confidence'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–357, Canada Corn-AMS Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–1563 Filed 1–30–07; 8:45 am]

BILLING CODE 3190–W7–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Washington Nationals Baseball Club, LLC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Washington Nationals Baseball Club, LLC for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if the transaction meets certain conditions. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption, the statute and PBGC regulations require PBGC to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before March 19, 2007.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be submitted electronically through the PBGC's Web site at *reg.comments@pbgc.gov* or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 1200 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.)

FOR FURTHER INFORMATION CONTACT: Eric Field, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4020. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to covered operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the statute be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, *The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations* 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of a variance or exemption from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or exemption from the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12 and 4204.13) is to be made to the plan in question. The PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the four regulatory tests under regulation §§ 4204.12 and 4204.13 or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (Freedom of Information Act).

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the Washington Nationals Baseball Club, LLC (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Washington Nationals from Baseball Expos, L.P. (the ''Seller'') on April 24, 2006. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Plan (the ''Plan'') for certain employees of the sold operations.

2. The Buyer has agreed to assume the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal

liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan and fail to pay its withdrawal liability.

4. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is $14,454,124.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $2,803,040.

6. The Major League Baseball Clubs (the ''Clubs'') have established the Major League Central Fund (the ''Central Fund'') pursuant to the Major League Baseball Constitution. Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues from foreign broadcasts, regular, spring training and exhibition games (''Revenues'').

7. In support of the exemption request, the requester asserts that: ''The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the Clubs. Therefore the Plan enjoys a substantial degree of security with respect to contributions on behalf of the Clubs. A change in ownership of a Club does not affect the obligation of the Central Fund to fund the Plan out of the Revenues. As such, approval of this exemption request would not increase the risk of financial loss to the Plan.''

8. A complete copy of the request was sent to the Plan and to the Major League Baseball Players Association by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing or visiting the PBGC's Communications and Public Affairs Department (CPAD) at the above address or by visiting that office or calling 202–326–4040 during normal business hours.

Issued at Washington, DC, on this 24th of January, 2007.

Vincent K. Snowbarger,

Interim Director.

[FR Doc. E7–1505 Filed 1–30–07; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–1542 Filed 1–30–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Extension of a Currently Approved Information Collection: RI 30–10

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 RI 30–10 forms are completed annually. The form takes approximately 60 minutes to complete. The annual estimated burden is 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–1545 Filed 1–30–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Forms RI 20–7 and RI 30–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 12,480 RI 20–7 forms are completed annually. The form requires approximately 30 minutes for completion. The annual burden is 6,240 hours.

Approximately 250 RI 30–3 forms will be completed annually. Each form requires approximately 1 hour for completion. The annual burden is 250 hours. The total annual burden is 6,490.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–1564 Filed 1–30–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between December 1, 2006, and December 31, 2006. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for December 2006.

Schedule B

No Schedule B appointments were approved for December 2006.

Schedule C

The following Schedule C appointments were approved during December 2006.

Section 213.3304 Department of State

DSGS61200 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective December 06, 2006.

DSGS61202 Senior Advisor to the Coordinator for International Information Programs. Effective December 06, 2006.

DSGS61300 Staff Assistant to the Under Secretary for Management. Effective December 13, 2006.

DSGS61203 Special Assistant to the Deputy Assistant Secretary. Effective December 19, 2006.

DSGS61089 Supervisory Protocol Officer (Visits) to the Chief of Protocol. Effective December 22, 2006.

DSGS61205 Protocol Officer (Visits) to the Chief of Protocol. Effective December 22, 2006.

Section 213.3305 Department of the Treasury

DYGS00479 Speechwriter to the Deputy Secretary of the Treasury. Effective December 08, 2006.

DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance. Effective December 15, 2006.

DYGS00480 Policy Advisor to the Secretary. Effective December 22, 2006.

DYGS00481 Senior Counselor to the Assistant Secretary (Terrorist Financing). Effective December 29, 2006.

Section 213.3306 Department of Defense

DDGS17004 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective December 14, 2006.

DDGS17001 Speechwriter to the Assistant Secretary of Defense, Public Affairs. Effective December 20, 2006.
DDGS17002 Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness). Effective December 20, 2006.

Section 213.3307 Department of the Army

DWGS60028 Personal and Confidential Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective December 22, 2006.

Section 213.3309 Department of the Air Force

DFGS07001 Special Assistant to the Assistant Secretary of the Air Force (Acquisition) for Industrial Relations. Effective December 20, 2006.

Section 213.3310 Department of Justice

DJGS00323 Counsel to the Assistant Attorney General (Legal Policy). Effective December 04, 2006.
DJGS00065 Special Assistant to the Assistant Attorney General for Justice Programs. Effective December 15, 2006.
DJGS00066 Special Assistant to the Assistant Attorney General for Administration. Effective December 19, 2006.

Section 213.3311 Department of Homeland Security

DMGS00596 Associate Director for White House Actions and Policy Coordinating Committee Coordinator to the Executive Secretary. Effective December 06, 2006.
DMGS00595 Director of Homeland Security Council/National Security Council/White House Actions and Interagency Coordinator to the Executive Secretary. Effective December 06, 2006.
DMGS00597 Director of Communications, United States Citizenship and Immigration Services to the Director, Bureau of Citizenship and Immigration Services. Effective December 11, 2006.
DMGS00598 Legislative Assistant to the Assistant Secretary for Legislative Intergovernmental Affairs. Effective December 11, 2006.
DMGS00599 Legislative Assistant to the Assistant Secretary for Legislative Intergovernmental Affairs. Effective December 11, 2006.
DMGS00600 Confidential Assistant to the Under Secretary for Protocol and Advance Briefings to the Under Secretary for Science and Technology. Effective December 20, 2006.
DMGS00601 Legislative Assistant to the Assistant Secretary for Legislative Intergovernmental Affairs. Effective December 20, 2006.
DMGS00602 Director of Communications to the Assistant Secretary, Immigration and Customs Enforcement. Effective December 20, 2006.
DMGS00603 International Policy Analyst to the Under Secretary for Science and Technology. Effective December 20, 2006.
DMGS00605 Special Assistant for Strategic Communications and Public Relations to the Under Secretary for Science and Technology. Effective December 20, 2006.
DMGS00607 Business Liaison to the Assistant Secretary for Private Sector. Effective December 20, 2006.
DMGS00608 International Policy Analyst to the Under Secretary for Science and Technology. Effective December 20, 2006.
DMGS00611 Special Assistant to the White House Liaison and Advisor. Effective December 20, 2006.

Section 213.3312 Department of the Interior

DIGS01080 Assistant Director-Scheduling and Advance to the Director-Scheduling and Advance. Effective December 08, 2006.
DIGS01081 Associate Director to the Director, Congressional and Legislative Affairs. Effective December 13, 2006.
DIGS01083 White House Liaison to the Chief of Staff. Effective December 19, 2006.
DIGS01085 Special Assistant to the Assistant Secretary, Land and Minerals Management. Effective December 20, 2006.
DIGS06001 Special Assistant to the Director, Bureau of Land Management. Effective December 22, 2006.

Section 213.3313 Department of Agriculture

DAGS00865 Confidential Assistant to the Administrator. Effective December 06, 2006.
DAGS00869 Press Secretary to the Director of Communications. Effective December 14, 2006.
DAGS00868 Confidential Assistant to the Administrator, Rural Housing Service. Effective December 22, 2006.
DAGS00871 Staff Assistant to the Administrator, Farm Service Agency. Effective December 22, 2006.

Section 213.3314 Department of Commerce

DCGS00655 Senior Advisor to the Deputy Assistant Secretary for Domestic Operations. Effective December 22, 2006.

Section 213.3315 Department of Labor

DLGS60093 Staff Assistant to the Counselor in the Office of the Secretary. Effective December 20, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60436 Associate Commissioner to the Assistant Secretary for Children and Families. Effective December 20, 2006.
DHGS60027 Deputy Director for Scheduling. Effective December 21, 2006.
DHGS60238 Regional Director, Boston, Massachusetts, Region I to the Director of Intergovernmental Affairs. Effective December 29, 2006.

Section 213.3317 Department of Education

DBGS00570 Confidential Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective December 01, 2006.
DBGS00568 Deputy Assistant Secretary for Policy and State Technical Assistance to the Assistant Secretary for Elementary and Secondary Education. Effective December 07, 2006.
DBGS00574 Deputy Assistant Secretary for Community Colleges to the Assistant Secretary for Vocational and Adult Education. Effective December 06, 2006.
DBGS00576 Special Assistant to the Director, Scheduling and Advance Staff. Effective December 07, 2006.
DBGS00571 Confidential Assistant to the Senior Advisor to the Under Secretary. Effective December 08, 2006.
DBGS00573 Confidential Assistant to the Deputy Assistant Secretary. Effective December 08, 2006.
DBGS00575 Confidential Assistant to the Director, White House Liaison. Effective December 08, 2006.
DBGS00572 Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective December 11, 2006.
DBGS00569 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective December 14, 2006.
DBGS00577 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective December 19, 2006.
DBGS00578 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective December 20, 2006.

DBGS00579 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective December 22, 2006.

DBGS00581 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective December 22, 2006.

Section 213.3318 Environmental Protection Agency

EPGS06034 Deputy Speech Writer to the Associate Administrator for Public Affairs. Effective December 11, 2006.

EPGS06035 Advance Specialist to the Director of Advance. Effective December 11, 2006.

EPGS06032 Advance Specialist to the Director of Advance. Effective December 20, 2006.

Section 213.3331 Department of Energy

DEGS00547 Scheduler to the Secretary to the Director, Office of Scheduling and Advance. Effective December 12, 2006.

DEGS00548 Staff Assistant to the General Counsel. Effective December 22, 2006.

DEGS00549 Senior Advisor to the Principal Deputy Assistant Secretary. Effective December 22, 2006.

DEGS00553 Special Assistant to the Principal Deputy Assistant Secretary. Effective December 29, 2006.

Section 213.3332 Small Business Administration

SBGS00607 White House Liaison to the Chief of Staff. Effective December 01, 2006.

Section 213.3348 National Aeronautics and Space Administration

NNGS00177 Writer/Editor to the Associate Deputy Administrator for Policy and Planning. Effective December 22, 2006.

NNGS00179 Legislative Affairs Specialist to the Assistant Administrator for Legislative Affairs. Effective December 22, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60039 Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective December 20, 2006.

Section 213.3394 Department of Transportation

DTGS60324 Director for Scheduling and Advance to the Chief of Staff. Effective December 22, 2006.

DTGS60317 Deputy Assistant Administrator for Government and Industry Affairs. Effective December 29, 2006.

Office of Personnel Management.

Tricia Hollis,

Chief of Staff/Director of External Affairs.

[FR Doc. E7–1454 Filed 1–30–07; 8:45 am]

BILLING CODE 6325–43–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Application for Survivor Insurance Annuities: OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and the amount of the annuity applied for.

The RRB currently utilizes Form(s) AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–17cert, Application Summary and Certification, AA–18, Application for Mother's/Father's and Child's Annuity, AA–19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes non-burden impacting editorial changes to all of the forms in the information collection.

Estimate of Annual Respondent Burden: The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
AA–17 (manual, without assistance)	150	47	113
AA–17b (with assistance)	380	40	253
AA–17b (without assistance)	20	50	17
AA–17cert	3,265	20	1,088
AA–18 (manual, without assistance)	12	47	9
AA–19 (manual, without assistance)	9	47	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (manual, without assistance)	1	47	1

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–1466 Filed 1–30–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 154; SEC File No. 270–438; OMB Control No. 3235–0495.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (''householding'') to satisfy the applicable prospectus delivery requirements.[1] The purpose of Rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under Rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on Rule 154 for the householding of prospectuses relating to open-end mutual funds, must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses and prospectus supplements if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are open-end mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

Although Rule 154 is not limited to investment companies, the Commission believes that it is used mainly by open-end mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of September 2006, there are approximately 2,400 open-end mutual funds, approximately 200 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 4,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 200 hours. The Commission estimates that there are approximately 361 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 7,220 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 361 hours. Therefore, the total number of respondents for Rule 154 is 561 (200 mutual funds plus 361 broker-dealers), and the estimated total hour burden is 11,781 hours (4,200 hours for mutual funds plus 7,581 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. Responses to the collections of information will not be kept confidential. The rule does not require these records be retained for any specific period of time. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, 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*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 22, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1507 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) (15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b)); see also Rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); Rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8) (prospectus delivery obligations of brokers and dealers).

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. See Rule 154(b)(4).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 12b–1; SEC File No. 270–188; OMB Control No. 3235–0212.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 12b–1 (17 CFR 270.12b–1) permits a registered open-end investment company (''mutual fund'') to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan (''Rule 12b–1 plan'') and has in writing any agreements relating to the implementation of the Rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a Rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the Rule 12b–1 plan; and (iii) the board consider continuation of the Rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the Rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a Rule 12b–1 plan.

The board and shareholder approval requirements of Rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a Rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the Rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

The number of hours required to comply with Rule 12b–1 will vary considerably depending on several factors, including the complexity of the plan and the number of classes of fund shares covered by the plan, and is expected to be higher in the first year following adoption of the proposed amendments than in subsequent years. Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,536 mutual fund portfolios with Rule 12b–1 plans.

Rule 12b–1 requires the board of each fund with a Rule 12b–1 plan to (i) review quarterly reports of amounts spent under the plan, and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review); (iii) have each fund document the policies and procedures it has implemented to enable it to effect portfolio securities transactions through an executing broker that also distributes the fund's shares, and (iv) approve those policies and procedures.

The number of annual responses per fund portfolio will be four per year. Thus, there will be an estimated 26,144 industry responses (6,536 fund portfolios × 4 responses per fund portfolio = 26,144 responses) in the first year and in each subsequent year. Thus, we estimate that there will be an average of 26,144 industry responses per year over the three year period for which we are requesting approval of the information collection burden.

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 6,536 mutual fund portfolios that currently have a Rule 12b–1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. The total burden hours per year for all fund portfolios to comply with current information collection requirements under Rule 12b–1, is therefore estimated to be 653,600 hours (6,536 fund portfolios × 100 hours per fund portfolio = 653,600 hours). The annual cost of the hourly burden per fund under the rule is estimated to be $11,135.00. Thus, we estimate that the total annual cost to all funds of the Rule 12b–1 hour burden is $72,778,360.00 (6,536 fund portfolios with Rule 12b–1 plans × $11,135.00 per fund portfolio = $72,778,360.00).

If a currently operating fund seeks to (i) adopt a new Rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its Rule 12b–1 plan, Rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Based on conversations with fund industry representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a Rule 12b–1 plan. The staff further estimates that the cost of each fund's proxy is $30,000. Thus the total annual cost burden of Rule 12b–1 to the fund industry is $90,000 (3 funds requiring a proxy × $30,000 per proxy).

The collections of information required by Rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 22, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1520 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55165]

Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 608(e) Thereunder Extending a de minimis Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

January 25, 2007.

This order extends, through March 4, 2007, a *de minimis* exemption to the provisions of the Intermarket Trading System Plan (''ITS Plan''),[1] a national

[1] The self-regulatory organizations (''SROs'') participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the

Continued

market system plan,[2] governing intermarket trade-throughs that currently is due to expire on February 4, 2007. The *de minimis* exemption was originally issued by the Commission on August 28, 2002 [3] and extended on May 30, 2003,[4] on March 3, 2004,[5] on December 3, 2004,[6] on September 6, 2005,[7] and on June 28, 2006.[8]

Specifically, this order continues the *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to two specific exchange-traded funds (''ETFs''), the Dow Jones Industrial Average ETF (''DIA'') and the Standard & Poor's 500 Index ETF (''SPY'').[9] By its terms, the June 2006 Order continued the exemption from the trade-through provisions of the ITS Plan of any transactions in the two ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the Consolidated Quote System (''CQS'') through February 4, 2007.

In the Commission's previous orders to issue and extend the *de minimis* exemption,[10] the Commission discussed its basis for determining that the *de minimis* exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. In the June 2006 Order, the Commission further noted that:

> In March 2004 and in May 2003, the Commission extended the three cent *de minimis* exemption for additional nine-month periods, in order to assess trading data associated with the *de minimis* exemption and to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire. As a result of its review of trading data associated with the *de minimis* exemption, the Commission has proposed, as part of its market structure initiatives, Regulation NMS under the Act, which would include a new rule relating to trade-throughs.

On April 6, 2005, the Commission approved Regulation NMS under the Act.[11] In Regulation NMS, the Commission adopted an approach that, among other things, protects only automated quotations and excludes manual quotations from trade-through protection, and renders the *de minimis* exemption unnecessary. Given the significant systems and other changes necessary to implement Rule 610 and Rule 611,[12] the Commission originally established delayed compliance dates for Rule 610 and Rule 611, the first of which was scheduled to begin on June 29, 2006.[13] In the September 2005 Order, the Commission stated that until Regulation NMS is implemented, the reasons for maintaining the *de minimis* exemption in effect continue to be valid, and thus the Commission extended the *de minimis* exemption though June 28, 2006, which was the date before the initial compliance date for Rule 610 and Rule 611.

On May 18, 2006, the Commission extended the compliance dates for Rule 610 and Rule 611 to give trading centers additional time to finalize the development of their new or modified trading systems, and to give the securities industry sufficient time to establish the necessary access to such trading systems.[14] The initial compliance date was extended to a series of five dates, beginning on October 16, 2006, for different functional stages of compliance, with February 5, 2007 (the ''Trading Phase Date'') being the final date for full operation of Regulation NMS-compliant trading systems for initial trade-through protection under Rule 611, as described in the First NMS Extension Release. The Commission also extended the *de minimis* exemption through February 4, 2007, which was the day before the Trading Phase Date.[15]

On January 24, 2007, the Commission extended the Trading Phase Date to March 5, 2007.[16] Therefore, to maintain the status quo and avoid requiring market participants to make short-term trading or programming changes pending the extended implementation period for Rule 610 and Rule 611 of Regulation NMS, it is appropriate to extend the *de minimis* exemption through March 4, 2007, the day before

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Chicago Stock Exchange, Inc., the National Stock Exchange, Inc. (formerly the Cincinnati Stock Exchange, Inc.), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange LLC, NYSE Arca, Inc. (formerly the Pacific Exchange, Inc.), and the Philadelphia Stock Exchange, Inc. (collectively, the ''participants''). *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[2] Securities Exchange Act of 1934 (''Act'') Rule 608(c) (formerly Rule 11Aa3–2(d)), 17 CFR 242.608(c), promulgated under Section 11A, 15 U.S.C. 78k–1, of the Act requires each SRO to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 608(e) (formerly Rule 11Aa3–2(f)), 17 CFR 242.608(e), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (the ''August 2002 Order''). The August 2002 Order granted relief through June 4, 2003.

[4] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003) (the ''May 2003 Order''). The May 2003 Order granted relief through March 4, 2004.

[5] *See* Securities Exchange Act Release No. 49356 (March 3, 2004), 69 FR 11057 (March 9, 2004) (the ''March 2004 Order''). The March 2004 Order granted relief through December 4, 2004.

[6] *See* Securities Exchange Act Release No. 50795 (December 3, 2004), 69 FR 71445 (December 9, 2004) (the ''December 2004 Order''). The December 2004 Order granted relief through September 4, 2005.

[7] *See* Securities Exchange Act Release No. 52382 (September 6, 2005), 70 FR 53695 (September 9, 2005) (the ''September 2005 Order''). The September 2005 Order granted relief through June 28, 2006.

[8] *See* Securities Exchange Act Release No. 54063 (June 28, 2006), 71 FR 38433 (July 6, 2006) (the ''June 2006 Order''). The June 2006 Order granted relief through February 4, 2007.

[9] The Commission limited the *de minimis* exemption to these two securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the two ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to obtain a slightly better price. Unlike prior orders, the December 2004, September 2005, and June 2006 extensions of the *de minimis* exemption applied only to the DIA and the SPY, and not the QQQ, because, on December 1, 2004, trading of the QQQ transferred from the American Stock Exchange to Nasdaq, and thus trades in the QQQ ceased to be subject to the trade-through provisions of the ITS Plan. Accordingly, an exemption for the QQQ was no longer necessary. *See* December 2004 Order, September 2005 Order, and June 2006 Order.

[10] *See supra* notes 3 to 8.

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[12] Rule 610 generally prohibits national securities exchanges and national securities associations from imposing unfairly discriminatory terms that prevent or inhibit access to quotations, and establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception.

[13] *See* supra note 11.

[14] Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30037 (May 24, 2006) (''First NMS Extension Release'').

[15] *See* supra note 8.

[16] Securities Exchange Act Release No. 55160 (January 24, 2007) (''Second NMS Extension Release''). To reflect the extended Trading Phase Date and avoid coinciding with major trading days in June 2007, the Commission also extended the Pilot Stocks Phase Date (as defined in the Second NMS Extension Release) until July 9, 2007, and the All Stocks Phase Date (as defined in the Second NMS Extension Release) until August 20, 2007. In contrast, the Specifications Date (as defined in the Second NMS Extension Release) of October 16, 2006 has already passed and was not extended. In addition, the Completion Date (as defined in the Second NMS Extension Release) of October 8, 2007 was not changed

the extended Trading Phase Date.[17] The Commission emphasizes, as it did in the previous orders,[18] that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, it is ordered, pursuant to Section 11A of the Act and Rule 608(e) thereunder,[19] that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in DIAs and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This Order extends the *de minimis* exemption from February 5, 2007 through March 4, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–1475 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55163; File No. SR–Amex–2007–11]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Pilot Program Increasing Position and Exercise Limits for Options on the iShares® Russell 2000® Index Fund

January 24, 2007.

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 January 22, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Amex. On January 22, 2007, Amex submitted Amendment No. 1 to the proposed rule change. Amex has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 904 to exempt options on the iShares® Russell 2000® Index Fund (''IWM'') from the position and exercise limits provided for under the Rule 904 Pilot Program and to increase the standard position and exercise limits for IWM as part of a six-month pilot (''IWM Pilot Program''). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 IV below. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .07 to Rule 904 on a six-month pilot basis to exempt options on IWM from the Rule 904 Pilot Program. Under the Rule 904 Pilot Program, the position and exercise limits for IWM would be reduced on January 22, 2007 from 500,000 to 250,000 contracts. The Exchange now proposes to allow position and exercise limits for options on IWM to remain at 500,000 contracts on a pilot basis, from January 22, 2007 through July 22, 2007.

In June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit will revert to the pre-split level (as provided for in connection with the Rule 904 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.[5]

The Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000® Index (''RUT''), which have a position limit of 50,000 contracts.[6] Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum—500,000 IWM options to properly hedge the position. Therefore, the Exchange believes that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

Additionally, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, the volume in options on IWM set a new single-day record on June 8, 2006, when 760,803 contracts (120,229 calls and 640,574 puts) traded on that day. This record level volume beat the previous single-day high of 727,521 contracts on May 17, 2006. Further, over the previous six months, ending December 31, 2006, the average daily trading volume (market-wide) of IWM options has been 300,409 contracts and a total of 2,444,470 contracts have traded on the Exchange.

As a result, the Exchange proposes that options on IWM be subject to position and exercise limits of 500,000 contracts on a pilot basis to run from January 22, 2007 through July 22, 2007.[7] The Exchange believes that increasing position and exercise limits for IWM options will lead to a more liquid and

[17] The Commission expects most trading centers to be operating consistent with the requirements of Rule 611 by the Trading Phase Date.

[18] *See supra* notes 3 to 8.

[19] 17 CFR 242.608(e).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Amex Information Circular #05–0397.

[6] *See* Amex Rule 904C; *see also* Securities Exchange Act Release Nos. 45236 (January 2, 2002), 67 FR 1378 (January 10, 2002) (SR–Amex–2001–42) (increase of position and exercise limits to 300,000 for QQQ options); and 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005) (SR–Amex–2005–06) (increase of position and exercise limits for options on Standard and Poor's Depositary Receipts® from 75,000 to 300,000).

[7] Pursuant to Rule 905, the exercise limit established for IWM options shall be equivalent to the position limit prescribed for IWM options in Commentary .07 to Rule 904. The increased exercise limits would only be in effect during the pilot period, to run from January 22, 2007 through July 22, 2007. *See* Amendment No. 1 to the proposed rule change.

more competitive market environment for IWM options that will benefit customers interested in this product.

The Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the IWM option class, for its own account or for the account of a customer report certain information.[8] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge, and if applicable, the collateral used to carry the position. Exchange Registered Options Traders and specialists would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for IWM options.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to remain at 500,000 option contracts for a six-month pilot period. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–11 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–Amex–2007–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–11 and should be submitted on or before February 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1519 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Amex Rule 906(b).

[9] *See* Amex Rule 906(a).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

[14] *Id.*

[15] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55171; File No. SR–BSE–2007–03]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a Pilot Program That Increases Position and Exercise Limits for Options on the iShares® Russell 2000® Index Fund

January 25, 2007.

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 January 23, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by BSE. BSE has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter III, Section 7 of the Rules of the Boston Options Exchange (''BOX'') to exempt options on the iShares® Russell 2000® Index Fund (''IWM'') from the position and exercise limits provided for under the Chapter III, Section 7 Pilot Program and to increase the standard position and exercise limits for IWM as part of an approximately six-month pilot (''Chapter III, Section 7 IWM Pilot Program''). The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *www.bostonstock.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter III, Section 7 of the BOX Rules on a pilot basis for approximately six months to exempt options on IWM from the Chapter III, Section 7 Pilot Program. Under the Chapter III, Section 7 Pilot Program, the position and exercise limits for IWM were reduced on January 22, 2007 from 500,000 to 250,000 contracts. The Exchange now proposes to allow position and exercise limits for options on IWM to return to and continue at 500,000 contracts on a pilot basis, from January 23, 2007 through July 22, 2007.

In June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit reverted to the pre-split level (as provided for in connection with the Chapter III, Section 7 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.

The Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000® Index (''RUT''), which have a position limit of 50,000 contracts.[5] Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum—500,000 IWM options to properly hedge the position. Therefore, the Exchange believes that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

Additionally, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, the volume in options on IWM set a new single-day record on June 8, 2006, when 760,803 contracts (120,229 calls and 640,574 puts) traded on that day. This record level volume beat the previous single-day high of 727,521 contracts on May 17, 2006. Further, over the past six months, the average daily BOX trading volume of IWM options has been 9,346 contracts and a total of 1,177,640 IWM contracts have traded between July 22, 2006 and January 22, 2007.

As a result, the Exchange proposes that options on IWM be subject to position and exercise limits of 500,000 contracts on a pilot basis to run from January 23, 2007 through July 22, 2007.[6] The Exchange believes that increasing position and exercise limits for IWM options will lead to a more liquid and more competitive market environment for IWM options that will benefit customers interested in this product.

The Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the IWM option class, for its own account or for the account of a customer report certain information.[7] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge, and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for IWM options.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Chapter XIV, Section 5 of BOX Rules.

[6] Pursuant to Chapter III, Section 7 of BOX Rules, the exercise limit established under Chapter III, Section 7 for IWM options shall be equivalent to the position limit prescribed for IWM options in Supplementary Material .01 to Chapter III, Section 7. The increased exercise limits would only be in effect during the pilot period, to run from January 23, 2007 through July 22, 2007.

[7] *See* Chapter III, Section 10(b) of BOX Rules.

[8] *See* Chapter III, Section 10(a) of BOX Rules.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to continue at 500,000 option contracts for an approximately six-month pilot period. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2007–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of BSE. 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–BSE–2007–03 and should be submitted on or before February 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1510 Filed 1–30–07; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

[13] *Id.*

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55174; File No. SR–CBOE–2007–07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Duration of the SizeQuote Mechanism Pilot

January 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot in CBOE Rule 6.74(f) pertaining to the SizeQuote Mechanism, which is a process by which a Floor Broker may execute and facilitate large-sized orders in open outcry. The Exchange is proposing to extend the pilot program, which would otherwise expire on February 15, 2007, through February 15, 2008. No other changes are being made to the pilot program through this rule

[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] CBOE gave the Commission written notice of its intention to file the proposed rule change on January 10, 2007. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

filing.[6] The text of the proposed rule change is available at *http://www.cboe.org/Legal,* at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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

CBOE Rule 6.74(f), which relates to the open outcry ''SizeQuote'' Mechanism, was approved on a pilot basis in February 2005 and was expanded to include solicited orders in January 2006.[7] The pilot program has been extended once and is currently set to expire on February 15, 2007.[8] The pilot program provides a process by which a Floor Broker, using his/her exercise of due diligence to execute orders at the best price(s), may execute and facilitate large-sized orders in open outcry. Under the pilot program, the ICMPs have priority to trade a SizeQuote Order at the best price communicated by the ICMPs in their response to a Floor Broker's SizeQuote request and at one increment better, while a Floor Broker can execute the entire SizeQuote Order with a facilitation order, one or more solicited orders, or a combination of solicited and facilitation orders at a price two trading increments better than the best price provided by the ICMPs in their response to the SizeQuote request. For purposes of the pilot program, the minimum qualifying order size is 250 contracts[9] and Floor Brokers must stand ready to facilitate the entire size of the order for which they request SizeQuotes.

The instant rule change seeks to extend the existing pilot program, which would otherwise expire on February 15, 2007, through February 15, 2008. The Exchange notes that, as part of the original pilot program approval order and subsequent filing to extend the pilot program,[10] the Exchange represented that it would provide the Commission a report at the end of the pilot period summarizing the effectiveness of the SizeQuote program. In that regard, though the SizeQuote Mechanism has been made available during the pilot period in all equity option classes traded on the Exchange for orders of 250 contracts or more, the Exchange's continued experience has been that Floor Brokers have not generally availed themselves of the SizeQuote Mechanism to facilitate large-sized orders.[11] However, the Exchange continues to believe that the SizeQuote Mechanism enhances ICMPs' ability and incentive to quote competitively and participate in open outcry trades while at the same time creates a process that gives greater certainty to Floor Brokers in the execution of large orders in that ICMPs only have one opportunity to respond with a quote response (which further enhances an ICMP's incentive to quote competitively). The Exchange is therefore seeking to extend the existing pilot program for another year through February 15, 2008 in order to continue its evaluation of the utility of the SizeQuote Mechanism.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[12] in general and furthers the objectives of Section 6(b)(5) of the Act[13] in particular in that it is designed to promote just and equitable principles of trade, 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.

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

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[6] A separate rule change proposal has been filed and is currently pending with the Commission that would make amendments to the SizeQuote Mechanism. *See* SR–CBOE–2005–115 (proposal to modify the pilot program in various respects, including to permit a Floor Broker to execute the entire SizeQuote Order at a price at least one trading increment better than the best price communicated by the in-crowd market participants (''ICMPs'') in their responses to the SizeQuote request).

[7] *See* Securities Exchange Act Release Nos. 51205 (February 15, 2005), 70 FR 8647 (February 22, 2005) (approving SR–CBOE–2004–72 on a pilot basis through February 15, 2006) and 53135 (January 17, 2006), 71 FR 3908 (January 24, 2006) (approving SR–CBOE–2005–83, which modified the pilot program to enable a Floor Broker to execute a SizeQuote Order with either a firm facilitation order, one or more solicited orders, or a combination of the Floor Broker's facilitation order and such solicited order(s)).

[8] *See* Securities Exchange Act Release No. 53252 (February 8, 2006), 71 FR 8012 (February 15, 2006) (immediately effective proposal, SR–CBOE–2006–05, extending the pilot program from February 15, 2006 to February 15, 2007).

[9] The appropriate Exchange committee determines the classes in which SizeQuote operates and may vary the minimum qualifying order size, provided that such number may not be less than 250 contracts.

[10] *See* notes 7 and 8, *supra.*

[11] The Exchange believes the SizeQuote Mechanism has not been actively utilized due to some of the limitations and risks inherent in the original design of the pilot program. Thus, CBOE expanded the pilot program to include solicited orders. Originally the pilot program only applied to facilitation orders. *See* note 7, *supra.* CBOE has also proposed to modify the pilot program in various other respects. *See* note 6, *supra.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

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–2007–07 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–2007–07. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–07 and should be submitted on or before February 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1509 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55173; File No. SR–Phlx–2006–85]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing Standards for Basket Linked Notes

January 25, 2007.

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 12, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. 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 Phlx proposes to amend Phlx Rule 803—Criteria for Listing—Tier 1, regarding listing standards for Basket Linked Notes (''BLNs''). The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com*, at Phlx'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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform Phlx's listing standards for Basket Linked Notes, specifically Phlx Rule 803(k), to that of other exchanges. Phlx Rule 803 provides listing standards for Basket Linked Notes, which are income instruments whose values are linked to the performance of highly capitalized, actively traded common stock. Specifically, BLNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

Phlx Rule 803(k) details Phlx's listing standards for BLNs. Specifically, Phlx Rule 803(k)(3) currently requires, among other things, that securities linked to BLNs either: (i) Have a minimum market capitalization of $3 billion and during the 12 months preceding listing are shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of $1.5 billion and during the 12 months preceding listing are shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of $500 million and during the 12 months preceding listing are shown to have traded at least 15 million shares.

On December 7, 2000, the Commission granted authority to the Phlx to list and trade notes linked to more than one equity security.[3] Each of the underlying securities of a BLN is required to meet the standards for linked securities set forth in Phlx Rule 803(k). However, the 2000 Order limited the basket of underlying securities that may to be linked to a BLN to no more than twenty. At this time, Phlx proposes to increase the number of underlying securities that may be linked to a BLN from no more than 20 to no more than thirty.[4]

The Phlx believes that expanding the basket of equity securities that may be linked to a BLN will enhance competition and benefit investors and the marketplace through additional product choices and alternatives. The Phlx also believes that there would be no investor protection concerns with expanding the number of equity securities that may be linked to a BLN from more than one common stock to up to thirty common stocks.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43690 (December 7, 2000), 65 FR 78523 (December 15, 2000) (SR–Phlx–2000–90) (''2000 Order'').

[4] This is identical to the listing standard of the American Stock Exchange (Amex Company Guide Section 107B); *see* Securities Exchange Act Release No. 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR–Amex–2002–110).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.[7]

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–Phlx–2006–85 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–Phlx–2006–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–85 and should be submitted on or before February 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1506 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[7] Phlx has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55153; File No. SR–Phlx–2006–74]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, Relating to a Pilot Program To Quote Options in Penny Increments

January 23, 2007.

I. Introduction

On November 13, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 various Exchange rules to permit certain option classes to be quoted in pennies on a pilot basis. On November 22, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on December 5, 2006. The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on December 13, 2006.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

Phlx proposes to amend its rules to permit certain option classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, proposed Phlx Rule 1034(a)(i)(B) would set forth the parameters of the Penny Pilot Program.

Currently, all six options exchanges, including Phlx, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54886 (December 6, 2006), 71 FR 74979.

The Penny Pilot Program would include the following thirteen options classes: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A). The Exchange would communicate the list of options to be included in the Penny Pilot Program to its membership via Exchange circular.

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.

Proposed Phlx Rule 1034(a)(i)(C) would require the Exchange to prepare and submit a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny quoting on market quality and options systems capacity.

B. Automatic Executions During Crossed Markets

The Exchange anticipates that the instance of crossed markets (where the bid price is greater than the offer price) will increase in options traded in penny increments. Accordingly, the Exchange proposes to amend its rules concerning automatic executions during crossed markets, and its rule [4] providing exceptions from Trade-Through liability when a Trade-Through occurs due to an automatic execution when the Exchange's disseminated market is crossed, or crosses the disseminated market of another options exchange, and the Exchange's disseminated price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.

Currently, orders on the Exchange that are otherwise eligible for automatic execution are handled manually by the specialist when the Exchange's disseminated market is crossed by more than one minimum quoting increment (as defined in Phlx Rule 1034) (*i.e.*, 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange by more than one minimum quoting increment.[5] The Exchange currently provides automatic executions during crossed markets when the Exchange's disseminated market is crossed by not more than one minimum quoting increment, or crosses the disseminated market of another options exchange by not more than one minimum quoting increment, and the Exchange's disseminated price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.[6] The Exchange proposes to delete Phlx Rule 1080(c)(iv)(A), which would mean that the Exchange would provide automatic executions in options where the Exchange's disseminated market is the NBBO [7] and is crossed, or crosses the disseminated market of another options exchange, regardless of the amount by which such market is crossed.[8]

C. Trade-Throughs

Currently, Phlx Rule 1085(b) affords Exchange members several exemptions from Trade-Through liability and the requirements under Phlx's rules and the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') concerning satisfaction of Trade-Throughs. Among the exemptions from such liability and satisfaction responsibility is current Phlx Rule 1085(b)(10), which provides an exemption when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum quoting increment (as defined in Phlx Rule 1034), or crosses the disseminated market of another options exchange by not more than one minimum quoting increment.[9]

To be consistent with the proposed rule change (described above) to provide automatic executions when the Exchange's disseminated market is the NBBO regardless of the amount by which the market is crossed, the Exchange proposes to amend Phlx Rule 1085(b)(10) to exempt from such liability and satisfaction responsibility when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed, or crosses the disseminated market of another options exchange. The proposed rule change would delete the current language contained in Phlx Rule 1085(b)(10) that limits the exemption from Trade-Through and satisfaction liability to automatic executions at the NBBO during markets that are crossed by one minimum trading increment.

D. Zero-Bid Option Series

Currently, Phlx Rule 1080(i) states that the Exchange's AUTOM System will convert market orders to sell a particular option series to limit orders to sell with a limit price of $0.05 that are received when the bid price for such series is zero. The proposal would amend Phlx Rule 1080(i) to state that the system will convert such orders to limit orders to sell with a limit price of the minimum quoting increment applicable to such series. The effect of this with respect to options quoted and traded in minimum increments of $0.01 would be that such conversion would be to a limit order to sell at $0.01, rather than $0.05.

E. Quote Mitigation

To mitigate quote traffic, the Exchange proposes to amend Phlx Rule 1082, Firm Quotations, by adopting new Phlx Rule 1082(a)(ii)(C), which would modify the Exchange's definition of ''disseminated size'' such that the Exchange will disseminate fewer updated quotations.

Specifically, proposed Phlx Rule 1082(a)(ii)(C) would set forth the conditions under which the Exchange would disseminate updated quotations based on changes in the Exchange's disseminated price and/or size. The proposed rule would require the Exchange to disseminate an updated bid and offer price, together with the size associated with such bid and offer, when: (1) The Exchange's disseminated bid or offer price increases or decreases; (2) the size associated with the

[4] *See* Phlx Rule 1085(b)(10).

[5] *See* Phlx Rule 1080(c)(iv)(A).

[6] *See* Phlx Rule 1085(b)(10). *See also* Securities Exchange Act Release No. 53449 (March 8, 2006), 71 FR 13441 (March 15, 2006) (SR–Phlx–2005–45).

[7] The Exchange provides automatic executions only when its disseminated market is the NBBO. *See* Phlx Rule 1080(c)(iv)(E).

[8] The Exchange notes that another options exchange currently provides automatic executions during crossed markets regardless of the amount by which the market is crossed. *See* Securities Exchange Act Release No. 54229 (July 27, 2006), 71 FR 44058 (August 3, 2006) (SR–CBOE–2005–90).

[9] The Commission exempted the Exchange from the requirement under Rule 608(c) of Regulation NMS that Phlx comply, and enforce compliance by its members, with Section 8(c) of Linkage Plan. Section 8(c) of the Linkage Plan provides, in part, that, ''absent reasonable justification and during normal market conditions, members in [Participants'] markets should not effect Trade-Throughs'' in the limited situation when transactions are the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment (as defined in Phlx Rule 1034), or crosses the disseminated market of another options exchange by not more than one minimum trading increment. *See* letter from Robert L.D. Colby to Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated March 8, 2006.

Exchange's disseminated bid or offer decreases; or (3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid (offer). Such percentage, which would never exceed 20%, would be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular. The percentage size increase necessary to give rise to a refreshed quote may vary from issue to issue, depending, without limitation, on the liquidity, average volume, and average number of quotations submitted in the issue. Proposed Phlx Rule 1082(b)(ii)(C) would not be limited to options included in the pilot, and would apply to all options traded on the Exchange.

The Exchange represents that participants on its system would not be notified of any incremental increase in the size of the Exchange's quote under proposed Phlx Rule 1082(a)(ii)(C)(3) until such quote is disseminated to OPRA. Therefore, no participant on the Exchange's system would have information that is unavailable to another participant.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by Phlx and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.

Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is simultaneously approving the Exchange's proposals to reduce the number of quotations it disseminates.[12]

In addition, the Commission believes that Phlx's proposed deletion of Phlx Rule 1080(c)(iv)(A) and proposed conforming changes to Phlx Rule 1085(b)(10) is consistent with the Act and will facilitate the prompt resolution of crossed markets by permitting automatic executions when the Exchange's disseminated market is the NBBO and is crossed, or crosses the disseminated market of another options exchange, regardless of the amount by which the market is crossed.[13]

Finally, the Commission believes that it is consistent with the Act for Phlx to update its rule governing Zero-Bid Options Series to provide that the system will convert such orders to limit orders to sell with a limit price of the minimum quoting increment applicable to such series, in order that options quoted and traded in minimum increments of $0.01 pursuant to the Penny Pilot Program would convert to a limit order to sell at $0.01, rather than $0.05.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2006–74), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on a six month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1508 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] In addition to the quote mitigation proposal discussed herein, Phlx also proposed other quote mitigation strategies. *See e.g.*, Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR–Phlx–2006–52); No. 54807 (November 21, 2006), 71 FR 69173 (November 29, 2006) (SR–Phlx–2006–53); 54859 (December 1, 2006), 71 FR 71605 (December 11, 2006) (SR–Phlx–2006–51); 54914 (December 11, 2006), 71 FR 75798 (December 18, 2006) (SR–Phlx–2006–81).

[13] The exemption Phlx received from the requirement under Rule 608(c) of Regulation NMS that Phlx comply, and enforce compliance by its members, with Section 8(c) of Linkage Plan regarding trade-throughs on March 8, 2006 (*see* note 9, *supra*) was limited to transactions when the market was crossed by one minimum trading increment. Therefore, Phlx submitted an exemption request to expand the scope of the exemption to include trade-throughs resulting from automatic executions while the Exchange's disseminated market is crossed, or crosses the disseminated market of another options exchange, and the Exchange's disseminated price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO, regardless of the amount by which the market is crossed. *See* letter from Richard S. Rudolph, Vice President and Counsel, Chairman and Chief Executive Officer, Phlx, to Nancy M. Morris, Secretary, Commission, dated January 19, 2006. The Commission granted this exemption request on January 23, 2007. *See* letter from Elizabeth K. King, Associate Director, Commission, to Richard S. Rudolph, Vice President and Counsel, Phlx, dated January 23, 2006.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5670]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 22, 2007 at the Boeing Company, Arlington, Virginia. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial and financial information that is considered privileged and confidential. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: January 17, 2007.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E7–1527 Filed 1–30–07; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Office of Small and Disadvantaged Business Utilization; Solicitation of Applications for Regional Small Business Transportation Resource Centers (SBTRCs) Fiscal Year (FY) 2007, Grant Opportunity

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), DOT.

ACTION: Notice.

SUMMARY: OSDBU announces that it has published an opportunity to apply for the FY 2007 Small Business Transportation Business Resource Center funding on the grants.gov Web site (*http://www.grants.gov*). Section 4134 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: OSDBU is responsible for the implementation and execution of the Department of Transportation (DOT) activities on behalf of small businesses in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The OSDBU also administers the provisions of Title 49, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE). This request solicits competitive proposals from business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges or chambers of commerce for participation in OSDBU's Small Business Transportation Resource Centers (SBTRC) under the Minority Resource Center (MRC) program. OSDBU will enter into Cooperative Agreements with these organizations to outreach to the small business community in their designated region and provide financial and technical assistance, business training programs such as, business assessment, management training, counseling, technical assistance, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Eligible applicants must be registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations.

To apply for funding, applicants must be registered with grants.gov. Registration with grants.gov may take two to five days before the system will allow you to apply for grants using the grants.gov Web site *http://www.grants.gov/applicants/get_registered.jsp.* Submit application in accordance with the instructions provided. Applications for grant funding must be submitted electronically to OSDBU through the grants.gov Web site.

DATES: Proposals must be submitted to Grants.gov by March 9, 2007, 4 p.m. Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and will not be reviewed.

FOR FURTHER INFORMATION CONTACT: Mr. Art Jackson, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Room 9414, Washington, DC 20590, Tel. 202–366–1930 or 800–532–1169. Office hours are from 9 a.m. to 5 p.m., EST., Monday through Friday, except Federal holidays.

Issued on: January 25, 2007.

Denise Rodriguez-Lopez,

Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

[FR Doc. E7–1526 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–44]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 2007.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–26428 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Frances Shaver, (202–267–9681), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591–3356, or Tyneka Thomas, (202–267–7626), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591–3356.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 22, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–26428.

Petitioner: GROB Aerospace GmbH.

Section of 14 CFR Affected: 14 CFR 23.3(d).

Description of Relief sought: Petitioner seeks an exemption from the requirements of § 23.3(d), Airplane categories, to permit the type certification of the GROB G180A in the commuter category. The G180A is a twin-engine turbojet airplane. Under § 23.3(d), the commuter category is currently limited to propeller-driven multiengine aircraft.

[FR Doc. 07–409 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–03]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on the petition received must identify the petition docket number involved and must be received on or before February 20, 2007.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2006–26659) 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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Frances Shaver (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 24, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2006–26659.

Petitioner: Embraer, Av. Brig. Faria Lima, 2170 Putim, 12227–901—Sao Jose dos Campos—SP, Brazil.

Section of 14 CFR Affected: 14 CFR, Part 23, § 23.3(d).

Description of Relief Sought: Embraer requests an exemption from the requirements of 14 CFR, part 23, § 23.3(d), ''Airplane categories,'' to permit the type certification of the EMB–505 in the commuter category. The EMB–505 is a twin-engine turbofan airplane. Under § 23.3(d), the commuter category is currently limited to propeller-driven multiengine aircraft.

[FR Doc. 07–410 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–02]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–26605] 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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Frances Shaver (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 24, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–26605.

Petitioner: Daniel Nachbar.

Section of 14 CFR Affected: 14 CFR 61.31(c) and 61.31(k)(2)(iii)(B).

Description of Relief Sought: To allow Mr. Daniel Nachbar, a private pilot, to operate and act as a pilot in command of a steerable lighter-than-air balloon while carrying passengers without a type rating for that aircraft.

[FR Doc. E7–1463 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Seattle, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of Notice of Intent, FR document 03–10244.

SUMMARY: This notice rescinds the previous Notice of Intent issued on April 18, 2003, to prepare an environmental impacts statement (EIS) for the proposed Magnolia Bridge Replacement transportation project in the city of Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Healy, Area Engineer, Federal

Highway Administration, 711 S. Capitol Way, Suite 501, Olympia, WA 98501, Telephone (360) 753–9480 and Ed Conyers, Washington State Department of Transportation, Local Programs Engineer for Northwest Region, P.O. Box 330310, 15700 Dayton Avenue, Seattle, WA 98133, Telephone (206) 440–4734.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the Seattle Department of Transportation (SDOT), issued a Notice of Intent on April 18, 2003 to prepare an EIS to evaluate the potential environmental impacts associated with the proposed replacement of the Magnolia Bridge, which spans from the intersection of 15th Avenue West and West Garfield Street to the intersection of West Galer Street and Dartmouth Avenue West in Seattle, Washington.

The initial proposal included the consideration of four alternatives (three build alternatives and a no action alternative) for evaluation in the proposed EIS. Since then, as the project elements have been refined and completion of associated discipline reports have helped to more specifically identify potential impacts, the build alternative with significant impacts was eliminated from consideration. As such, the FHWA, WSDOT, and SDOT have jointly decided that the project will likely not result in significant impacts to the environment and that an Environmental Assessment (EA) is the most appropriate environmental document for compliance with the National Environmental Policy Act (NEPA). The EA will be circulated, as appropriate, once it is completed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 25, 2007.

Elizabeth Healy,

Area Engineer, Federal Highway Administration, Olympia, Washington.

[FR Doc. E7–1495 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2007–26859]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2007

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: As provided for in 49 CFR Part 601, Subpart D, (72 FR 910, Jan. 9, 2007), the Federal Transit Administration (FTA) must, by January 31 of each calendar year, establish an Emergency Relief Docket so grantees and subgrantees affected by national or regional emergencies may request relief from policy statements, circulars, guidance documents and regulations. By this notice, FTA is establishing an Emergency Relief Docket for calendar year 2007.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC, 20590, *phone:* (202) 366–4011, *fax:* (202) 366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: The Administrator in his/her sole discretion shall determine the need for opening the Emergency Relief Docket. It may be opened at the request of a grantee or subgrantee, or on the Administrator's own initiative. When the Emergency Relief Docket is opened, FTA will post a notice on its Web site, at *www.fta.dot.gov.* In addition, a notice will be posted in the docket.

In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590; via telephone, at: (202) 366–4043; or via fax, at (202) 366–3472, requesting opening of the Docket for that emergency and including the information set forth below.

All petitions for relief must be posted in the docket in order to receive consideration by FTA. The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at *http://dms.dot.gov.* Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590.

In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on their behalf.

Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number 26859. Grantees and subgrantees making submissions by mail or hand delivery should submit two copies.

A petition for relief shall:

(a) Identify the grantee or subgrantee and its geographic location;

(b) Specifically address how an FTA requirement in a policy statement, circular, or agency guidance will limit a grantee's or subgrantee's ability to respond to an emergency or disaster;

(c) Identify the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

A petition for relief will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the

three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision. FTA decision letters, either granting or denying a petition, shall be posted in the appropriate Emergency Relief Docket and shall reference the document number of the petition to which it relates.

Issued in Washington, DC this 25th day of January 2007.

James S. Simpson,

FTA Administrator.

[FR Doc. E7–1488 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–07–26922]

Highway Safety Programs; Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice amends and updates the list of devices that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

EFFECTIVE DATE: January 31, 2007.

FOR FURTHER INFORMATION CONTACT: J. De Carlo Ciccel, Impaired Driving Division (NTI–111), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–1694.

SUPPLEMENTARY INFORMATION: On August 2, 1994, NHTSA published Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (*e.g.*, ''zero tolerance'' laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923, with corrections on December 16, 1994 in 59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. Five (5) devices appeared on that first list. Thereafter, NHTSA amended the CPL on August 15, 1995 (60 FR 42214) and on May 4, 2001 (66 FR 22639), adding seven (7) devices to the CPL in those two (2) actions.

On September 19, 2005, NHTSA published an updated CPL (70 FR 54972), adding several devices to the list and removing several other devices. Subsequently NHTSA discovered an error regarding the name of a device listed on the CPL and republished the CPL on December 5, 2005 (70 FR 72502) to correct the error.

Since the publication of the last CPL, NHTSA has evaluated additional devices at the Volpe National Transportation Systems Center (VNTSC) in Cambridge, Massachusetts, resulting in the addition of three (3) new breath alcohol screening devices to the CPL.

(1) Q3 Innovations, Inc. submitted two (2) screening devices for testing. Their trade names are: AlcoHAWK Micro and AlcoHAWK Slim. These devices meet the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(2) Akers Biosciences, Inc. submitted the Breath Alcohol ✓ .02 Detection System for testing. This device meets the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

Consistent with paragraphs (1) and (2) above, NHTSA amends the Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids to read as follows:

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES

Manufacturer	Device(s)
AK Solutions, Inc., Palisades Park, NJ [1]	Alcoscan AL–2500.
	AlcoChecker.
	AlcoKey.
	AlcoMate.
	AlcoMate Pro.
	Alcoscan AL–5000.
	Alcoscan AL–6000.
Alco Check International, Hudsonville, MI	Alco Check 3000 D.O.T.
	Alco Check 9000.
Akers Biosciences, Inc., Thorofare, NJ	Breath Alcohol ✓ .02 Detection System. [2]
Chematics, Inc., North Webster, IN	ALCO–SCREEN 02™. [3]
Guth Laboratories, Inc., Harrisburg, PA	Alco Tector Mark X.
	Mark X Alcohol Checker.
	Alcotector WAT89EC–1.
Han International Co., Ltd., Seoul, Korea [4]	A.B.I. (Alcohol Breath Indicator).
OraSure Technologies, Inc., Bethlehem, PA	Q.E.D. A150 Saliva Alcohol Test.
PAS Systems International, Inc., Fredericksburg, VA	PAS Vr.
Q3 Innovations, Inc., Independence, IA [5]	AlcoHAWK Precision.
	AlcoHAWK Slim.
	AlcoHAWK Elite.
	AlcoHAWK ABI.
	AlcoHAWK Micro.
	AlcoHAWK PRO.
Repco Marketing, Inc., Raleigh, NC	Alco Tec III.
Seju Co. of Taejeon, Korea	Safe-Slim.
Sound Off, Inc., Hudsonville, MI	Digitox D.O.T.
Varian, Inc., Lake Forest, CA	On-Site Alcohol. [6]

[1] The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.

[2] The Breath Alcohol ✓ .02 Detection System consists of a single-use disposable breath tube used in conjunction with an electronic analyzer that determines the test result. The electronic analyzer and the disposable breath tubes are lot specific and manufactured to remain calibrated throughout the shelf-life of the device. This screening device cannot be used after the expiration date.

[3] While the ALCO–SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40 °C (104 °F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27 °C (80 °F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27 °C (80 °F). If the device is stored at or below 27 °C (80 °F) and used at higher temperatures (i.e., within a minute), the device meets the Model Specifications and the results persist for 10–15 minutes. If the device is stored at or below 27 °C (80 °F) and equilibrated at 40 °C (104 °F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27 °C (80 °F), for even brief periods of time, may result in false negative readings.

[4] Han International does not market or sell devices directly in the U.S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q–3 Innovations, Inc.

[5] The AlcoHAWK ABI is the same device as that listed under Han International as the ''ABI'' and is manufactured for Q–3 Innovations by Han International. The AlcoHAWK PRO is the same device as the AlcoMate marketed and sold by AK Solutions, and also manufactured by Han International.

[6] While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30°C (86°F); readings should be taken after two (2) minutes at 18°C–29°C (64.4°-84.2°F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17°C (62.6°F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

Issued on: January 24, 2007.

Marilena Amoni,

Associate Administrator for the Office of Research and Program Development.

[FR Doc. E7–1465 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2006–26249]

Brain Injury Symposium Agenda

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Agenda for the Meeting Notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announced a two day Brain Injury Symposium to be held in Washington, DC (**Federal Register**/Vol. 71, No. 217/Thursday, November 9, 2006/Notices). This notice supplements the agenda for the symposium (see the previous announcement for further information, NHTSA–2006–26249:1).

DATES: February 26 and 27, 2007 starting at 9 a.m. on Monday, February 26 and ending at 5 p.m. on Tuesday, February 27, 2007.

ADDRESSES: The meeting will be held at: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION: Erik Takhounts, PhD, Office of Applied Vehicle Safety Research, Human Injury Research Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone number (202) 366–4737; E-mail *Erik.Takhounts@dot.gov.*

SUPPLEMENTARY INFORMATION:

Program

Day 1: Monday, February 26, 2007

Room—Quorum

8 a.m.–9 a.m. Refreshments.
9 a.m.–9:15 a.m. Opening Remarks.
R. Medford. Senior Associate Administrator, National Highway Traffic Safety Administration ''Welcoming remarks.''
9:15 a.m.–10:15 a.m. Session I.
S. Ridella, Human Injury Research Division, National Highway Traffic Safety Administration ''Overview of NHTSA activities related to brain injury research.''
E. Takhounts, Human Injury Research Division, National Highway Traffic Safety Administration ''Brain injury research at NHTSA: modeling efforts.''
T. Gennare III, Medical College of Wisconsin, ''Overview of previous and current research in brain injury biomechanics.''
10:15 a.m.–10:35 a.m. Break.
10:35 a.m.–11:35 a.m. Session II.
A. King, Wayne State University, ''Overview of WSU current research: modeling, tissue level injuries.''
R. Willinger, University of Louis Pasteur-Strasbourg, ''Overview of ULP head injury criteria research and European perspectives.''
11:35 a.m.–1:30 p.m. Lunch [on your own]
1:30 p.m.–3 p.m. Session III.
J. Melvin, Tandelta, ''Brain injuries in race car drivers.''
R. Nightingale, Duke University, ''Neck as a delivery device for head; pediatric brain research.''
S. Margulies, University of Pennsylvania, ''Pediatric brain injury research; tissue level brain injuries.''
3 p.m.–3:20 p.m. Break.
3:20 p.m.–4:20 p.m. Session IV.
S. Duma, Virginia Tech, ''Brain injuries in college football players.''
B. Morrison III, Columbia University, ''Advances in cellular brain injury biomechanics.''
4:20 p.m.–5 p.m. Discussion and Concluding Remarks.
Ridella/Takhounts: Announcements of the working groups for the next day: Injury Mechanisms and Criteria, Modeling, and Dummy development; discussion of the presentations and working groups, selection of the group members and conformation of leaders.

Day 2: Tuesday, February 27, 2007

Rooms—Montcalm, Lasalle, Lafayette

8 a.m.–9 a.m. Refreshments.
9 a.m.–12 p.m. Working in Breakout Groups.
Discussion of the respective topics, research needs for the short-, mid-, and long-terms.
10:30 a.m.–10:50 a.m. Break.
Continuing discussion of the respective topics.
12 p.m.–1:30 p.m. Lunch [on your own].
1:30 p.m.–3 p.m. Working in Breakout Groups.
Preparation of the resolution in each group.
3 p.m.–3:20 p.m. Break.
3:20 p.m.–5 p.m. Discussion and Concluding Remarks.
BALL Rooms C and D.
Ridella/Takhounts: Putting it all together, concluding remarks.

Issued on: January 25, 2007.

William T. Hollowell,

Director, Office of Applied Vehicle Safety Research.

[FR Doc. E7–1491 Filed 1–30–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals and Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two newly-designated individuals and one newly-designated entity whose

property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Secretary of the Treasury of two individuals and one entity identified in this notice, pursuant to Executive Order 13224, is effective on January 26, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On January 26, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General, and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two individuals and one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of additional designees follows:

Individuals

DOCKRAT, Farhad Ahmed (a.k.a. DOCKRAT, Ahmed; a.k.a. DOCKRAT, Farhaad; a.k.a. DOCKRAT, Farhaad Ahmed; a.k.a. DOCKRAT, Farhad; a.k.a. DOCKRAT, Farhad Ahmad; a.k.a. DOCKRAT, Maulana Farhad; a.k.a. DOCRATE, Farhad; a.k.a. ''DOCKRAT, F.''), 386 Swanepoel Street, Erasmia, Pretoria, South Africa; DOB 28 Feb 1959; POB Pretoria, South Africa; nationality South Africa; National ID No. 5902285162089/055 (South Africa); Passport 446333407 (South Africa) expires 26 May 2014.

DOCKRAT, Junaid Ismail (a.k.a. DOCKRAT, Junaid; a.k.a. DOCRATE, Junaid; a.k.a. ''AHMED, DR.''; a.k.a. ''DOCKRAT, J. I.''), 71 Fifth Avenue, Mayfair 2108, South Africa; P.O. Box 42928, Fordsburg 2033, South Africa; Johannesburg, South Africa; DOB 16 Mar 1971; National ID No. 7103165178083 (South Africa).

Entity

SNIPER AFRICA (a.k.a. SNIPER OUTDOOR CC; a.k.a. SNIPER OUTDOORS CC; a.k.a. TRUE MOTIVES 1236 CC), P.O. Box 28215, Kensington 2101, South Africa; 40 Mint Road, Amoka Gardens, Fordsburg, Johannesburg, South Africa; P.O. Box 42928, Fordsburg 2003, South Africa; 16 Gold Street, Carletonville 2500, South Africa; Registration ID 200302847123; Tax ID No. 9113562152; Web site *http://www.sniperafrica.com.*

Dated: January 26, 2007.

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 07–422 Filed 1–30–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one person from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13382 of June 28, 2005, *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.* The entity, GREAT WALL AIRLINES COMPANY LIMITED, was designated pursuant to Executive Order 13382 on August 15, 2006.

DATES: The removal of the person from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13382 is effective as of December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Houghton, Assistant Director, Designation Investigations, Office of Foreign Assets Control, Department of

the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY IMFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On August 15, 2006, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, designated one person whose property and interests in property are blocked pursuant to Executive Order 13382.

The Department of the Treasury's Office of Foreign Assets Control has determined that this person no longer continues to meet the criteria for designation under the Order and is appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following designation is removed from the list of Specially Designated Nationals and Blocked Persons:

GREAT WALL AIRLINES COMPANY LIMITED (a.k.a GREAT WALL AIRLINES; a.k.a. CHANGCHENG HANGKONG), 1600 Century Road, Shanghai 200122, China; C.R. No. 001144 (China) Issued 20 Oct 2005 expires 19 Oct 2035

The removal of the person's name from the list of Specially Designated Nationals and Blocked Persons is effective as of December 12, 2006. All property and interests in property of the person that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: January 25, 2007.

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E7–1548 Filed 1–30–07; 8:45 am]

BILLING CODE 4811–42–P

Corrections

Federal Register

Vol. 72, No. 20

Wednesday, January 31, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

Correction

In notice document 07–309 beginning on page 3136 in the issue of Wednesday, January 24, 2007, make the following correction:

On page 3136, in the second column, under the **DATES** heading, in the third line ''on or before.'' should read ''on or before February 23, 2007.''.

[FR Doc. C7–309 Filed 1–30–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
January 31, 2007

Part II

Reader Aids

Cumulative List of Public Laws
109th Congress, Second Session

Rules and Regulations

Federal Register
Vol. 72, No. 20
Wednesday, January 31, 2007

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.

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 109th Congress, Second Session. Other cumulative lists (1993–2006) are available online at *http://www.archives.gov/federal-register/laws/past/index.html.* Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The text of laws may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at *http://www.gpoacess.gov/plaws/index.html.* Some laws may not yet be available online or for purchase.

Public Law	Title	Approved	120 Stat.
109–170	To amend the USA PATRIOT ACT to extend the sunset of certain provisions of such Act	Feb. 3, 2006	3
109–171	Deficit Reduction Act of 2005	Feb. 8, 2006	4
109–172*	State High Risk Pool Funding Extension Act of 2006	Feb. 10, 2006	185
109–174	Making supplemental appropriations for fiscal year 2006 for the Small Business Administration's disaster loans program, and for other purposes.	Feb. 18, 2006	189
109–175	To designate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office''.	Feb. 27, 2006	190
109–176	Katrina Emergency Assistance Act of 2006	Mar. 6, 2006	191
109–177	USA PATRIOT Improvement and Reauthorization Act of 2005	Mar. 9, 2006	192
109–178	USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006	Mar. 9, 2006	278
109–179	To facilitate shareholder consideration of proposals to make Settlement Common Stock under the Alaska Native Claims Settlement Act available to missed enrollees, eligible elders, and eligible persons born after December 18, 1971, and for other purposes.	Mar. 13, 2006	283
109–180	To designate the facility of the United States Postal Service located at 4422 West Sciota Street in Scio, New York, as the ''Corporal Jason L. Dunham Post Office''.	Mar. 14, 2006	284
109–181	To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.	Mar. 16, 2006	285
109–182	Increasing the statutory limit on the public debt	Mar. 20, 2006	289
109–183	Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005.	Mar. 20, 2006	290
109–184	To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building''.	Mar. 20, 2006	292
109–185	To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the ''John F. Whiteside Joliet Post Office Building''.	Mar. 20, 2006	293
109–186	To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the ''John J. Hainkel, Jr. Post Office Building''.	Mar. 20, 2006	294
109–187	To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the ''Lillian McKay Post Office Building''.	Mar. 20, 2006	295
109–188	To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the ''J.M. Dietrich Northeast Annex''.	Mar. 20, 2006	296
109–189	To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''.	Mar. 20, 2006	297
109–190	To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the ''Congressman James Grove Fulton Memorial Post Office Building''.	Mar. 20, 2006	298
109–191	To designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the ''Gagetown Veterans Memorial Post Office''.	Mar. 20, 2006	299
109–192	To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the ''Ava Gardner Post Office''.	Mar. 20, 2006	300
109–193	To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the ''Heinz Ahlmeyer, Jr. Post Office Building''.	Mar. 20, 2006	301
109–194	To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the ''Staff Sergeant Michael Schafer Post Office Building''.	Mar. 20, 2006	302
109–195	To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building''.	Mar. 20, 2006	303
109–196	To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the ''Clayton J. Smith Memorial Post Office Building''.	Mar. 20, 2006	304
109–197	To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the ''U.S. Cleveland Post Office Building''.	Mar. 20, 2006	305
109–198	To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the ''Albert H. Quie Post Office''.	Mar. 20, 2006	306
109–199	To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the ''Lillian Kinkella Keil Post Office''.	Mar. 20, 2006	307

Public Law	Title	Approved	120 Stat.
109–200	To designate the facility of the United States Postal Service located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the ''Maryland State Delegate Lena K. Lee Post Office Building''.	Mar. 20, 2006	308
109–201	To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''.	Mar. 20, 2006	309
109–202	To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the ''Mont and Mark Stephensen Veterans Memorial Post Office Building''.	Mar. 20, 2006	310
109–203	To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building''.	Mar. 20, 2006	311
109–204	To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes.	Mar. 20, 2006	312
109–205	To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine.	Mar. 23, 2006	313

***Note:** Public Law 109–173 passed during the First Session of the 109th Congress and appeared in that listing of Cumulative Public Laws.

Public Law	Title	Approved	120 Stat.
109–206	To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the ''John H. Bradley Department of Veterans Affairs Outpatient Clinic''.	Mar. 23, 2006	315
109–207	To designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville ''Mac'' Lawrence Post Office.	Mar. 23, 2006	316
109–208	National Flood Insurance Program Enhanced Borrowing Authority Act of 2006	Mar. 23, 2006	317
109–209	To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.	Mar. 24, 2006	318
109–210	To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member.	Mar. 24, 2006	319
109–211	To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999.	Mar. 24, 2006	320
109–212	Higher Education Extension Act of 2006	Apr. 1, 2006	321
109–213	To award a congressional gold medal on behalf of the Tuskegee Airmen, collectively, in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.	Apr. 11, 2006	322
109–214	To transfer jurisdiction of certain real property to the Supreme Court	Apr. 11, 2006	326
109–215	Milk Regulatory Equity Act of 2005	Apr. 11, 2006	328
109–216	Providing for the appointment of Phillip Frost as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 13, 2006	331
109–217	Providing for the reappointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 13, 2006	332
109–218	Local Community Recovery Act of 2006	Apr. 20, 2006	333
109–219	Glendo Unit of the Missouri River Basin Project Contract Extension Act of 2005	May 5, 2006	334
109–220	Approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower.	May 5, 2006	335
109–221	Native American Technical Corrections Act of 2006	May 12, 2006	336
109–222	Tax Increase Prevention and Reconciliation Act of 2005	May 17, 2006	345
109–223	To memorialize and honor the contribution of Chief Justice William H. Rehnquist	May 18, 2006	374
109–224	To require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe.	May 18, 2006	376
109–225	James Campbell National Wildlife Refuge Expansion Act of 2005	May 25, 2006	378
109–226	Coastal Barrier Resources Reauthorization Act of 2005	May 25, 2006	381
109–227	Heroes Earned Retirement Opportunities Act	May 29, 2006	385
109–228	Respect for America's Fallen Heroes Act	May 29, 2006	387
109–229	To provide for the participation of employees in the judicial branch in the Federal leave transfer program for disasters and emergencies.	May 31, 2006	390
109–230	San Francisco Old Mint Commemorative Coin Act	June 15, 2006	391
109–231	To designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.	June 15, 2006	394
109–232	Lewis and Clark Commemorative Coin Correction Act	June 15, 2006	395
109–233	Veterans' Housing Opportunity and Benefits Improvement Act of 2006	June 15, 2006	397
109–234	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.	June 15, 2006	418
109–235	Broadcast Decency Enforcement Act of 2005	June 15, 2006	491
109–236	Mine Improvement and New Emergency Response Act of 2006	June 15, 2006	493
109–237	To designate the facility of the United States Postal Service located at 520 Colorado Avenue in Arriba, Colorado, as the ''William H. Emery Post Office''.	June 23, 2006	506
109–238	Second Higher Education Extension Act of 2006	June 30, 2006	507
109–239	Safe and Timely Interstate Placement of Foster Children Act of 2006	July 3, 2006	508
109–240	Rural Health Care Capital Access Act of 2006	July 10, 2006	515
109–241	Coast Guard and Maritime Transportation Act of 2006	July 11, 2006	516
109–242	Fetus Farming Prohibition Act of 2006	July 19, 2006	570
109–243	Freedom to Display the American Flag Act of 2005	July 24, 2006	572
109–244	Authorizing the printing and binding of a supplement to, and revised edition of, Senate Procedure.	July 25, 2006	574
109–245	To amend the Public Health Service Act with respect to the National Foundation for the Centers for Disease Control and Prevention.	July 26, 2006	575
109–246	Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.	July 27, 2006	577

Public Law	Title	Approved	120 Stat.
109–247	Louis Braille Bicentennial—Braille Literacy Commemorative Coin Act	July 27, 2006	582
109–248	Adam Walsh Child Protection and Safety Act of 2006	July 27, 2006	587
109–249	To exempt persons with disabilities from the prohibition against providing section 8 rental assistance to college students.	July 27, 2006	651
109–250	To amend section 1113 of the Social Security Act to temporarily increase funding for the program of temporary assistance for United States citizens returned from foreign countries, and for other purposes.	July 27, 2006	652
109–251	Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes.	Aug. 1, 2006	654
109–252	To designate the facility of the United States Postal Service located at 306 2nd Avenue in Brockway, Montana, as the ''Paul Kasten Post Office Building''.	Aug. 1, 2006	655
109–253	To designate the facility of the United States Postal Service located at 100 Avenida RL Rodríguez in Bayamón, Puerto Rico, as the ''Dr. José Celso Barbosa Post Office Building''.	Aug. 1, 2006	656
109–254	To designate the facility of the United States Postal Service located at 210 West 3rd Avenue in Warren, Pennsylvania, as the ''William F. Clinger, Jr. Post Office Building''.	Aug. 1, 2006	657
109–255	To designate the facility of the United States Postal Service located at 80 Killian Road in Massapequa, New York, as the ''Gerard A. Fiorenza Post Office Building''.	Aug. 1, 2006	658
109–256	To designate the facility of the United States Postal Service located at 170 East Main Street in Patchogue, New York, as the ''Lieutenant Michael P. Murphy Post Office Building''.	Aug. 1, 2006	659
109–257	To designate the facility of the United States Postal Service located at 3000 Homewood Avenue in Baltimore, Maryland, as the ''State Senator Verda Welcome and Dr. Henry Welcome Post Office Building''.	Aug. 1, 2006	660
109–258	To designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the ''Hattie W. Caraway Station''.	Aug. 2, 2006	661
109–259	To designate the facility of the United States Postal Service located at 8624 Ferguson Road in Dallas, Texas, as the ''Francisco 'Pancho' Medrano Post Office Building''.	Aug. 2, 2006	662
109–260	To designate the facility of the United States Postal Service located at 1 Boyden Street in Badin, North Carolina, as the ''Mayor John Thompson 'Tom' Garrison Memorial Post Office''.	Aug. 2, 2006	663
109–261	To designate the facility of the United States Postal Service located at 535 Wood Street in Bethlehem, Pennsylvania, as the ''H. Gordon Payrow Post Office Building''.	Aug. 2, 2006	664
109–262	To designate the facility of the United States Postal Service located at 7 Columbus Avenue in Tuckahoe, New York, as the ''Ronald Bucca Post Office.	Aug. 2, 2006	665
109–263	To designate the facility of the United States Postal Service located at 1 Marble Street in Fair Haven, Vermont, as the ''Matthew Lyon Post Office Building''.	Aug. 2, 2006	666
109–264	To amend title 4 of the United States Code to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement income.	Aug. 3, 2006	667
109–265	Newlands Project Headquarters and Maintenance Yard Facility Transfer Act	Aug. 3, 2006	668
109–266	Electronic Duck Stamp Act of 2005	Aug. 3, 2006	670
109–267	To amend the Iran and Libya Sanctions Act of 1996 to extend the authorities provided in such Act until September 29, 2006.	Aug. 4, 2006	680
109–268	To provide funding authority to facilitate the evacuation of persons from Lebanon, and for other purposes.	Aug. 4, 2006	681
109–269	To redesignate the Mason Neck National Wildlife Refuge in Virginia as the Elizabeth Hartwell Mason Neck National Wildlife Refuge.	Aug. 12, 2006	682
109–270	Carl D. Perkins Career and Technical Education Improvement Act of 2006	Aug. 12, 2006	683
109–271	To make technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005.	Aug. 12, 2006	750
109–272	To preserve the Mt. Soledad Veterans Memorial in San Diego, California, by providing for the immediate acquisition of the memorial by the United States.	Aug. 14, 2006	770
109–273	To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the ''Coach John Wooden Post Office Building''.	Aug. 17, 2006	773
109–274	To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the ''John Paul Hammerschmidt Post Office Building''.	Aug. 17, 2006	774
109–275	To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the ''Captain George A. Wood Post Office Building''.	Aug. 17, 2006	775
109–276	To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the ''Morris W. Milton Post Office''.	Aug. 17, 2006	776
109–277	To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the ''Earl D. Hutto Post Office Building''.	Aug. 17, 2006	777
109–278	To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the ''Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office''.	Aug. 17, 2006	778
109–279	To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the ''Sergeant Jacob Dan Dones Post Office''.	Aug. 17, 2006	779
109–280	Pension Protection Act of 2006	Aug. 17, 2006	780
109–281	YouthBuild Transfer Act	Sept. 22, 2006	1173
109–282	Federal Funding Accountability and Transparency Act of 2006	Sept. 26, 2006	1186
109–283	United States-Oman Free Trade Agreement Implementation Act	Sept. 26, 2006	1191
109–284	To make technical corrections to the United States Code	Sept. 27, 2006	1211
109–285	Abraham Lincoln Commemorative Coin Act	Sept. 27, 2006	1215
109–286	Pueblo de San Ildefonso Claims Settlement Act of 2005	Sept. 27, 2006	1218
109–287	Fourteenth Dalai Lama Congressional Gold Medal Act	Sept. 27, 2006	1231
109–288	Child and Family Services Improvement Act of 2006	Sept. 28, 2006	1233
109–289	Department of Defense Appropriations Act, 2007	Sept. 29, 2006	1257
109–290	Military Personnel Financial Services Protection Act	Sept. 29, 2006	1317
109–291	Credit Rating Agency Reform Act of 2006	Sept. 29, 2006	1327
109–292	Third Higher Education Extension Act of 2006	Sept. 30, 2006	1340
109–293	Iran Freedom Support Act	Sept. 30, 2006	1344
109–294	Partners for Fish and Wildlife Act	Oct. 3, 2006	1351
109–295	Department of Homeland Security Appropriations Act, 2007	Oct. 4, 2006	1355
109–296	To reauthorize the Livestock Mandatory Reporting Act of 1999 and to amend the swine reporting provisions of that Act.	Oct. 5, 2006	1464

Public Law	Title	Approved	120 Stat.
109–297	To extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.	Oct. 5, 2006	1471
109–298	To extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.	Oct. 5, 2006	1472
109–299	Wichita Project Equus Beds Division Authorization Act of 2005	Oct. 5, 2006	1473
109–300	To designate the facility of the United States Postal Service located at 7172 North Tongass Highway, Ward Cove, Alaska, as the ''Alice R. Brusich Post Office Building''.	Oct. 5, 2006	1475
109–301	To designate the facility of the United States Postal Service located on Lindbald Avenue, Girdwood, Alaska, as the ''Dorothy and Connie Hibbs Post Office Building''.	Oct. 5, 2006	1476
109–302	To designate the facility of the United States Postal Service located at 8801 Sudley Road in Manassas, Virginia, as the ''Harry J. Parrish Post Office''.	Oct. 5, 2006	1477
109–303	Copyright Royalty Judges Program Technical Corrections Act	Oct. 6, 2006	1478
109–304	To complete the codification of title 46, United States Code, ''Shipping'', as positive law	Oct. 6, 2006	1485
109–305	Railroad Retirement Technical Improvement Act of 2006	Oct. 6, 2006	1719
109–306	To amend the John F. Kennedy Center Act to authorize additional appropriations for the John F. Kennedy Center for the Performing Arts for fiscal year 2007.	Oct. 6, 2006	1720
109–307	Children's Hospital GME Support Reauthorization Act of 2006	Oct. 6, 2006	1721
109–308	Pets Evacuation and Transportation Standards Act of 2006	Oct. 6, 2006	1725
109–309	To amend the Ojito Wilderness Act to make a technical correction	Oct. 6, 2006	1727
109–310	To designate the Post Office located at 5755 Post Road, East Greenwich, Rhode Island, as the ''Richard L. Cevoli Post Office''.	Oct. 6, 2006	1728
109–311	To designate the facility of the United States Postal Service located at 2951 New York Highway 43 in Averill Park, New York, as the ''Major George Quamo Post Office Building''.	Oct. 6, 2006	1729
109–312	Trademark Dilution Revision Act of 2006	Oct. 6, 2006	1730
109–313	General Services Administration Modernization Act	Oct. 6, 2006	1734
109–314	National Law Enforcement Officers Memorial Maintenance Fund Act of 2005	Oct. 6, 2006	1739
109–315	To designate the facility of the United States Postal Service located at 110 Cooper Street in Babylon, New York, as the ''Jacob Samuel Fletcher Post Office Building''.	Oct. 10, 2006	1741
109–316	To extend temporarily certain authorities of the Small Business Administration	Oct. 10, 2006	1742
109–317	To authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.	Oct. 11, 2006	1743
109–318	To amend the Yuma Crossing National Heritage Area Act of 2000 to adjust the boundary of the Yuma Crossing National Heritage Area, and for other purposes.	Oct. 11, 2006	1745
109–319	Ste. Genevieve County National Historic Site Study Act of 2005	Oct. 11, 2006	1746
109–320	Salt Cedar and Russian Olive Control Demonstration Act	Oct. 11, 2006	1748
109–321	To direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.	Oct. 11, 2006	1753
109–322	North American Wetlands Conservation Reauthorization Act of 2006	Oct. 11, 2006	1756
109–323	To extend the waiver authority for the Secretary of Education under title IV, section 105, of Public Law 109–148.	Oct. 11, 2006	1757
109–324	Rio Arriba County Land Conveyance Act	Oct. 11, 2006	1758
109–325	To extend relocation expenses test programs for Federal employees	Oct. 11, 2006	1760
109–326	Great Lakes Fish and Wildlife Restoration Act of 2006	Oct. 11, 2006	1761
109–327	To designate the facility of the United States Postal Service located at 6101 Liberty Road in Baltimore, Maryland, as the ''United States Representative Parren J. Mitchell Post Office''.	Oct. 12, 2006	1767
109–328	To designate the facility of the United States Postal Service located at 110 North Chestnut Street in Olathe, Kansas, as the ''Governor John Anderson, Jr. Post Office Building''.	Oct. 12, 2006	1768
109–329	To designate the facility of the United States Postal Service located at 350 Uinta Drive in Green River, Wyoming, as the ''Curt Gowdy Post Office Building''.	Oct. 12, 2006	1769
109–330	To designate the facility of the United States Postal Service located at 6029 Broadmoor Street in Mission, Kansas, as the ''Larry Winn, Jr. Post Office Building''.	Oct. 12, 2006	1770
109–331	To designate the United States courthouse to be constructed in Greenville, South Carolina, as the ''Carroll A. Campbell, Jr. United States Courthouse''.	Oct. 12, 2006	1771
109–332	To designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the ''William M. Steger Federal Building and United States Courthouse''.	Oct. 12, 2006	1772
109–333	To designate the facility of the United States Postal Service located at 950 Missouri Avenue in East St. Louis, Illinois, as the ''Katherine Dunham Post Office Building''.	Oct. 12, 2006	1773
109–334	To designate the facility of the United States Postal Service located at 39–25 61st Street in Woodside, New York, as the ''Thomas J. Manton Post Office Building''.	Oct. 12, 2006	1774
109–335	To designate the Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, as the ''John F. Seiberling Federal Building and United States Courthouse''.	Oct. 12, 2006	1775
109–336	To designate the facility of the United States Postal Service located at 101 East Gay Street in West Chester, Pennsylvania, as the ''Robert J. Thompson Post Office Building''.	Oct. 12, 2006	1776
109–337	Rio Grande Natural Area Act	Oct. 12, 2006	1777
109–338	National Heritage Areas Act of 2006	Oct. 12, 2006	1783
109–339	To designate the United States courthouse at 300 North Hogan Street, Jacksonville, Florida, as the ''John Milton Bryan Simpson United States Courthouse''.	Oct. 13, 2006	1863
109–340	To authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932–1933.	Oct. 13, 2006	1864
109–341	To designate a portion of the Federal building located at 2100 Jamieson Avenue, in Alexandria, Virginia, as the ''Justin W. Williams United States Attorney's Building''.	Oct. 13, 2006	1865
109–342	To designate a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, as the ''Clyde S. Cahill Memorial Park''.	Oct. 13, 2006	1867
109–343	To designate the Federal building located at 320 North Main Street in McAllen, Texas, as the ''Kika de la Garza Federal Building''.	Oct. 13, 2006	1868
109–344	Darfur Peace and Accountability Act of 2006	Oct. 13, 2006	1869
109–345	To designate the facility of the United States Postal Service located at 777 Corporation Street in Beaver, Pennsylvania, as the ''Robert Linn Memorial Post Office Building''.	Oct. 13, 2006	1882

Public Law	Title	Approved	120 Stat.
109–346	To designate the facility of the United States Postal Service located at 105 North Quincy Street in Clinton, Illinois, as the ''Gene Vance Post Office Building''.	Oct. 13, 2006	1883
109–347	Security and Accountability for Every Port Act of 2006	Oct. 13, 2006	1884
109–348	To designate the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the ''Andres Toro Building''.	Oct. 13, 2006	1963
109–349	To designate the facility of the United States Postal Service located at 202 East Washington Street in Morris, Illinois, as the ''Joshua A. Terando Morris Post Office Building''.	Oct. 13, 2006	1964
109–350	To designate the facility of the United States Postal Service located at 40 South Walnut Street in Chillicothe, Ohio, as the ''Larry Cox Post Office''.	Oct. 13, 2006	1965
109–351	Financial Services Regulatory Relief Act of 2006	Oct. 13, 2006	1966
109–352	Wright Amendment Reform Act of 2006	Oct. 13, 2006	2011
109–353	North Korea Nonproliferation Act of 2006	Oct. 13, 2006	2015
109–354	To revise the boundaries of John H. Chafee Coastal Barrier Resources System Jekyll Island Unit GA–06P.	Oct. 16, 2006	2017
109–355	To replace a Coastal Barrier Resources System map relating to Coastal Barrier Resources System Grayton Beach Unit FL–95P in Walton County, Florida.	Oct. 16, 2006	2018
109–356	2005 District of Columbia Omnibus Authorization Act	Oct. 16, 2006	2019
109–357	Byron Nelson Congressional Gold Medal Act	Oct. 16, 2006	2044
109–358	Lake Mattamuskeet Lodge Preservation Act	Oct. 16, 2006	2047
109–359	Long Island Sound Stewardship Act of 2006	Oct. 16, 2006	2049
109–360	National Fish Hatchery System Volunteer Act of 2006	Oct. 16, 2006	2058
109–361	Veterans' Compensation Cost-of-Living Adjustment Act of 2006	Oct. 16, 2006	2062
109–362	Northern California Coastal Wild Heritage Wilderness Act	Oct. 17, 2006	2064
109–363	To direct the Secretary of the Interior to convey the Tylersville division of the Lamar National Fish Hatchery and Fish Technology Center to the State of Pennsylvania, and for other purposes.	Oct. 17, 2006	2074
109–364	John Warner National Defense Authorization Act for the Fiscal Year 2007	Oct. 17, 2006	2083
109–365	Older Americans Act Amendments of 2006	Oct. 17, 2006	2522
109–366	Military Commissions Act of 2006	Oct. 17, 2006	2600
109–367	Secure Fence Act of 2006	Oct. 26, 2006	2638
109–368	To clarify the provision of nutrition services to older Americans	Nov. 17, 2006	2641
109–369	Making further continuing appropriations for the fiscal year 2007, and for other purposes	Nov. 17, 2006	2642
109–370	Lower Farmington River and Salmon Brook Wild and Scenic River Study Act of 2005	Nov. 27, 2006	2643
109–371	Pactola Reservoir Reallocation Authorization Act of 2005	Nov. 27, 2006	2644
109–372	Idaho Land Enhancement Act	Nov. 27, 2006	2645
109–373	Fort McDowell Indian Community Water Rights Settlement Revision Act of 2006	Nov. 27, 2006	2650
109–374	Animal Enterprise Terrorism Act	Nov. 27, 2006	2652
109–375	Sierra National Forest Land Exchange Act of 2006	Dec. 1, 2006	2656
109–376	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	2659
109–377	Pitkin County Land Exchange Act of 2006	Dec. 1, 2006	2660
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	2664
109–379	Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006	Dec. 1, 2006	2666
109–380	To convey to the town of Frannie, Wyoming, certain land withdrawn by the Commissioner of Reclamation.	Dec. 1, 2006	2671
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	2672
109–382	New England Wilderness Act of 2006	Dec. 1, 2006	2673
109–383	Making further continuing appropriations for the fiscal year 2007, and for other purposes	Dec. 9, 2006	2678
109–384	To redesignate the facility of the Bureau of Reclamation located at 19550 Kelso Road in Byron, California, as the ''C.W. 'Bill' Jones Pumping Plant''.	Dec. 12, 2006	2680
109–385	Valle Vidal Protection Act of 2005	Dec. 12, 2006	2681
109–386	To authorize the Secretary of the Interior to revise certain repayment contracts with the Bostwick Irrigation District in Nebraska, the Kansas Bostwick Irrigation District No. 2, the Frenchman-Cambridge Irrigation District, and the Webster Irrigation District No. 4, all a part of the Pick-Sloan Missouri Basin Program, and for other purposes.	Dec. 12, 2006	2683
109–387	To provide for the conveyance of certain National Forest System land to the towns of Laona and Wabeno, Wisconsin, and for other purposes.	Dec. 12, 2006	2685
109–388	Paint Bank and Wytheville National Fish Hatcheries Conveyance Act	Dec. 12, 2006	2688
109–389	To provide for the conveyance of the former Konnarock Lutheran Girls School in Smyth County, Virginia, which is currently owned by the United States and administered by the Forest Service, to facilitate the restoration and reuse of the property, and for other purposes.	Dec. 12, 2006	2690
109–390	Financial Netting Improvements Act of 2006	Dec. 12, 2006	2692
109–391	Ouachita National Forest Boundary Adjustment Act of 2006	Dec. 12, 2006	2701
109–392	To amend the Federal Water Pollution Control Act to reauthorize a program relating to the Lake Pontchartrain Basin, and for other purposes.	Dec. 12, 2006	2703
109–393	To extend the time required for construction of a hydroelectric project, and for other purposes	Dec. 13, 2006	2704
109–394	Esther Martinez Native American Languages Preservation Act of 2006	Dec. 14, 2006	2705
109–395	Congressional Tribute to Dr. Norman E. Borlaug Act of 2006	Dec. 14, 2006	2708
109–396	Federal and District of Columbia Government Real Property Act of 2006	Dec. 15, 2006	2711
109–397	To designate the facility of the United States Postal Service located at 167 East 124th Street in New York, New York, as the ''Tito Puente Post Office Building''.	Dec. 18, 2006	2722
109–398	To designate the facility of the United States Postal Service located at 8135 Forest Lane in Dallas, Texas, as the ''Dr. Robert E. Price Post Office Building''.	Dec. 18, 2006	2723
109–399	To designate the facility of the United States Postal Service located at 200 Gateway Drive in Lincoln, California, as the ''Beverly J. Wilson Post Office Building''.	Dec. 18, 2006	2724
109–400	To designate the facility of the United States Postal Service located at 1213 East Houston Street in Cleveland, Texas, as the ''Lance Corporal Robert A. Martinez Post Office Building''.	Dec. 18, 2006	2725

Public Law	Title	Approved	120 Stat.
109–401	To exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.	Dec. 18, 2006	2726
109–402	To designate the facility of the United States Postal Service located at 101 Palafox Place in Pensacola, Florida, as the ''Vincent J. Whibbs, Sr. Post Office Building''.	Dec. 18, 2006	2754
109–403	To designate the facility of the United States Postal Service located at 1501 South Cherrybell Avenue in Tucson, Arizona, as the ''Morris K. 'Mo' Udall Post Office Building''.	Dec. 18, 2006	2755
109–404	To designate the facility of the United States Postal Service located at 29–50 Union Street in Flushing, New York, as the ''Dr. Leonard Price Stavisky Post Office''.	Dec. 18, 2006	2756
109–405	To designate the facility of the United States Postal Service located at 10240 Roosevelt Road in Westchester, Illinois, as the ''John J. Sinde Post Office Building''.	Dec. 18, 2006	2757
109–406	To designate the facility of the United States Postal Service located at 415 South 5th Avenue in Maywood, Illinois, as the ''Wallace W. Sykes Post Office Building''.	Dec. 18, 2006	2758
109–407	To designate the facility of the United States Postal Service located at 307 West Wheat Street in Woodville, Texas, as the ''Chuck Fortenberry Post Office Building''.	Dec. 18, 2006	2759
109–408	To designate the facility of the United States Postal Service located at 200 Lawyers Road, NW in Vienna, Virginia, as the ''Captain Christopher P. Petty and Major William F. Hecker, III Post Office Building''.	Dec. 18, 2006	2760
109–409	To designate the facility of the United States Postal Service located at 216 Oak Street in Farmington, Minnesota, as the ''Hamilton H. Judson Post Office''.	Dec. 18, 2006	2761
109–410	To authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc.	Dec. 18, 2006	2762
109–411	To designate the facility of the United States Postal Service located at 6110 East 51st Place in Tulsa, Oklahoma, as the ''Dewey F. Bartlett Post Office''.	Dec. 18, 2006	2763
109–412	To name the Armed Forces Readiness Center in Great Falls, Montana, in honor of Captain William Wylie Galt, a recipient of the Congressional Medal of Honor.	Dec. 18, 2006	2764
109–413	To designate the facility of the United States Postal Service located at 103 East Thompson Street in Thomaston, Georgia, as the ''Sergeant First Class Robert Lee 'Bobby' Hollar, Jr. Post Office Building''.	Dec. 18, 2006	2765
109–414	To designate the outpatient clinic of the Department of Veterans Affairs located in Farmington, Missouri, as the ''Robert Silvey Department of Veterans Affairs Outpatient Clinic''.	Dec. 18, 2006	2766
109–415	Ryan White HIV/AIDS Treatment Modernization Act of 2006	Dec. 19, 2006	2767
109–416	Combating Autism Act of 2006	Dec. 19, 2006	2821
109–417	Pandemic and All-Hazards Preparedness Act	Dec. 19, 2006	2831
109–418	Captain John Smith Chesapeake National Historic Trail Designation Act	Dec. 19, 2006	2882
109–419	To direct the Secretary of the Interior to conduct a boundary study to evaluate the significance of the Colonel James Barrett Farm in the Commonwealth of Massachusetts and the suitability and feasibility of its inclusion in the National Park System as part of the Minute Man National Historical Park, and for other purposes.	Dec. 20, 2006	2884
109–420	To establish an interagency aerospace revitalization task force to develop a national strategy for aerospace workforce recruitment, training, and cultivation.	Dec. 20, 2006	2886
109–421	To provide for certain lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe	Dec. 20, 2006	2889
109–422	Sober Truth on Preventing Underage Drinking Act	Dec. 20, 2006	2890
109–423	Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005	Dec. 20, 2006	2900
109–424	Tsunami Warning and Education Act	Dec. 20, 2006	2902
109–425	To provide that attorneys employed by the Department of Justice shall be eligible for compensatory time for travel under section 5550b of title 5, United States Code.	Dec. 20, 2006	2910
109–426	To reauthorize permanently the use of penalty and franked mail in efforts relating to the location and recovery of missing children.	Dec. 20, 2006	2911
109–427	To direct the Joint Committee on the Library to accept the donation of a bust depicting Sojourner Truth and to display the bust in a suitable location in the Capitol.	Dec. 20, 2006	2912
109–428	Wool Suit Fabric Labeling Fairness and International Standards Conforming Act	Dec. 20, 2006	2913
109–429	River Raisin National Battlefield Study Act	Dec. 20, 2006	2916
109–430	National Integrated Drought Information System Act of 2006	Dec. 20, 2006	2918
109–431	To study and promote the use of energy efficient computer servers in the United States	Dec. 20, 2006	2920
109–432	Tax Relief and Health Care Act of 2006	Dec. 20, 2006	2922
109–433	To permit certain expenditures from the Leaking Underground Storage Tank Trust Fund	Dec. 20, 2006	3196
109–434	To extend through December 31, 2008, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.	Dec. 20, 2006	3197
109–435	Postal Accountability and Enhancement Act	Dec. 20, 2006	3198
109–436	Michigan Lighthouse and Maritime Heritage Act	Dec. 20, 2006	3264
109–437	Stolen Valor Act of 2005	Dec. 20, 2006	3266
109–438	Export-Import Bank Reauthorization Act of 2006	Dec. 20, 2006	3268
109–439	Religious Liberty and Charitable Donation Clarification Act of 2006	Dec. 20, 2006	3285
109–440	Iraq Reconstruction Accountability Act of 2006	Dec. 20, 2006	3286
109–441	To provide for the preservation of the historic confinement sites where Japanese Americans were detained during World War II, and for other purposes.	Dec. 21, 2006	3288
109–442	Lifespan Respite Care Act of 2006	Dec. 21, 2006	3291
109–443	National Transportation Safety Board Reauthorization Act of 2006	Dec. 21, 2006	3297
109–444	Veterans Programs Extension Act of 2006	Dec. 21, 2006	3304
109–445	Fallen Firefighters Assistance Tax Clarification Act of 2006	Dec. 21, 2006	3317
109–446	Palestinian Anti-Terrorism Act of 2006	Dec. 21, 2006	3318
109–447	Appointing the day for the convening of the first session of the One Hundred Tenth Congress	Dec. 22, 2006	3327
109–448	United States-Mexico Transboundary Aquifer Assessment Act	Dec. 22, 2006	3328
109–449	Marine Debris Research, Prevention, and Reduction Act	Dec. 22, 2006	3333
109–450	Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act	Dec. 22, 2006	3341
109–451	Rural Water Supply Act of 2006	Dec. 22, 2006	3345
109–452	Musconetcong Wild and Scenic Rivers Act	Dec. 22, 2006	3363
109–453	National Historic Preservation Act Amendments Act of 2006	Dec. 22, 2006	3367
109–454	City of Yuma Improvement Act	Dec. 22, 2006	3369

Public Law	Title	Approved	120 Stat.
109–455	Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006.	Dec. 22, 2006	3372
109–456	Democratic Republic of the Congo Relief, Security, and Democracy Promotion Act of 2006	Dec. 22, 2006	3384
109–457	Eugene Land Conveyance Act	Dec. 22, 2006	3392
109–458	Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006	Dec. 22, 2006	3394
109–459	Call Home Act of 2006	Dec. 22, 2006	3399
109–460	To amend the National Dam Safety Program Act to reauthorize the national dam safety program, and for other purposes.	Dec. 22, 2006	3401
109–461	Veterans Benefits, Health Care, and Information Technology Act of 2006	Dec. 22, 2006	3403
109–462	Dietary Supplement and Nonprescription Drug Consumer Protection Act	Dec. 22, 2006	3469
109–463	Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006.	Dec. 22, 2006	3477
109–464	To amend title 18, United States Code, to prohibit disruptions of funerals of members or former members of the Armed Forces.	Dec. 22, 2006	3480
109–465	Social Security Trust Funds Restoration Act of 2006	Dec. 22, 2006	3482
109–466	To clarify certain land use in Jefferson County, Colorado	Dec. 22, 2006	3484
109–467	To amend the Farm Security and Rural Investment Act of 2002 to extend a suspension of limitation on the period for which certain borrowers are eligible for guaranteed assistance.	Dec. 22, 2006	3485
109–468	Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006	Dec. 29, 2006	3486
109–469	Office of National Drug Control Policy Reauthorization Act of 2006	Dec. 29, 2006	3502
109–470	Holloman Air Force Base Land Exchange Act	Jan. 11, 2007	3550
109–471	Water Resources Research Act Amendments of 2006	Jan. 11, 2007	3552
109–472	Department of State Authorities Act of 2006	Jan. 11, 2007	3554
109–473	To make a conforming amendment to the Federal Deposit Insurance Act with respect to examinations of certain insured depository institutions, and for other purposes.	Jan. 11, 2007	3561
109–474	Pine Springs Land Exchange Act	Jan. 12, 2007	3562
109–475	Gynecologic Cancer Education and Awareness Act of 2005	Jan. 12, 2007	3565
109–476	Telephone Records and Privacy Protection Act of 2006	Jan. 12, 2007	3568
109–477	Physicians for Underserved Areas Act	Jan. 12, 2007	3572
109–478	Railroad Retirement Disability Earnings Act	Jan. 12, 2007	3573
109–479	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006	Jan. 12, 2007	3575
109–480	Belarus Democracy Reauthorization Act of 2006	Jan. 12, 2007	3666
109–481	Geneva Distinctive Emblems Protection Act of 2006	Jan. 12, 2007	3673
109–482	National Institutes of Health Reform Act of 2006	Jan. 15, 2007	3675

Federal Register

Wednesday,
January 31, 2007

Part III

Securities and Exchange Commission

Self-Regulatory Organizations—Proposed Rule Changes: National Association of Securities Dealers, Inc.; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55158 ; File Nos. SR–NASD–2003–158; SR–NASD–2004–011]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 To Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 To Amend NASD Arbitration Rules for Industry Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto

January 24, 2007.

I. Introduction

The National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes to amend the NASD Code of Arbitration Procedure in connection with rules applicable to customer disputes (''Customer Code'') and to industry disputes (''Industry Code'') on October 15, 2003 and January 16, 2004, respectively, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] Amendments 1, 2, 3, and 4 to the Customer Code were filed with the Commission on January 3, January 19, April 8, and June 10, 2005, respectively. Amendments 1, 2, 3, and 4 to the Industry Code were filed with the Commission on January 3, February 26, April 8, and June 10, 2005, respectively. The Customer Code and Amendments 1, 2, 3, and 4 thereto (''Customer Code Notice'') and the Industry Code and Amendments 1, 2, 3, and 4 thereto (''Industry Code Notice'') were published for comment on June 23, 2005.[3] The Commission received 51 comments[4] in response to the Customer Code Notice and one comment[5] in response to the Industry Code Notice, all of which are available on the Commission's Internet Web site at (*http://www.sec.gov/rules/sro.shtml*). On May 4, 2006, NASD filed Amendments 5 to the Customer Code and to the Industry Code. The Commission received 125 comments following NASD's posting of Amendment 5 to the Customer Code on its Web site.[6] The Commission did not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Customer Disputes, Securities Exchange Act Rel. No. 51856 (Jun. 15, 2005), 70 FR 36442 (Jun. 23, 2005); Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Industry Disputes, Securities Exchange Act Rel. No. 51857 (Jun. 15, 2005), 70 FR 36430 (Jun. 23, 2005).

[4] *See* Letter from Norman B. Arnoff, Esq., dated Aug. 12, 2004 (''Arnoff''); Letter from Daniel A. Ball, Esq., Selzer Gurvitch Rabin & Obecny, Chtd., dated Jul. 14, 2005; Letter from Gail E. Boliver, Esq., Boliver Law Firm, dated Jul. 13, 2005 (''Boliver''); Letter from Timothy A. Canning, Esq., Law Offices of Timothy A. Canning, dated Jul. 14, 2005 (''Canning''); Letter from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated Jul. 13, 2005 (''Caruso''); Letter from Rebecca C. Davis, Esq., Tate, Lazarini & Beall, PLC, dated Jul. 14, 2005 (''R. Davis''); Letter from James J. Eccleston, Esq., Shaheen, Novoselsky, Staat, Filipowski & Eccleston, P.C., dated Jul. 14, 2005 (''Eccleston''); Letter from Barry D. Estell, Esq., dated Jul. 14, 2005 (''Estell''); Letter from Jonathan W. Evans, Esq., Jonathan W. Evans & Associates, dated Jul. 14, 2005 (''Evans''); Letter from Martin L. Feinberg, Esq., dated Jul. 13, 2005 (''Feinberg''); Letter from Jeffrey A. Feldman, Esq., dated Jul. 11, 2005 (''Feldman''); Letter from Stuart Finer, Esq., dated Jul. 15, 2005 (''Finer''); Letter from William A. Fynes, dated Jul. 13, 2005 (''Fynes''); Letter from W. Scott Greco, Esq., Greco and Greco, P.C., dated Jun. 24, 2005 (''Greco''); Letter from Scott C. Ilgenfritz, Esq., Johnson, Pope, Bokor, Ruppel, and Burns, LLP, dated Jul. 14, 2005 (''Ilgenfritz''); Letter from James S. Jones, Esq., dated Mar. 30, 2006 (''Jones''); Letter from Wayne M. Josel, Esq., Kaufmann, Feiner, Yamin, Gilden, & Robbins LLP, dated Jul. 13, 2005 (''Josel''); Letter from Spiro T. Komninos, Esq., Komninos, Fowkes & Farrugia Law Group, LLC, dated Jul. 14, 2005 (''Komninos''); Letter from Stephen Krosschell, Goodman & Nekvasil, dated Jul. 14, 2005 (''Krosschell''); Letter from Cary S. Lapidus, Esq., Law Offices of Cary S. Lapidus, dated Jul. 14, 2005 (''Lapidus''); Letter from Richard M. Layne, Esq., Layne & Lewis LLP, dated Jul. 12, 2005 (''Layne''); Letter from Royal Lea, Esq., Bingham & Lea, P.C., dated Jul. 14, 2005 (''Lea''); Letter from Dale Ledbetter, Adorno & Yoss, dated Jul. 14, 2005 (''Ledbetter''); Letter from Prof. Seth E. Lipner, Zicklin School of Business, Member/Deutsch & Lipner, dated Jul. 13, 2005 (''Lipner''); Letter from Jorge A. Lopez, Esq., dated Jul. 21, 2005 (''Lopez''); Letter from Angela H. Magary, Brickley, Sears & Sorett, dated Jul. 14, 2005 (''Magary''); Letter from Stuart D. Meissner, Esq., Law Offices of Stuart D. Meissner LLC., dated Jul. 12, 2005 (''Meissner''); Letter from John J. Miller, Esq., Law Office of John J. Miller, P.C., dated Jul. 12, 2005 (''Miller''); Letter from Jill I. Gross and Barbara Black, Directors, Pace Investor Rights Project, dated Jul. 14, 2005 (''PACE''); Letter from J. Boyd Page, Esq. and Samuel T. Brannan, Esq., Page Perry, LLC, dated Jul. 14, 2005 (''Page''); Letter from Rosemary J. Shockman, President, and Robert S. Banks, Jr., Executive Vice President, President Elect, Public Investors Arbitration Bar Association, dated Jul. 13, 2005 (''PIABA''); Letter from Rosemary Shockman, President, Public Investors Arbitration Bar Association, dated Aug. 2, 2005 (''PIABA #2''); Letter from Herbert E. Pounds, Herbert E. Pounds, Jr., P.C., dated Jul. 14, 2005 (''Pounds''); Letter from M. Clay Ragsdale, Esq., Ragsdale LLC, dated Jul. 14, 2005 (''Ragsdale''); Letter from Howard M. Rosenfield, Esq., dated Jul. 14, 2005 (''Rosenfield''); Letter from Richard P. Ryder, President, Securities Arbitration Commentator, Inc., dated Jul. 21, 2005 (''Ryder''); Letter from J. Pat Sadler, dated Jul. 13, 2005 (''Sadler''); Letter from Laurence S. Schultz, Esq., Driggers, Schultz & Herbst PC, dated Jun. 8, 2005 (''Schultz''); Letter from Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, dated Jul. 14, 2005 (''Schultz #2''); Letter from Scott R. Shewan, Esq., Born, Pape & Shewan LLP, dated Jul. 14, 2005 (''Shewan''); Letter from Edward G. Turan, Esq., Chair, Arbitration and Litigation Committee, Securities Industry Association, dated Jul. 13, 2005 (''SIA''); Letter from Jeff Sonn, Esq., Sonn & Erez, dated Jul. 14, 2005 (''Sonn''); Letter from Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated Jul. 14, 2005 (''Speyer''); Letter from Arnold Y. Steinberg, P.C., dated Jul. 14, 2005 (''Steinberg''); Letter from Steven A. Stolle, Esq., Rohde & Van Kampen PLLC, dated Jul. 8, 2005 (''Stolle''); Letter from Andrew Stoltmann, Stoltmann Law Offices, P.C., dated Jul. 14, 2005 (''Stoltmann''); Letter from Mark A. Tepper, Esq., Mark A. Tepper, P.A., dated Jul. 14, 2005 (''Tepper''); Letter from Richard A. Karoly, Vice President and Senior Corporate Counsel, Schwab & Co., Inc., dated Jul. 14, 2005 (''Schwab''); Letter from John E. Sutherland, Esq., Brickley, Sears & Sorett, dated Jul. 14, 2005 (''Sutherland''); Letter from Steele T. Williams, P.A., dated Jul. 15, 2005 (''Williams''); Letter from Michael J. Willner, Esq., Miller Faucher and Cafferty LLP, dated Jul. 16, 2005 (''Willner''); Letter from A. Daniel Woska, Woska & Hayes, LLP, dated Jun. 15, 2005 (''Woska'').

[5] Letter from Marvin Elster, dated Jun. 30, 2005 (''Elster'').

[6] Letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated May 16, 2006 (''Aidikoff''); Letter from Ronald M. Amato, Shaheen, Novoselsky, Staat, Filipowski & Eccleston, P.C., dated May 30, 2006 (''Amato''); Letter from Sarah G. Anderson, dated May 15, 2006 (''Anderson''); Letter from Anonymous, dated May 15, 2006 (''Anonymous''); Letter from Robert W. Anthony, dated May 16, 2006 (''Anthony''); Letter from John G. Appel, Jr., dated May 18, 2006 (''Appel''); Letter from Kurt Arbuckle, Kurt Arbuckle, P.C., dated May 22, 2006 (''Arbuckle''); Letter from C.W. Austin, Jr., dated May 15, 2006 (''Austin''); Letter from Daniel E. Bacine, Barrack, Rodos & Bacine, dated May 15, 2006 (''Bacine''); Letter from Bruce E. Baldinger, Levine & Baldinger, LLC, dated May 16, 2006 (''Baldinger''); Letter from Scott I. Batterman, Esq., Clay Chapman Crumpton Iwamura & Pulice, dated May 15, 2006 (''Batterman''); Letter from Scot Bernstein, Law Offices of Scot Bernstein, dated May 26, 2006 (''Bernstein''); Letter from Brian P. Biggins, Esq., Brian P. Biggins & Associates Co., L.P.A., dated May 15, 2006 (''Biggins''); Letter from Rob Bleecher, Esq., dated May 15, 2006 (''Bleecher''); Letter from Gail E. Boliver, Boliver Law Firm, dated May 15, 2006 (''Boliver #2''); Letter from Sam Brannan, Page Perry LLC, dated May 16, 2006 (''Brannan''); Letter from Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C, dated May 15, 2006 (''Buchwalter''); Letter from John S. Burke, Higgins & Burke, P.C, dated May 15, 2006 (''J. Burke''); Letter from Thomas F. Burke, May 22, 2006 (''T. Burke''); Letter from Tim Canning, dated May 15, 2006 (''Canning #2''); Letter from Carl J. Carlson, Carlson & Dennett, P.S., dated May 12, 2006 (''Carlson''); Letter from Jeremy B. Chalmers, Mars, Mars and Chalmers, dated May 16, 2006 (''Chalmers''); Letter from Roger F. Claxton, Claxton & Hill, dated May 15, 2006 (''Claxton''); Letter from Erwin Cohn, Cohn & Cohn, dated May 16, 2006 (''Cohn''); Letter from Patrick A. Davis, P.A, dated May 16, 2006 (''P. Davis''); Letter from William F. Davis, dated May 15, 2006 (''W. Davis''); Letter from Adam Doner, dated May 16, 2006 (''Doner''); Letter from James J. Eccleston, Shaheen, Novoselsky, Staat, Filipowski & Eccleston, dated May 16, 2006 (''Eccleston #2''); Letter from Richard Elliott, dated May 16, 2006 (''Elliot''); Letter from Barry D. Estell, dated May 15, 2006 (''Estell #2''); Letter from Barry D. Estell, Esq., dated May 16, 2006 (''Estell #3'');

Letter from Jonathan W. Evans, Esq., Jonathan W. Evans & Associates, dated May 15, 2006 (''Evans #2''); Letter from Allan J. Fedor, Esq., dated May 22, 2006 (''Fedor''); Letter from Martin L. Feinberg, dated May 15, 2006 (''Feinberg #2''); Letter from Teresa M. Gillis, Esq., Shustak & Partners, dated May 16, 2006 (''Gillis''); Letter from Robert W. Goehring, Esq., dated May 15, 2006 (''Goehring''); Letter from Eliot Goldstein, Esq., Law Offices of Eliot Goldstein LLP, dated May 16, 2006 (''Goldstein''); Letter from Jan Graham, Graham Law Offices, dated May 15, 2006 (''Graham''); Letter from W. Scott Greco, Greco & Greco, P.C., dated May 15, 2006 (''Greco #2''); Letter from Brian M. Greenman, Esq., dated May 15, 2006 (''Greenman''); Letter from Randall R. Heiner, Heiner Law Offices, dated May 15, 2006 (''Heiner''); Letter from Eric Hewko, dated May 20, 2006 (''Hewko''); Letter from Charles C. Hunter, Esq., Woska & Hayes, LLP, dated May 23, 2006 (''Hunter''); Letter from Scott C. Ilgenfritz, dated May 15, 2006 (''Ilgenfritz #2''); Letter from Wayne M. Josel, Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, dated May 15, 2006 (''Josel #2''); Letter from Jeffrey B. Kaplan, Dimond Kaplan Rothstein, P.A., dated May 16, 2006 (''Kaplan''); Letter from James D. Keeney, dated May 15, 2006 (''Keeney''); Letter from T. Michael Kennedy, dated May 15, 2006 (''Kennedy''); Letter from Joseph C. Korsak, Esq., Law Office of Joseph C. Korsak, dated May 15, 2006 (''Korsak''); Letter from Richard M. Layne, Layne & Lewis LLP, dated May 13, 2006 (''Layne #2''); Letter from Royal Lea, Bingham & Lea, P.C., dated May 16, 2006 (''Lea #2''); Letter from Dale Ledbetter, Adorno & Yoss, dated May 15, 2006 (''Ledbetter #2''); Letter from Prof. Seth E. Lipner, Zicklin School of Business, Member/Deutsch & Lipner, dated May 15, 2006 (''Lipner #2''); Letter from Jorge A. Lopez, Esq., Jorge A. Lopez, P.A., dated May 15, 2006 (''Lopez #2''); Letter from Michael B. Lynch, Esq., Law Offices of James Richard Hooper, PA, dated May 16, 2006 (''Lynch''); Letter from Daniel I. MacIntyre, Esq., Shapiro Fussell, dated May 16, 2006 (''MacIntyre''); Letter from Angela H. Magary, Brickley, Sears & Sorett, dated May 31, 2006 (''Magary 2''); Letter from Jenice L. Malecki, Esq., Malecki Law, dated May 16, 2006 (''Malecki''); Letter from Emerson R. Marks, Jr., Emerson R. Marks, Jr., P.L.C., dated May 15, 2006 (''Marks''); Letter from Thomas D. Mauriello, Law Offices of Thomas D. Mauriello, dated May 15, 2006 (''Mauriello''); Letter from Steven M. McCauley, Esq., Charles C. Mihalek, P.S.C, dated May 16, 2006 (''McCauley''); Letter from C. David Mee, Esq., Ajamie LLP, dated May 15, 2006 (''Mee''); Letter from Stuart Meissner, Esq., The Law Offices of Stuart D. Meissner LLC., dated May 15, 2006 (''Meissner #2''); Letter from David P. Meyer, Esq., David P. Meyer Associates, Co. LPA, dated May 16, 2006 (''D. Meyer''); Letter from Stephen P. Meyer, Esq., Meyer & Ford, dated May 16, 2006 (''S. Meyer''); Letter from John Miller, Law Office of John J. Miller, P.C., dated May 15, 2006 (''Miller #2''); Letter from Stephen David Murakami, Esq., Hooper & Weiss, LLC, dated May 16, 2006 (''Murakami''); Letter from Bryan Lantagne, Director, Massachusetts Securities Division, Chair, NASAA Broker-Dealer Arbitration Project Group, dated Jul. 19, 2006 (''NASAA''); Letter from Mitchell Ostwald, Law Office of Mitchell Ostwald, dated May 16, 2006 (''Ostwald''); Letter from Jill Gross and Barbara Black, Directors, Pace Investor Rights Project, Jun. 6, 2006 (''PACE 2''); Letter from Boyd Page, Page Perry LLC, dated May 16, 2006 (''Page #2''); Steve Parker, Page Perry, LLC, dated May 16, 2006 (''Parker''); Letter from Henry I. Pass, Esq., The Law Offices of Henry Ian Pass, dated May 15, 2006 (''Pass''); Letter from Joseph C. Peiffer, Correro Fishman Haygood Phelps, dated May 15, 2006 (''Peiffer''); Letter from Susan N. Perkins, dated May 16, 2006 (''Perkins''); Letter from Steven B. Caruso, President-Elect, Public Investors Arbitration Bar Association, dated May 16, 2006 (''PIABA #3''); Letter from Robert S. Banks, Jr., President, Public Investors Arbitration Bar Association, dated May 26, 2006 (''PIABA 4''); Letter from Robert C. Port, Esq., Cohen Goldstein Port & Gottlieb, LLP, dated May 20, 2006 (''Port''); Letter from Herbert Pounds, Herbert E. Pounds, Jr., P.C., dated May 15, 2006 (''Pounds #2''); Letter from Thomas Quarles, Jr., Esq., Devine, Millimet & Branch, P.A., dated May 16, 2006 (''Quarles''); Letter from Adam T. Rabin, Esq., Dimond Kaplan & Rothstein, P.A, dated May 16, 2006 (''Rabin''); Letter from Kirk Reasonover, Esq., Smith & Fawer, L.L.C., dated May 16, 2006 (''Reasonover''); Letter from Robert H. Rex, Esq., Dickenson Murphy Rex & Sloan, dated May 15, 2006 (''Rex''); Letter from David E. Robbins, Kaufmann, Feiner, Yamin, Gildin & Robbins LLP, dated May 29, 2006 (''Robbins''); Letter from J. Pat Sadler, dated May 16, 2006 (''Sadler #2''); Letter from Jay H. Salamon, Hermann Cahn & Schneider LLP, dated May 15, 2006 (''Salamon''); Letter from Robert K. Savage, Esq., The Savage Law Firm, P.A., dated May 16, 2006 (''Savage''); Letter from Martin Seiler, dated May 15, 2006 (''Seiler''); Letter from Steven Sherman, Law Offices of Steven M. Sherman, dated May 15, 2006 (''Sherman''); Letter from Scott R. Shewan, Born, Pape & Shewan LLP, dated May 15, 2006 (''Shewan #2''); Letter from Rosemary J. Shockman, Shockman Law Office, dated May 16, 2006 (''Shockman''); Letter from Brian N. Smiley, Gard Smiley & Bishop LLP, dated May 15, 2006 (''Smiley''); Letter from James A. Sigler, dated May 15, 2006 (''Sigler''); Letter from Scott Silver, Esq., Blum & Silver, LLP, dated May 17, 2006 (''Silver''); Letter from Donald A.W. Smith, Esq., dated May 17, 2006 (''Smith''); Letter from Jeff Sonn, dated May 22, 2006 (''Sonn #2''); Letter from Ben Stewart, dated May 16, 2006 (''Stewart''); Letter from Tracy Pride Stoneman, Tracy Pride Stoneman, P.C., dated May 16, 2006 (''Stoneman''); Letter from Mark A. Tepper, Mark A. Tepper P.A., dated May 15, 2006 (''Tepper #2''); Letter from William P. Torngren, dated May 15, 2006 (''Torngren''); Letter from Al Van Kampen, Rohde & Van Kampen PLLC, dated May 15, 2006 (''Van Kampen''); Letter from James V. Weixel, Jr., Weixel Law Office, dated May 15, 2006 (''Weixel''); Letter from Michael J. Willner, Esq., Miller Faucher and Cafferty LLP, dated May 15, 2006 (''Willner #2''); Letter from A. Daniel Woska, Esq., Woska & Hayes, LLP, dated May 12, 2006 (''Woska #2''); Letter from Todd Young, dated May 15, 2006 (''T. Young''); Letter from William B. Young, Jr., Hooper Weiss, LLC, dated Florida, May 18, 2006 (''W. Young''); Letter from Elizabeth Zeck, Esq., Willoughby & Hoefer, P.A., dated May 16, 2006 (''Zeck''). In addition, the Commission received 15 form letters from individuals that were substantially similar (''Letter Type A'') and three other form letters (''Letter Type B'').

receive any comments in connection with Amendment 5 to the Industry Code. NASD filed Amendments 6 to the Customer Code and Industry Code on July 21, 2006 and Amendments 7 to Customer Code and Industry Code on August 15, 2006. NASD requested accelerated approval in connection with Amendments 5, 6, and 7.[7] This Order approves the Customer Code and Industry Code, as amended, accelerating approval of Amendments 5, 6, and 7 thereto.

[7] Because the Customer Code and Industry Code, as amended by Amendments 1, 2, 3, and 4 to each code, already have been published for comment, the request for accelerated approval applies only to Amendments 5, 6, and 7 to each code.

II. Purpose for and Description of the Proposal

A. Background

NASD proposed to amend the NASD Code of Arbitration Procedure (''current Code'') to simplify the rule language into plain English, reorganize the rules, codify certain practices, and implement several substantive changes. The current Code would be reorganized into three separate procedural codes: The NASD Code of Arbitration Procedure for Customer Disputes; the NASD Code of Arbitration Procedure for Industry Disputes; and the NASD Code of Mediation Procedure.[8] The three new codes are intended to replace the current Code in its entirety.

This approval order pertains to the Customer Code and Industry Code, the final texts of which are available on the NASD Web site at *http://www.nasd.com/web/groups/med_arb/documents/mediation_arbitration/nasdw_018335.pdf.* Charts comparing the current Code to the Customer Code and Industry Code are also available at the URL above. Descriptions of the proposed rule changes, as amended by Amendments 1, 2, 3, and 4, are contained in the Customer Code Notice and Industry Code Notice [9] and are also available at NASD's principal office and at the Commission's Public Reference Room.

B. Purpose and Description

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations (''SROs'') to use ''plain English'' in disclosure documents and other materials used by investors. Because the current Code is used by investors, including investors who appear *pro se* in the NASD forum, NASD undertook to rewrite the current Code in ''plain English.'' Over time, the goals of the plain English initiative expanded beyond simplifying the language and sentence structure of the rules in the Code to include:

- Reorganizing the current Code in a more logical, user-friendly way, including creating separate codes for

[8] The Mediation Code was filed separately with the Commission as SR–NASD–2004–013. The Commission approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006. *See* Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, to Amend NASD Rules for Mediation Proceedings, Securities Exchange Act Rel. No. 52705 (Oct. 31, 2005), 70 FR 67525 (Nov. 7, 2005) (SR–NASD–2004–013).

[9] *See supra* n. 3.

customer and industry arbitrations, and for mediations; and

• Implementing several substantive rule changes, including codifying several common practices, to provide more guidance to parties and arbitrators, and to streamline the administration of arbitrations in the NASD forum.

1. Plain English

When it launched its ''plain English'' initiative in 1998, the SEC published a ''Plain English Handbook'' to provide guidance to issuers and SROs in drafting materials intended to be used by investors. The SEC's Plain English Handbook recommended using shorter, more common words; breaking long rules into shorter ones; using the active voice whenever possible; and putting lists into easy-to-read formatting, such as bullet points.

NASD stated that, in revising the current Code, it implemented these guidelines wherever possible. Throughout the Customer and Industry Codes, NASD simplified language and eliminated unnecessarily legalistic or arcane terminology. Long rules, such as current Rule 10308 (Selection of Arbitrators) and current Rule 10321 (General Provisions Governing Pre-Hearing Proceedings), have been broken into several shorter rules.[10] Where appropriate, NASD has presented lists in bullet point format and used active verbs.

The Customer and Industry Codes also contain new definitions rules (Proposed Rules 12100 and 13100, respectively) that define commonly used terms applicable throughout the current Code.[11] NASD believes that a comprehensive definitions rule will make the Customer and Industry Codes easier to understand and to use and will help eliminate confusion about the meaning and scope of frequently used terms. It will also allow NASD to use shorter phrases, or single words, in place of longer phrases in its rules.[12] This makes rules easier to read and understand, without changing the meaning of the current Code.

2. Reorganization

One of the most frequent criticisms of the current Code is that it is poorly organized. Parties, particularly infrequent users of the forum, have difficulty finding the rules they are looking for, because the organization of the rules is not clear. The confusion is compounded because certain rules in the current Code apply only to customer cases, some apply only to industry cases, and others apply to both types of disputes. In addition, the current Code contains the NASD mediation rules, even though many matters are submitted directly to mediation, and do not arise out of an arbitration proceeding.

To address these concerns, NASD proposed to divide the current Code into three separate Codes: The Customer Code, the Industry Code, and the Mediation Code.[13] Although many of the rules in the Customer and Industry Codes will be identical, NASD believes that maintaining separate arbitration codes will eliminate confusion regarding which rules are applicable to which types of disputes. NASD intends to maintain electronic versions of each code on its Web site, *http://www.nasd.com*, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each code will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. In particular, the Customer Code will use the Rule 12000 series, and the Industry Code will use the Rule 13000 series.[14]

To make it easier to find specific rules, the Customer Code will be divided into the following nine parts, which are intended to approximate the chronological order of a typical arbitration:

• Part I (Rule 12100 *et seq.*) contains definitions, as well as other rules relating to the organization and authority of the forum;

• Part II (Rule 12200 *et seq.*) contains general arbitration rules, including what claims are subject to arbitration in the NASD forum;

• Part III (Rule 12300 *et seq.*) contains rules explaining how to initiate a claim, how to respond to a claim, how to amend claims, and when claims may be combined and separated;

• Part IV (12400 *et seq.*) contains rules relating to the appointment, authority and removal of arbitrators;

• Part V (Rules 12500 *et seq.*) contains rules governing the prehearing process, including proposed new rules relating to motions and discovery;

• Part VI (Rules 12600 *et seq.*) contains rules relating to hearings;

• Part VII (Rules 12700 *et seq.*) contains rules relating to the dismissal, withdrawal, or settlement of claims;

• Part VIII (Rules 12800 *et seq.*) contains rules relating to simplified (small cases) arbitrations and default proceedings; and

• Part IX (Rules 12900 *et seq.*) contains rules relating to fees and awards. The Industry Code will use the same divisions, numbered under the 13000 series.

3. Description of Other Changes

In addition to simplifying and reorganizing the current Code, the Customer and Industry Codes include other changes that NASD states are intended to make the NASD arbitration process as simple, uniform, and transparent as possible. Some of these changes codify or clarify current NASD practice. Others are intended to provide guidance to parties, resolve open questions, or streamline or standardize the administration of NASD arbitrations.

4. Relationship Between Proposed Customer Code and Industry Codes

Although the Customer Code and Industry Code are similarly organized and numbered, there are two main differences. First, some rules in the current Code contain different provisions for customer and industry disputes.[15] For such rules, the Customer Code contains only the provisions that relate to customer disputes, and the Industry Code contains only the provisions that relate to industry cases.

Second, some rules in the current Code apply only to industry disputes. These rules are included in the Industry Code but have no counterpart in the Customer Code.[16] NASD has not proposed any substantive changes to

[10] For example, Rule 10308 of the current Code is contained in Proposed Rules 12400–12406 for the Customer Code and 13400–13406 for the Industry Code.

[11] Some rules in the current Code, such as Rule 10308, contain definitions applicable to that rule only. However, there is no general definitions rule that applies to the entire current Code.

[12] For example, the phrase ''dispute, claim, or controversy'' has been replaced by the word ''dispute,'' which has been defined in Proposed Rules 12100 and 13100, respectively, to mean the longer phrase.

[13] As noted above, the Commission approved the Mediation Code in October 2005. *See supra* note 8.

[14] Both of these series are currently unused. The Mediation Code uses the Rule 14000 series. NASD will reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

[15] *E.g.,* current Rule 10308 (Selection of Arbitrators) requires that three-arbitrator panels in customer cases consist of a majority of public arbitrators but provides that the composition of the panel in industry disputes depends on the nature of the claim.

[16] *See, e.g.,* Rules 10210 and 10211 of the current Code, governing statutory employment discrimination claims, and Rule 10335 of the current Code, governing injunctive relief.

those parts of the current Code that are unique to industry cases.

III. Summary of Comments on the Customer Code as Amended by Amendments 1, 2, 3, and 4 Thereto and Description of Amendments 5, 6, and 7 to the Customer Code [17]

As noted above, in Amendment 5 to the Customer Code, NASD responded to comments on the Customer Code Notice,[18] proposed additional rule changes, most of which were in response to comments, and requested accelerated approval of the Customer Code.[19] After NASD filed Amendment 5 with the Commission, the Commission received 125 additional comments. Many of the comments centered on: (1) NASD's request for accelerated approval; [20] (2) provisions of Proposed Rules 12506 (Document Production Lists) and 12514 (Exchange of Documents and Witness Lists Before Hearing), as published in the Customer Code Notice, that concern the production during discovery of documents within a party's ''control''; [21] and (3) Proposed Rule 12504 (Motions to Decide Claims Before a Hearing on the Merits), as amended by Amendment 5.[22] In response to these comments, NASD filed Amendment 6 to the Customer Code with the Commission on July 21, 2006, in which it withdrew Proposed Rule 12504 (Motions to Decide Claims Before a Hearing on the Merits) and all references thereto from the Customer Code.[23]

NASD filed Amendment 7 to the Customer Code with the Commission on August 15, 2006. In this amendment, NASD further responded to comments concerning Proposed Rules 12506 (Document Production Lists) and 12514 (Exchange of Documents and Witness Lists Before Hearing) by amending Proposed Rule 12508 (Objecting to Discovery; Waiver of Objection). In addition, NASD amended other proposed rules, provided additional clarification concerning certain NASD practices and rules, and responded to one comment submitted in response to Amendment 5 to the Customer Code.

A summary of comments received in connection with the Customer Code Notice and NASD's responses, as well as a description of the amendments to proposed rule text made in Amendments 5, 6, and 7 are included below. References to Amendments 5, 6, or 7 in this Section 0 refer to Amendments 5, 6, or 7 to the Customer Code only, unless otherwise specified. For the text of Amendments 5, 6, and 7, please see the NASD Web site at *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_009306&=802.*

A. General Comments

In the Customer Code Notice, the Commission solicited comment on the differences between provisions in the Customer Code and their counterparts in the Uniform Code of Arbitration (''Uniform Code'') developed by the Securities Industry Conference on Arbitration (''SICA'').[24] One commenter favored the Uniform Code provisions over those of the Customer Code, stating that because NASD's arbitration program operates from a position of dominance, it has abandoned the premise of uniformity under which SICA operates.[25]

In Amendment 5, NASD responded that it participates actively in SICA and values the input of SICA participants. In some instances, however, the nature and volume of NASD's caseload require NASD to adopt rules either in advance of other SROs or that differ from other SROs'. NASD also stated that to gather a wide range of ideas and information, it regularly discusses rule proposals with the same constituencies represented at SICA: Representatives of the investor and industry communities, as well as arbitrators and mediators.

B. Proposed Rule 12100—Definitions

1. Definitions Added in Amendment 5

As noted above, the Customer Code includes a comprehensive definitions section. Two commenters suggested defining the term ''customer'' to help clarify jurisdictional and standing issues related to arbitration.[26] One commenter also suggested defining the term ''pleadings'' to assist *pro se* claimants to understand which documents are required for their arbitration claims.[27] Another commenter suggested defining the term ''award'' to minimize the confusion concerning what type of ruling by the panel constitutes an award.[28] NASD proposed to define these terms in the Customer Code in Amendment 5.[29] As amended, Proposed Rule 12100 would define an ''award'' in paragraph (b) as ''a document stating the disposition of a case.'' Paragraph (i) would define a ''customer'' as not including a broker or dealer. NASD noted that the definition of ''customer'' would be the same as that found in the general definitions for NASD rules, Rule 0129(g). Paragraph (s) of the rule would define a ''pleading'' as ''a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies.''

2. Proposed Rule 12100(a)—Definition of Associated Person; Proposed Rule 12100(r)—Definition of Person Associated With a Member

Proposed Rules 12100(a) and 12100(r) provide that, for purposes of the Customer Code, an associated person includes a person formerly associated with a member. One commenter suggested that, consistent with NASD By-Laws,[30] the concept of a formerly associated person should be limited to persons who have been associated within two years.[31] This commenter asserted that when read in conjunction with Proposed Rule 12200 (concerning mandatory arbitration), these definitions would subject formerly associated persons to NASD Dispute Resolution's jurisdiction in perpetuity. In the

[17] Section III discusses Amendments 5, 6, and 7 to the Customer Code. Section IV, below, discusses Amendments 5, 6, and 7 to the Industry Code.

[18] *See supra* note 3.

[19] The request for accelerated approval applies to all amendments filed after the Customer Code Notice, which are Amendments 5, 6, and 7.

[20] *See, e.g.*, Aidikoff, Appel, Arbuckle, Austin, Baldinger, Baccine, Batterman, Bernstein, Biggins, Bleecher, Brannan, Buchwalter, T. Burke, Canning #2, Chalmers, Claxton, Cohn, P. Davis, Doner, Elliott, Evans #2, Feinberg #2, Gillis, Goldstein, Graham, Greco #2, Greenman, Hewko, Hunter, Kaplan, Keeney, Korsak, Lea #2, Levine, Lopez #2, Lynch, MacIntyre, Magary #2, Malecki, Marks, McCauley, Mee, Meissner #2, Meyer, S. Meyer, Miller #2, Murakami, Ostwald, Page #2, Parker, Pass, Peiffer, Perkins, PIABA #3, Port, Pounds #2, Quarles, Rabin, Reasonver, Robbins, Sadler, Salamon, Savage, Seiler, Sherman, Shewan #2, Shockman, Sigler, Silver, Smiley, Smith, Sonn #2, Stewart, Stoneman, Van Kampen, W. Young.

[21] *See, e.g.*, Eccleston #2, Fedor, Kaplan, Lipner #2, Page #2, Perkins, PIABA #4, Shockman, Smiley.

[22] *See e.g.*, Aidikoff, Brannan, Boliver #2, Carlson, Fedor, Kaufman, Lantagne, Lipner, PACE #2, Page #2, PIABA #3, PIABA #4, Robbins, Rothstein, Shockman, Smiley, Sonn #2, Tepper #2.

[23] Proposed Rule 12504 has been re-filed as a separate proposed rule change and published for public comment. *See* Securities Exchange Act Rel. No. 54360 (Aug. 24, 2006), 71 FR 51879 (Aug. 31, 2006) (SR–NASD–2006–088).

[24] SICA is a cooperative organization that is composed of public members, as well as representatives of the SROs and the Securities Industry Association. SICA works toward improving the dispute resolution process by considering current issues, case law, and policy in connection with arbitration, and amending the Uniform Code in light of those considerations when appropriate. SROs have often revised their own arbitration rules in accordance with changes in the Uniform Code.

[25] Ryder.

[26] PACE and Ryder.

[27] PACE.

[28] Ryder.

[29] As a result of these new definitions, the remaining definitions would be re-designated in alphabetical order.

[30] *See* NASD By-Laws, Art. V, Sec. 4.

[31] SIA.

commenter's view, no NASD by-laws or NASD Dispute Resolution rules permit lifelong jurisdiction.

In Amendment 5, NASD responded that the two-year retention of jurisdiction in Article V, Section 4 of NASD's By-Laws is for NASD regulatory purposes and does not apply to arbitrations. In the arbitration context, NASD maintains jurisdiction over a formerly associated person for events that occurred while the person was associated with a member firm (or related to the person's termination of employment with a member firm, in the case of industry disputes). NASD noted that such arbitrations would be subject to any applicable statutes of limitation, as well as the six-year eligibility rule under Proposed Rule 12206. NASD thus is not proposing to amend Proposed Rules 12100(a) and 12100(r).

3. Proposed Rule 12100(u)—Definition of Public Arbitrator; Proposed Rule 12100(p)—Definition of Non-Public Arbitrator

NASD proposed to define ''public arbitrator'' and ''non-public arbitrator'' in the Customer Code the same way as in Rules 10308(a)(5) and (a)(4), respectively, of the current Code. Twenty-three commenters expressed concern with the definitions of public arbitrator and non-public arbitrator.[32] As a preliminary matter, they urged NASD to change the term ''non-public arbitrator'' to ''industry arbitrator.'' In their view, the current terminology is not consistent with the goal of rewriting the Customer Code in plain English. They suggested that the term ''industry arbitrator'' would assist *pro se* parties or inexperienced attorneys with no background in arbitration.

In Amendment 5, NASD noted that it has used the term ''non-public arbitrator'' since the Commission approved the Neutral List Selection System (''NLSS'') in 1998.[33] NASD expressed the belief that users of its forum understand the term, and thus did not agree that the term should be changed.

Commenters also suggested several changes to the definition of ''public arbitrator'' and objected to the inclusion of a non-public arbitrator on three-person panels.[34] In Amendment 5, NASD responded that because it did not propose substantive amendments to these provisions in the Customer Code, those suggestions are outside the scope of the rule filing. The Commission notes that changes to the definition of ''public arbitrator'' are addressed in a separate rule filing.[35]

C. Proposed Rule 12102—National Arbitration and Mediation Committee

Proposed Rule 12102 includes the size and composition requirements of the National Arbitration and Mediation Committee (''NAMC''). One commenter noted that these requirements are not in the current Code.[36] NASD responded in Amendment 5 that Proposed Rule 12102 would codify the requirements of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.[37]

D. Proposed Rule 12103—Director of Dispute Resolution

Proposed Rule 12103 includes a delineation of the duties and responsibilities of the Director of Dispute Resolution with respect to the NAMC. One commenter noted that the proposed rule would change the Director's relationship with the NAMC.[38] Specifically, the current Code provides that the Director ''shall be directly responsible to the NAMC and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so.'' The Customer Code provides that the Director ''shall consult with the NAMC upon the NAMC's request.''

In Amendment 5, NASD noted that the proposed rule reflects current practice. Pursuant to Article V, Section 5.1 of the NASD Dispute Resolution By-Laws, the Director reports to the President of NASD Dispute Resolution and, ultimately as an officer, to the NASD Dispute Resolution Board. The Director meets with the NAMC, usually every quarter, and updates the Committee on the state of the arbitration forum. At this time, the Director receives feedback and suggestions on arbitration rules and procedures from NAMC.

Another commenter expressed concern regarding provisions in Proposed Rule 12103 that would give the Director the authority to delegate certain functions.[39] In this commenter's experience, arbitrators seek out the advice of NASD staff on certain issues, such as subpoenas, discovery matters, and motions. This commenter believes NASD staff should not provide opinions on such issues, but rather they should be addressed to the panel and, if necessary, argued by the parties.

NASD responded in Amendment 5 that its current policy is for staff to advise arbitrators on procedural matters, but not to provide opinions on substantive issues. If arbitrators ask staff about substantive matters, NASD staff suggest that the arbitrators ask the parties to brief the issue so that the arbitrators can make a decision. NASD stated that it would emphasize this policy when it trains its staff on the Customer Code.

E. Proposed Rule 12104—Effect of Arbitration on NASD Regulatory Activities

Proposed Rule 12104 provides that submitting a dispute to arbitration does not prevent NASD from taking additional regulatory action, if warranted. The rule would allow any arbitrator to make disciplinary referrals at the conclusion of an arbitration.

One commenter suggested that the proposed rule also should authorize regulatory sanctions for breaches of the procedural requirements of the arbitration rules.[40] In Amendment 5, NASD responded that because Proposed Rule 12104 is substantially the same as Rule 10105 of the current Code, the comment is outside the scope of the rule filing.

F. Proposed Rule 12105—Agreement of the Parties

As published in the Customer Code Notice, Proposed Rule 12105(a) would allow parties to modify a provision of the Code or a decision of the Director or the panel by written agreement. Proposed Rule 12105(b) provides that if the Director or the panel determines that a named party is inactive in the arbitration or has failed to respond after adequate notice has been given, the

[32] Boliver, Canning, Caruso, Estell, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Miller, PIABA, Pounds, Rosenfield, Sadler, Schultz #2, Shewan, Stoltmann, Sutherland, and Willner.

[33] *See* Securities Exchange Act Rel. No. 40555, 63 FR 56670 (Oct. 22, 1998) (SR–NASD–1998–48).

[34] Boliver, Canning, Caruso, Estell, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Miller, PIABA, Pounds, Rosenfield, Sadler, Schultz #2, Shewan, Stoltmann, Sutherland, and Willner.

[35] The Commission recently approved the rule changes proposed in the rule filing. *See* Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration Procedure, Securities Exchange Act Rel. No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (SR–NASD–2005–094); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration, Securities Exchange Act Rel. No. 52332 (Aug. 24, 2005), 70 FR 51365 (Aug. 30, 2005) (SR–NASD–2005–094).

[36] Ryder.

[37] *See* NASD Manual, Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, Part V(c)(1)(b); Securities Exchange Act Rel. No. 37107 (Apr. 11, 1996) (SR–NASD–96–16).

[38] Ryder.

[39] Magary.

[40] Ryder.

Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. In the Customer Code Notice, the Commission requested comment on whether the term ''inactive'' is defined sufficiently.

While one commenter thought the concept of an ''inactive'' party is sufficiently clear,[41] others suggested specifying that an ''inactive'' party is a party in default for failure to file a response to a claim, counter-claim, or cross claim.[42]

In Amendment 5, NASD stated that based on current practices in its forum, the term ''inactive'' could apply to: (1) A party who answers and then fails to respond to administrative matters or correspondence; (2) a claimant who cannot be found, after the claimant's attorney withdraws; or (3) a party who does not answer. In Amendment 7, NASD proposed to include a non-exhaustive list inactive parties. Proposed Rule 12105 is amended in Amendment 7 as follows (new language in *italics*):

12105. Agreement of the Parties

(a) No change.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. *For purposes of this rule, an inactive party could be, but is not limited to: (1) A party that does not answer; (2) a party that answers and then fails to respond to correspondence sent by the Director; (3) a party that answers and then fails to respond to correspondence sent by the panel in cases involving direct communication under Rule 12211; or (4) a party that does not attend pre-hearing conferences.*

G. Proposed Rule 12200—Arbitration Under an Arbitration Agreement or the Rules of NASD

1. Insurance Business Exception

Proposed Rule 12200 provides that parties must arbitrate a dispute under the Customer Code if (1) A written agreement requires it or the customer requests it; (2) the dispute is between a customer and a member or associated person of a member; and (3) the dispute arises in connection with the business activities of a member or associated person, unless the claims involve the insurance business activities of a member that is also an insurance company. Eighteen commenters argued that the rule could be read to exclude variable annuity claims from arbitration because some state statutes treat these products solely as insurance products, not securities.[43] In their view, the choice of whether to arbitrate variable annuity claims against NASD members should belong to the investor.

In Amendment 5, NASD noted that variable annuities are securities and are not excluded from arbitration under the exception for disputes involving the insurance business of a member that is also an insurance company in current Rule 10101 (concerning matters eligible for submission). According to NASD, no substantive change is intended in Proposed Rule 12200.

2. Requests by the Customer to Arbitrate

Under Proposed Rule 12200, parties must arbitrate if ''requested by the customer,'' and if the other requirements of the rule are satisfied. One commenter suggested inserting the words ''of the member'' after the word ''customer'' in the proposed rule text.[44] This commenter asserted that this change would eliminate attempts by customers to demand arbitration of disputes against firms with which the customer does not have an account or other relationship. Another commenter opposed this suggestion because it could preclude ''selling away'' claims (allegations that an associated person engaged in securities activities outside his or her firm).[45] This commenter stated that substantial judicial precedent supports the right of a customer to file a selling away claim against the brokerage firm that employed such an associated person, even if the customer has no account with that firm.

In Amendment 5, NASD responded that adding the words ''of the member'' after the word ''customer'' would inappropriately narrow the scope of claims that are required to be arbitrated under the Customer Code. Further, NASD noted that because Proposed Rule 12200 is substantially the same as Rule 10301 of the current Code, the comment is outside the scope of the rule filing.

3. ''Business Activities''

Rule 10301(a) of the current Code provides that a dispute, claim, or controversy arising in connection with the ''business of'' a member or the ''activities of'' an associated person is eligible for arbitration. In comparison, Proposed Rule 12200 would provide that disputes arising from the ''business activities of the member or the associated person'' must be arbitrated if the other conditions of the rule are satisfied. One commenter suggested that this change could alter the scope of disputes that members must arbitrate with customers, as well as the scope of the exception for disputes involving ''insurance business activities'' of a member.[46]

In Amendment 5, NASD noted that Proposed Rule 12200 is substantively the same as Rule 10301 of the current Code and is not intended to change the scope of arbitrable disputes. NASD also proposed deleting the insurance company exception from Proposed Rule 12200, noting that it is included in Proposed Rule 12201.

NASD reconsidered this decision in Amendment 7, and again proposed to include the insurance business exception in Proposed Rule 12200. Rule 10101 of the current Code provides that insurance disputes are not eligible for arbitration,[47] and Rules 10201 and 10301 of the current Code delineate the eligible disputes that parties are required to arbitrate. According to NASD, the proposed rules in the Customer Code were rearranged to place the mandatory arbitration provision before the elective arbitration provision in the Customer Code. Because of this organization, NASD believes that clarity requires the insurance exception to be included in both provisions.

NASD also proposed to clarify in Amendment 7 that the term ''business activities of a member'' in Proposed Rule 12200 would include ''selling away'' claims. Under the current Code, NASD accepts cases brought by customers against associated persons in selling away cases, and cases by customers against the associated person's member firm if there is any allegation that the member was or

[41] PACE.

[42] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[43] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[44] SIA.

[45] Eccleston.

[46] Ryder.

[47] Rule 10101 provides, ''This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company.''

should have been involved in the events, such as an alleged failure to supervise the associated person. As stated in Amendment 5, Proposed Rule 12200 is not intended to change the scope of arbitrable disputes. NASD reiterated in Amendment 7 that it would continue to accept these types of cases under the Customer Code.

H. Proposed Rule 12201—Elective Arbitration

1. Business Activities

The elective arbitration provision of Proposed Rule 12201, like the mandatory arbitration provision of Proposed Rule 12200, describes the scope of disputes that parties may choose to arbitrate, if the other conditions of the rule are satisfied, as relating to the ''business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.'' One commenter suggested that this phrasing, and in particular the term ''business activities,'' could alter the scope of disputes that parties could elect to arbitrate.[48] This commenter viewed the reference to ''business activities'' of an associated person as a substantive change to the types of cases that parties may agree to arbitrate, stating that the phrase implies a ''scope of employment'' construction. This commenter also noted that including the ''insurance company'' exception in the elective arbitration rule implies that NASD cannot entertain the arbitration of such disputes, even if all the parties agree.

In Amendment 5, NASD disagreed with the commenter, stating that Proposed Rule 12201 is not intended to alter the scope of claims that currently are eligible for voluntary arbitration under Rule 10101 of the current Code. Thus, NASD did not propose to amend Proposed Rule 12201. (*See also* Section 0, regarding selling away claims.)

2. Disclosures Regarding Insurance

Three commenters suggested that respondents should be required to disclose ''the presence and amount of insurance, if applicable.'' [49] These commenters stated that small brokerage firms that have insurance are able to coerce small settlements by falsely claiming an inability to pay. Two commenters also stated, ''[c]laimants, who are selecting arbitrators (some of whom have insurance affiliations) need to know whether an insurance company lawyer is defending.'' [50] In Amendment 5, NASD stated that because Proposed Rule 12201 is substantively the same as Rule 10101 of the current Code, these comments are outside the scope of the rule filing.

I. Proposed Rule 12203—Denial of NASD Forum

Rule 10301(b) of the current Code provides that the Director of Arbitration, upon approval of the NAMC or its Executive Committee, may decline to permit the use of the NASD arbitration forum if the ''dispute, claim, or controversy is not a proper subject matter for arbitration.'' Proposed Rule 12203(a) would provide that the Director ''may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives.'' To ensure that the authority to deny the forum could not be delegated by the Director, the rule would provide that only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under the rule.

One commenter suggested that the proposed rule should clarify that if the Director or President denies the use of the forum, and if there is no alternative forum specified in the arbitration agreement, a customer can pursue his or her remedies in court.[51] In Amendment 5, NASD responded that it does not believe it is appropriate for NASD to offer an opinion as to any other remedies that a party might be able to pursue. Accordingly, NASD amended the title of the proposed rule to read ''Denial of NASD Forum'' to avoid the suggestion that it is under an obligation to refer a party to another forum.

Another commenter expressed concern that the proposed rule would no longer require the Director to obtain the approval of the NAMC or the Executive Committee to deny access to the arbitration forum.[52] In Amendment 5, NASD stated that the proposed rule is intended to address circumstances that may require immediate resolution, such as security concerns and other unusual but serious situations, and in which the Director needs flexibility. Noting that the proposed rule provides that this authority may only be exercised by the Director or the President of NASD Dispute Resolution, NASD did not propose an amendment to Proposed Rule 12203 in connection with this comment.

J. Proposed Rule 12204—Class Actions

Rule 10301 of the current Code provides that a claim is not eligible for arbitration at NASD if it is (1) submitted as a class action, or (2) filed by a member or members of a putative or certified class action, if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court for class-wide arbitration at an arbitral forum not sponsored by an SRO. Such claims, however, may become eligible for arbitration at NASD if a claimant demonstrates that he or she has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court. Rule 10301 of the current Code also provides that a panel of arbitrators may hear disputes concerning whether a particular claim is encompassed by a putative or certified class action. Alternatively, either party may elect to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. As published in the Customer Code Notice, Proposed Rule 12204 is intended to be substantively the same as Rule 10301.

Eighteen commenters raised two interpretive issues with respect to the class action rule under the current Code.[53] First, they indicated that respondents may argue that any claim involving a security that is also the subject of a pending class action lawsuit is ineligible for arbitration. In their experience, respondents have offered this argument even though claims in the arbitration case are factually and legally distinguishable from those in the class action. They also stated that respondents that are not defendants in the class action may make motions to dismiss, citing this argument.

Second, the commenters argued that, although the current Code allows a party to opt out of the class action, it does not explain how a party can demonstrate to NASD that he or she is not participating in the class action, either before or after a class has been certified.

In Amendment 5, NASD proposed to clarify in Proposed Rule 12204(b) that only claims based on the same facts and law and that involve the same

[48] Ryder.

[49] Canning, Lipner, and Sutherland.

[50] Canning, Lipner.

[51] PACE.

[52] Ryder.

[53] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

defendants as in a class action are not arbitrable. NASD also proposed to clarify in Proposed Rule 12204(b) the procedure a party would use to demonstrate to NASD that he or she is opting or has opted out of a class action. In particular, NASD proposed to amend Proposed Rule 12204 as follows (new language in *italics;* deleted language in [brackets]):

12204. Class Action Claims

(a) No change.

(b) [No claim that is included] *Any claim that is based upon the same facts and law, and involves the same defendants as* in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, [will] *shall not* be arbitrated under the Code, unless the party bringing the claim [shows] *files with NASD one of the following:*

(1) A copy of a notice filed with the court in which the class action is pending that [it is not participating] *the party will not participate* in the class action[,] *or in any recovery that may result from the class action,* or has withdrawn from the class according to any conditions set by the court[, if any]*; or*

(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

(c) No change.

(d) No change.

* * * * *

K. Proposed Rule 12206—Time Limits

Proposed Rule 12206 provides, in pertinent part, that claims are not eligible for arbitration under the Customer Code when six years have elapsed from the occurrence or event giving rise to the claim, and that the panel will resolve any questions regarding the eligibility of a claim. One commenter suggested eliminating the proposed rule.[54] In this commenter's view, the Customer Code should authorize the arbitration panel to apply relevant statutes of limitation instead. In Amendment 5, NASD responded that because Proposed Rule 12206 is substantively the same as Rule 10304 of the current Code, this comment is outside the scope of the rule filing.

One commenter suggested that NASD amend the proposed rule to state that it is not a statute of repose.[55] In Amendment 5, NASD responded that it believed the suggestion could make the proposed rule confusing and therefore declined to amend the rule on this issue.

L. Proposed Rule 12207—Extension of Deadlines

In relevant part, Proposed Rule 12207(c) provides that the Director may extend or modify any deadline set by the Code for good cause, or by the panel in extraordinary circumstances. Two commenters suggested that the standard for extending deadlines for answering the statement of claim should remain the same as under Rule 10314 of the current Code, which provides that extensions of the time to answer are disfavored and will not be granted by the Director except in extraordinary circumstances.[56] In their view, Proposed Rule 12207, when read together with Proposed Rule 12303, would be less stringent than the current standard.

In Amendment 5, NASD responded that it believes that having a single, uniform standard for extensions of deadlines by the Director simplifies the Customer Code and is in the public interest. Such extensions would not be automatic upon request but would require respondents to demonstrate that they have good cause for seeking an extension of time to answer the statement of claim.

One commenter noted that the proposed rule would give the Director authority to override a panel deadline.[57] Even though this rule would expressly limit this authority to extraordinary circumstances, the commenter questioned the Director's need for this authority and for overriding a case-specific ruling made by a panel.

NASD responded that the phrase ''extraordinary circumstances'' would encompass such unexpected and uncontrollable events as a weather-related or security emergency. NASD noted that there have been instances, such as hurricanes and terrorist attacks, when NASD Dispute Resolution offices had to be evacuated, the offices of parties and counsel were damaged, and hearings could not be held safely. NASD believes that in such situations, the Director needs the authority to postpone deadlines until order is restored. For the above reasons, NASD is not proposing to amend Proposed Rule 12207 at this time.

M. Proposed Rule 12212—Sanctions

Rule 10305(b) of the current Code (Dismissal of Proceedings) provides that the ''arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.'' In addition, the NASD Discovery Guide (''Discovery Guide'') states that ''[t]he panel has wide discretion to address noncompliance with discovery orders.'' Proposed Rule 12212 would incorporate and codify these current sanctions provisions and extend them beyond the discovery context to apply to non-compliance with any provision of the Code, or order of the panel or a single arbitrator authorized to act on behalf of the panel. NASD stated that this rule change would encourage parties to comply with both the Customer Code and orders of the panel, and would also clarify the authority of arbitrators to ensure the fair and efficient administration of arbitration proceedings when parties do not comply.

1. Procedural Guidance

Two commenters stated that Proposed Rule 12212 grants broad authority to the panel to impose sanctions without providing guidance on how and when sanctions should be applied.[58] One of these commenters suggested that the lack of procedural and substantive standards creates the risk that sanctions will become a routine part of arbitration practice.[59] This commenter urged NASD to, among other things, require notice and an opportunity to be heard and eliminate the panel's authority to sanction a party for failing to comply with any provision of the Customer Code.

In Amendment 5, NASD explained that the panel has the authority to control all aspects of an arbitration, and, therefore, must have the ability to enforce the rules of the forum as well as its orders. Therefore, the proposed rule specifically provides that the panel has the authority to impose sanctions for violations of any provision of the Customer Code. NASD believes that underscoring the panel's authority will deter parties from violating the Customer Code and from employing abusive tactics, which require considerable time and effort to address. In turn, NASD believes reducing the incidence of violations and abusive tactics will expedite arbitrations. NASD also stated that it intends to provide guidance in arbitrator training materials on the Customer Code on how and when this proposed rule should be applied.

[54] PACE.

[55] Magary.

[56] Canning and Feinberg.

[57] Ryder.

[58] Ragsdale and SIA.

[59] SIA.

2. Sanctions Between the Time a Claim Is Filed and the Time a Panel Is Selected

One commenter expressed support for Proposed Rule 12212 but noted that no panel is available to enforce compliance with the provisions of the Customer Code between the time a claim is filed and the time a panel is selected.[60] This commenter suggested amending the proposed rule to provide explicit authority to a single arbitrator appointed during this time, or the panel, once appointed, to sanction parties for abusive or violative conduct that may occur during this time.

In Amendment 5, NASD stated that Proposed Rule 12212 would give the panel discretion to impose sanctions for any violations of the Customer Code, regardless of when they occurred. For this reason, NASD is not proposing to amend the proposed rule at this time.

3. Disciplinary Referrals

One commenter suggested that Proposed Rule 12212 should emphasize that a panel can make a disciplinary referral for a violation of NASD rules that either occurred during an arbitration or is related to conduct addressed as a claim in arbitration.[61] In Amendment 5, NASD explained that it intends to address the use of disciplinary referrals in NASD arbitrator training materials on the Customer Code.

4. Other Comments

One commenter noted that a party cannot appeal an abusive or excessive ruling, and that arbitrators are not required to explain their decision to impose sanctions.[62] This commenter suggested amending Proposed Rule 12212 to require forum fees to be assessed against respondents, except when a claim is brought in bad faith. This commenter also suggested requiring the panel to explain its findings if it assesses fees against a party.

In Amendment 5, NASD responded that a panel's rulings cannot be appealed under the Customer Code, and NASD is not proposing to create an appellate process. NASD stated that parties may ask the arbitrators to explain their imposition of sanctions in the award. It also noted that, as under the Customer Code, parties may seek to vacate or modify an award under the Customer Code on grounds provided by applicable federal or state arbitration laws. Although sanctions are rarely imposed, NASD intends to recommend in arbitrator training that arbitrators provide a written explanation for any sanctions in the award. Thus, NASD is not proposing to amend Proposed Rule 12212 at this time.

N. Proposed Rule 12213—Hearing Locations

Proposed Rule 12213 provides that the Director generally will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. The proposed rule also would clarify that before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a different hearing location other than the one selected by the Director, and that the Director may change the hearing location upon motion of a party.

One commenter supported the proposed rule but expressed concerned that a *pro se* customer might be discouraged from submitting an arbitration claim because the customer could not afford to travel to a distant hearing location.[63] This commenter suggested that NASD amend the proposed rule to clarify that a customer may request a more convenient hearing location upon filing a claim.

In Amendment 5, NASD noted that Proposed Rule 12213 is substantively the same as Rule 10315 of the current Code and stated that the commenter's suggested change may provide customers with the false impression that their request will be the only factor used to determine where the hearing is held. Currently, parties may request a hearing location, and this request is considered along with other factors in determining the hearing location for an arbitration. This practice would not change under the Customer Code.

NASD also noted that the panel, once appointed, would have the authority to change the hearing location. Although this authority is already included in Proposed Rule 12503(c)(2), NASD stated that it would be logical to include this authority in Proposed Rule 12213, as well. Therefore, NASD proposed to amend Proposed Rule 12213 as follows (new language in *italics*):

12213. Hearing Locations

(a) U.S. Hearing Location

(1) No change.

(2) No change.

(3) No change.

(4) *After the panel is appointed, the panel may decide a motion relating to changing the hearing location.*

(b) Foreign Hearing Location

No change.

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O. Proposed Rule 12300—Filing and Serving Documents; Proposed Rule 12302—Filing an Initial Statement of Claim

Under the current Code, initial statements of claim are filed with the Director and served on the other parties by the Director. This procedure would be the same under Proposed Rules 12300 and 12302. Two commenters suggested that the proposed rules should allow a claimant to directly serve the respondent with the statement of claim and the uniform submission agreement.[64] In their view, this would be especially helpful to a claimant when time is of the essence.

In Amendment 5, NASD noted that Proposed Rules 12300 and 12302 do not change the current process for serving claims. It also explained that it currently tries to serve claims as quickly as possible, and if its staff is notified that a party is elderly or infirm, NASD will try to expedite the process even further.[65]

One commenter suggested that NASD amend Proposed Rule 12302 to state that the statement of claim is not required to plead legal causes of action or legal theories.[66] In Amendment 5, NASD responded that because Proposed Rule 12302 is substantially the same as paragraphs (1) and (2) of Rule 10314(a) of the current Code, the comment is outside the scope of the rule filing.

P. Proposed Rule 12301—Service on Persons Currently Associated With a Member

Proposed Rule 12301 provides that service on an associated person may be made either on the member or directly on the associated person. If service is made on the member, the member would be required to serve the associated person, even if the member would not be representing the associated person in the arbitration. One commenter noted that the proposed rule is not limited to use by the Director or to initial pleadings.[67] The commenter noted that Proposed Rule 12301 would allow a claimant to serve all documents only on the member, which could cause confusion if the member and associated person are separately represented. It also would delay service on the

[60] PACE.

[61] Magary.

[62] Ragsdale.

[63] PACE.

[64] Canning and Feinberg.

[65] *See* Press Release, NASD, NASD Implements Expedited Dispute Resolution Proceedings for Elderly or Seriously Ill Parties (Jun. 18, 2004), *available at http://www.nasd.com/PressRoom/NewsReleases/2004NewsReleases/NASDW_002820.*

[66] PACE.

[67] SIA.

associated person. Thus, the commenter suggested amending the proposed rule to apply only to service of initial pleadings, or only to the Director for service of statements of claim.

In Amendment 5, NASD responded that it did not intend to make any substantive changes from the current Code, which permits (but does not require) the Director to serve statements of claim on currently employed associated persons through their firms when the associated person and the firm are both respondents. NASD stated that in practice, it rarely uses this form of service. NASD nonetheless proposed to clarify the proposed rule to reflect current procedure and to specify that only the Director may serve associated persons by serving the member, and that this method of service may only be used for initial statements of claim. Proposed Rule 12301, as amended in Amendment 5, provides (new language in *italics;* deleted language in [brackets]):

12301. Service on *Associated* Persons [Currently Associated With a Member]

(a) [If a member and a person currently associated with the member are named as respondents to the same arbitration,] *The Director will serve the initial statement of claim on* [service on the person] *an* associated *person* [with the member] *directly at the person's residential address or usual place of abode* [may be made on the member or directly on the associated person]. *If service cannot be completed at the person's residential address or usual place of abode, the Director will serve the initial statement of claim on the associated person at the person's business address.*

(b) If a member and a person currently associated with the member are named as respondents to the same arbitration, and the Director cannot complete service as provided in paragraph (a), then the Director may serve the member with the initial statement of claim on behalf of the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

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Q. Proposed Rule 12307—Deficient Claims

Proposed Rule 12307 provides that the Director will not serve any claim that is deficient and lists the reasons that a claim may be deficient. In the Customer Code Notice, the Commission specifically asked for comment on whether any changes intended to be nonsubstantive were actually substantive. In the event commenters identified substantive changes, the Commission asked why they are substantive, how they will affect the arbitration process or the rights of the parties, and whether they are an improvement over the current Code.

Several commenters stated that Proposed Rule 12307 represents a substantive change and is biased in favor of respondents.[68] They explained that if claimants file a deficient claim, the arbitration would be delayed until all deficiencies are corrected, and if the respondent files a deficient answer the claims also would be delayed. They suggested amending the rule to provide that deficient filings by respondents shall not delay the service of the arbitrator list selection materials, so as not to delay the case. Similarly, some commenters suggested that NASD should not transmit a deficient answer and gave as examples respondents' failure to submit a uniform submission agreement, or filing of a one-page denial as an initial answer, and subsequent submission of an amended answer.[69] These commenters also argued that there should be uniformity in application of the proposed rule.

Two commenters expressed concern that the sanctions imposed on respondents under Proposed Rule 12308 (Loss of Defenses Due to Untimely or Incomplete Answer) are not the same as those imposed on claimants for similar conduct.[70] They noted that if a claimant fails to file a uniform submission agreement, then NASD would consider the claim to be deficient under Proposed Rule 12307, but if the respondent fails to file a uniform submission agreement, the arbitration would proceed. These commenters suggested that NASD amend Proposed Rule 12308 to require respondents to submit a uniform submission agreement in a timely manner. They also suggested that NASD not transmit the answer to arbitrators unless the respondent files a uniform submission agreement, and that respondents should be precluded from engaging in any arbitration-related activity until they file the uniform submission agreement.

In Amendment 5, NASD confirmed that a deficient claim would not be processed until the deficiencies are corrected, and that the same is not true if a respondent's answer is deficient. NASD explained that it does not have a mechanism to delay or prevent service of answers because while it serves initial statements of claim, it does not serve answers. NASD further responded that the proposed rule codifies current deficiency practice. NASD noted that, nonetheless, a respondent could lose the ability to assert any claims or defenses at the hearing under Proposed Rule 12308 for an untimely or deficient answer and also could be subject to sanctions under Proposed Rule 12212. Therefore, NASD is not proposing to amend the proposed rule at this time based on these comments but stated that it would consider them when determining whether future amendments are warranted.

R. Proposed Rule 12308—Loss of Defenses Due to Untimely or Incomplete Answer

One commenter, citing the proposed definition of ''claim,'' stated that Proposed Rule 12308(a) could impose a severe penalty, including default proceedings under Proposed Rule 12801, for failure to answer any allegation regardless of materiality, a party's ability to investigate by the time the answer is due, or the ''boilerplate'' nature of the allegation.[71]

In Amendment 5, NASD noted that Proposed Rule 12308 is substantially the same as Rule 10314(b)(2) of the current Code and that the comments made on this issue are outside the scope of the rule filing. In Amendment 7 NASD further explained that Rule 10314(b)(2)(C) of the current Code, which is the basis for Proposed Rule 12308(a), is meant to address the timeliness of the answer, rather than its completeness. It stated that the other provisions of Rule 10314(b)(2)(C), addressing completeness, were included in Proposed Rule 12308(b). NASD also proposed in Amendment 7 to clarify that: (1) The listed sanctions apply only if a party does not file an answer within the time period specified in the Code; and (2) default proceedings apply only if the other conditions of Proposed Rule 12801, such as a member's expulsion from NASD, for example, are met. The proposed rule is amended as follows (new language in *italics*; deleted language in [brackets]):

12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party [fails to] *does not* answer [any claim] within the time period

[68] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[69] Meissner.

[70] Canning and Feinberg.

[71] SIA.

specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801, *if the conditions of Rule 12801(a) apply*.

(b) No change.

* * * * *

S. Proposed Rule 12309—Amending Pleadings; Proposed Rule 12310—Answering Amended Claims

Rule 10314 of the current Code establishes the general procedures for filing initial pleadings and answers. Rule 10328 of the current Code pertains to amended pleadings and their responses. Two commenters reported that under the current Code, respondents attempt to prevent claimants from submitting a response to amended pleadings by alleging that Rule 10314 only allows the claimant to reply to a counterclaim, even though Rule 10328 of the current Code permits any party to submit a response to any amended pleading, in accordance with Rule 10314(b).[72] They suggested that NASD amend Proposed Rule 12310, which pertains to answering amended claims, to clarify that all parties have a right to file a response to any amended pleading, as currently permitted by Rule 10328.

In Amendment 5, NASD responded that it did not intend to change current practice in the Customer Code. NASD explained that Rule 10314 neither prohibits nor permits the practice of responding to amended pleadings.[73] NASD proposed to revise Proposed Rule 12309 to clarify that all parties have a right to file a response to any amended pleading. The proposed rule would allow 20 days from the receipt of the amended pleading for the service of the response, unless the panel determines otherwise. NASD also proposed to clarify in Proposed Rule 12309(a)(1) that the service requirements of Proposed Rule 12300 (Filing and Serving Documents) also apply to Proposed Rule 12309. The proposed rule change is amended as follows (new language in *italics*):

12309. Amending Pleadings

(a) Before Panel Appointment.

Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rules *12300 and* 12301.

(2) No change.

(b) No change.

(c) No change.

(d) Responding to an Amended Pleading.

Any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the panel determines otherwise.

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T. Proposed Rule 12310—Answering Amended Claims

Proposed Rule 12310 establishes the procedural requirements for answering amended claims. One commenter noted that the proposed rule would give a respondent 20 days to answer an amended statement of claim and suggested that NASD amend the proposed rule so that the 20-day period would be calculated from the respondent's receipt of the amended statement of claim.[74]

In Amendment 5, NASD responded that, as part of the initiative to standardize time limits in the Customer Code, the time to answer an amended claim was extended from 10 business days to 20 calendar days. Thus, a respondent would have more time to respond to an amended claim under the Customer Code than under the current Code. Therefore, NASD is not proposing to amend the proposed rule at this time.

U. Proposed Rule 12312—Multiple Claimants; Proposed Rule 12313—Multiple Respondents

Proposed Rules 12312 and 12313 set forth standards by which parties or claims may be joined in the same arbitration case. Proposed Rule 12312 provides that one or more parties may join multiple claims in the same arbitration if the claims contain common questions of law and fact and the claims: (1) Assert any right to relief jointly and severally; or (2) arise out of the same transaction or occurrence, or series of transactions or occurrences. Proposed Rule 12313 provides that one or more parties may name one or more respondents in the same arbitration if the claims contain any questions of law or fact common to all respondents and the claims: (1) assert any right to relief jointly and severally; or (2) arise out of the same transaction or occurrence, or series of transactions or occurrences. Both proposed rules also provide that the Director may separate claims into two or more cases and establish procedures for parties to appeal the Director's action.

1. ''Joint and Several Relief''

Two commenters compared Rule 10314(d) of the current Code and Proposed Rules 12312 and 12313 to Rule 20 of the Federal Rules of Civil Procedure (Permissive Joinder of Parties) (''FRCP Rule 20'').[75] In their view, Proposed Rules 12312 and 12313 do not track FRCP Rule 20 correctly. They explained that parties seeking to join claims or respondents under FRCP Rule 20 must satisfy two criteria: (1) The parties' claims must have arisen out of the same transaction or occurrence or series of transactions or occurrences; *and* (2) the claims must contain common questions of law or fact. Both commenters argued that joint and several relief should not be an alternative to the ''same transaction or occurrence or series of transactions or occurrences'' requirement, and therefore should be deleted from the rule. They also stated that Proposed Rules 12312 and 12313 substantively change the joinder requirements for multiple parties contained in Rule 10314(d).

In Amendment 5, NASD responded that the joinder requirements in Proposed Rules 12312 and 12313 were not intended to differ in substance from those in Rule 10314(d). In NASD's view, the reference to joint and several relief in FRCP Rule 20 and Rule 10314(d) of the current Code is an alternative requirement to the ''same transactions or occurrences'' requirement and is appropriately written in the alternative in the proposed rules. Therefore, NASD did not propose changes to the proposed rules on this issue.

2. Standards for Severing Claims

Proposed Rule 12312(b) provides that after all responsive pleadings have been served, claims joined together under paragraph (a) of the rule may be separated into two or more arbitrations

[72] Canning and Meissner.

[73] Telephone conversation among Jean Feeney, Vice President, NASD; Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Market Regulation, SEC; and Gena Lai, Special Counsel, Division of Market Regulation, SEC (Dec. 1, 2006).

[74] SIA.

[75] Krosschell and SIA. FRCP Rule 20 provides ''All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.''

by the Director before a panel is appointed, or by the panel after the panel is appointed. One commenter argued that Proposed Rule 12312(b) would give the Director unfettered discretion to sever claims, without providing any standards for doing so.[76] This commenter also contended that severing claims could impose a financial hardship on some parties. The commenter suggested that NASD amend the proposed rule to incorporate the standards used to determine when to sever a claim.

In Amendment 5, NASD explained that Proposed Rules 12312 and 12313 provide the standard for when cases may be joined. Conversely, cases involving multiple claimants or multiple respondents that do not meet these criteria may be severed. NASD explained that it did not intend to change the current policy that the Director's decision to consolidate claims is preliminary and may be reconsidered by the panel. The Director's decision to sever claims also is preliminary. Accordingly, in Amendment 5, NASD proposed to clarify the current procedure for appealing the Director's decision to sever claims. Because there are at least two surviving panels when the Director severs claims, multiple panels could review the Director's decision, with potentially conflicting results. To avoid inconsistent results and to expedite the arbitration process, NASD currently forwards any motion to rejoin severed claims to the panel on the lowest numbered case (*i.e.*, the panel from the first-filed claim in the matter that was severed) to decide a motion to re-join the claims. In Amendment 5, NASD amended Proposed Rules 12312(b) and 12313(b) as follows to codify current practice (new language in *italics*):

12312. Multiple Claimants

(a) No change.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. *A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.*

* * * * *

12313. Multiple Respondents

(a) No change.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. *A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.*

* * * * *

3. Greater Panel Discretion to Join Claims

One commenter expressed concern that the changes to Proposed Rule 12312 would prevent the joinder of claimants in certain situations, which would result in added expense and repetitious hearings for the parties.[77] The commenter argued that the proposed rule should be revised to give a panel more discretion to join claims if it would save time and money and not be unreasonably prejudicial to the parties. In Amendment 5, NASD responded that the joinder requirements in Proposed Rules 12312 and 12313 were not intended to differ in substance from those in Rule 10314(d), and that therefore this comment is outside the scope of the rule filing.

V. Proposed Rule 12314—Combining Claims

Proposed Rule 12314 provides that before ranked arbitrator lists are due to the Director under Proposed Rule 12404(c), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party. One commenter expressed concern that the panel would no longer have the authority to review the Director's decision to sever or consolidate claims *sua sponte*.[78] In this commenter's view, the Director has preliminary authority to make rulings on these issues, but the panel has plenary authority to review any such rulings.

In Amendment 5, NASD disagreed with the commenter and stated that, under Rule 10314(d) of the current Code and current practice, panels review these rulings upon a motion of a party.

W. Proposed Rule 12400—Neutral List Selection System and Arbitrator Rosters

1. Proposed Rule 12400(a)—Neutral List Selection System

Nineteen commenters suggested that NASD hire a neutral third-party, not connected to NASD or the securities industry, to conduct an annual audit of NLSS[79] and make the results of the audit publicly available on NASD's Web site.[80]

In Amendment 5, NASD responded that it is committed to ensuring that its list selection system operates as described in the Customer Code. Thus, NASD stated that it plans to hire an independent auditor to conduct an initial audit of the system and will make public the results of the audit. NASD stated that thereafter, it will conduct audits on an as-needed basis.

2. Proposed Rule 12400(b)—Arbitrator Rosters

As published in the Customer Code Notice, Proposed Rule 12400(b) provides that NASD will maintain three separate arbitrator rosters: One of public arbitrators who may serve as a chairperson of a panel (''chair-qualified''), one of public arbitrators not eligible to serve as a chairperson (''non-chair public''), and one of non-public arbitrators. Lists would be generated from these rosters and sent to the parties so that the parties may select their arbitrators. Chair-qualified public arbitrators would not be included in the non-chair public roster. The Commission solicited comment on whether this approach would limit the pool of arbitrators available to serve on panels, particularly in regions where relatively few arbitrators are available, and whether chair-qualified arbitrators should be permitted to serve in a non-chair capacity, as well.

Twenty-three commenters stated that excluding chair-qualified arbitrators from the non-chair public arbitrator roster would decrease the pool of experienced, knowledgeable public arbitrators, particularly in regions of the country where the size of the arbitrator pool is already limited.[81] Many of these commenters also asserted that arbitration panels selected under this approach would have less overall

[76] Magary.

[77] Greco.

[78] Ryder.

[79] NLSS is the computer program NASD Dispute Resolution uses to appoint arbitrators. NASD Dispute Resolution is upgrading its computer technology platform, in what is known as the MATRICS Computer Project. MATRICS stands for Mediation and Arbitration Tracking and Retrieval Interactive Case System. MATRICS will replace two legacy case management systems, NLSS and CRAFTIS, the software application that NASD Dispute Resolution uses to support its case administration functions.

[80] Boliver, Canning, Estell, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[81] Boliver, Canning, Evans, Feldman, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Miller, PACE, PIABA, Pounds, Rosenfield, Schwab, Shewan, Stolle, Stoltmann, Sutherland, and Willner.

experience and expertise than current panels, which would be bad for all parties.

Eighteen commenters stated that the proposed rule would create a class of ''professional'' arbitrators who would strive for the appearance of fairness to both sides by issuing more compromise awards.[82] In Amendment 5, NASD disagreed, stating that the random selection function of the list selection system would allow the full use of the entire arbitrator pool. NASD also noted that all arbitrators take an oath in which they affirm their neutrality and ability to decide a matter fairly, and that NASD expects all arbitrators to adhere to these basic principles, regardless of their classification.

NASD further stated in Amendment 5 that it believes chair-qualified arbitrators should be included in the non-chair public roster, as well as in the chair-qualified roster. Therefore, it proposed to amend Proposed Rule 12400(b) to adopt this approach.[83] NASD also clarified that its list selection software would be programmed so that no arbitrator's name would appear on both the chair-qualified and non-chair public lists sent to the parties for arbitrator selection in a particular case. NASD believes this approach would provide users of the forum with access to the most experienced public arbitrators.

The proposed rule, as amended in Amendment 5, is as follows (new language in *italics;* deleted language in [brackets]):

12400. Neutral List Selection System and Arbitrator Rosters

(a) Neutral List Selection System

No change.

(b) Arbitrator[s] Rosters

NASD maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 12100(n);
- A roster of public arbitrators as defined in Rule 12100(r); and
- A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). *Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.*

* * * * *

Subsequent to the filing of Amendment 5 with the Commission, one commenter expressed opposition to NASD's proposal to include chair-qualified arbitrators with non-chair public arbitrators on the non-chair public roster.[84] This commenter included statistical models in support of his position that chair-qualified arbitrators would be selected more frequently than non-chair public arbitrators. This commenter also asserted that chair-qualified arbitrators would become ''professional'' arbitrators.

In Amendment 7, NASD declined to comment on the statistical analysis provided by the commenter, stating that the hypothesized outcome was speculative. NASD explained that it believes having arbitrators with the most experience serving more frequently on panels would be in the public interest. Moreover, NASD stated that the proposed standards to become eligible to serve as chair-qualified arbitrators are reasonable and necessary to provide investors with access to well-qualified arbitrators. NASD believes this proposal will enhance the efficiency of the arbitration process. Therefore, NASD declined to amend the proposed rule on this issue.

Subsequent to Amendment 7, this commenter submitted a second letter reiterating his arguments and providing additional information.[85] The Commission staff obtained data from NASD relating to the number of arbitrators at each NASD hearing location, including the number of arbitrators who are classified as ''public'' under the definition found in rule 10308(a)(5) of the current Code, and who would be classified as chair-qualified under Proposed Rule 12100(u) of the Customer Code.[86] Applying the formulas provided in the letter, the Commission staff determined that NASD's proposal to include chair-qualified arbitrators with non-chair public arbitrators in the non-chair public roster would not in all circumstances increase the frequency of chair-qualified arbitrators being appointed to panels. Moreover, even assuming that the odds would increase in certain circumstances, the staff could not find empirical evidence to indicate that the increased odds would result in bias in the NASD arbitration forum or otherwise outweigh the benefit of the increased training and experience among arbitrators.

3. Proposed Rule 12400(c)—Eligibility for Chairperson Roster

To be chair-qualified, Proposed Rule 12400(c) would require an arbitrator to complete the NASD training program or have ''substantially equivalent training or experience,'' and be either: (1) An attorney who has sat through two SRO arbitration cases through the award stage; or (2) a non-attorney who has sat through at least three such cases. Twenty-five commenters opposed the creation of the chair-qualified roster and questioned the eligibility requirements.[87] One commenter supported the concept of the chair-qualified roster but criticized the eligibility requirements.[88] Commenters' key concerns were that: (1) The term ''substantially equivalent training or experience'' is not defined and allows for subjective interpretation, which could lead to inexperienced persons serving as chairs; (2) the chair roster would create a class of ''professional arbitrators'' who would strive for the appearance of fairness to both sides by issuing more compromise awards; [89] and (3) a law degree and litigation experience are better predictors of chair qualification than serving as an arbitrator on two or three cases.

In Amendment 5, NASD stated that it believes that the term ''substantially equivalent training or experience'' was defined sufficiently in the narrative portion of its rule filing. In particular, the rule filing states that ''substantially equivalent training or experience would include service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like.'' NASD also noted that other factors, such as peer, party, and staff evaluations and a willingness to serve as chair, would be used in determining whether an arbitrator should be added to the chair roster. It stated that while these standards would require the use of judgment, the Commission oversees NASD for its compliance with its own rules. NASD also stated that it does not plan to grandfather any current arbitrators solely because they may have served as chairs on previous panels.

[82] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[83] NASD also proposed to amend the title of Proposed Rule 12400(b) to correct a typographical error.

[84] *See* Bernstein.

[85] *See* Letter from Scot D. Bernstein, Esq. and C. Thomas Mason III, Esq., dated Oct. 20, 2006.

[86] *See* Letter from Linda D. Fienberg, President, NASD Dispute Resolution, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, dated Nov. 9, 2006.

[87] Boliver, Canning, Caruso, Estell, Evans, Greco, Ilgenfritz, Josel, Komninos, Lapidus, Layne, Lea, Lipner, Lopez, Magary, Meissner, Miller, PIABA, Pounds, Rosenfield, Sadler, Shewan, Stoltmann, Sutherland, and Willner.

[88] PACE.

[89] *See* NASD's response to comments regarding professional arbitrators in Section 0, Proposed Rule 12400(b) (Arbitrator Rosters), above.

In addition, NASD stated that it believes the requirement that an arbitrator serve on at least three arbitrations through award to be eligible for the chair roster is an objective standard that is easily measured,[90] though not easy to meet. NASD stated that of the arbitration cases filed in the past four years, approximately 22% went to hearing.[91] NASD believes that the experience and training gained in the time it takes to serve on three hearings through award should qualify an arbitrator to serve as a chair, even without legal training or experience.

For the reasons stated above, NASD is not proposing to amend the proposed rule change in connection with these issues.

X. Proposed Rule 12401—Number of Arbitrators

As published in the Customer Code Notice, Proposed Rule 12401 provides that in cases involving claims of more than $25,000 but not more than $50,000, the panel will consist of one arbitrator, unless any party requests a panel of three arbitrators. One commenter suggested that NASD amend the proposed rule to increase the limit for a single arbitrator panel to $150,000 or more.[92] In this commenter's view, the current limitation of $25,000 is antiquated, and there is no empirical evidence to suggest that a single arbitrator cannot decide a claim involving a larger amount in dispute. In Amendment 5, NASD responded that, although this comment is beyond the scope of the rule filing, it would consider it when determining whether future amendments are warranted.

In Amendment 7, NASD amended Proposed Rule 12401(b) to require that the request for a three-arbitrator panel be made in a party's initial pleading. NASD stated that proposed change would codify current practice in the forum.[93] The proposed rule is amended as follows (new language in *italics*):

12401. Number of Arbitrators

(a) Claims of $25,000 or Less

No change.

(b) Claims of More Than $25,000 Up To $50,000

If the amount of a claim is more than $25,000 but not more than $50,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless any party requests a panel of three arbitrators *in its initial pleading.*

(c) Claims of More Than $50,000; Unspecified or Non-Monetary Claims

No change.

* * * * *

Y. Proposed Rule 12403—Generating and Sending Lists to Parties; Proposed Rule 12404—Striking and Ranking Arbitrators

Under the current Code, NLSS provides the parties with a list of five names for a single arbitrator customer case, and one list of ten public arbitrators and one list of five non-public arbitrators for a three-arbitrator case.[94] Once the parties receive the lists, they begin the process of selecting the members of their panel by striking arbitrators from each list and ranking the remaining ones.

1. Reducing Need for Extended Lists

Currently, the parties have an unlimited number of strikes, which they may exercise for any reason. This often results in so many strikes by both sides that an insufficient number of names remain on the list to fill a panel. When this happens, NLSS must generate additional names in the appropriate public/non-public categories and ''extend'' the list to fill the panel. Parties have often expressed concern with extended lists because the parties may not exercise additional strikes and can only challenge the inclusion of ''extended list'' arbitrators for cause.

As published in the Customer Code Notice, Proposed Rule 12403 increases the number of arbitrators on each list and limits the number of strikes that the parties may exercise. NASD intended this change to increase the likelihood that more names from the initial lists would remain after the striking process. In cases involving three-member panels, NASD proposed that seven arbitrators from each arbitrator roster (chair-qualified, non-chair public, and non-public) would be selected at random to generate the lists to be sent to the parties. Each separately represented party could strike up to five of the seven arbitrators on each list for any reason, but two names would remain on each list.

Some commenters found the proposed procedures to be an improvement over the current system, but noted that entire lists could still be stricken.[95] For example, if a claimant strikes arbitrators one through five from a seven-name list and a respondent strikes arbitrators three through seven, then the parties collectively will have stricken the entire list. Thus, these commenters believed the likelihood that NASD would need to extend lists would remain high. Commenters suggested amending the rule to provide that if all the arbitrators are stricken from a list, a subsequent list would be generated, accompanied by a limited number of strikes. Commenters also noted that if each party only ranks two arbitrators from the list, there is a likelihood for ties in the rankings by claimants and respondents.[96]

In Amendment 5, NASD proposed to increase the number of arbitrators on each list to eight, and to allow each separately represented party to exercise only four strikes. By increasing the number of arbitrators and reducing the number of strikes per list, NASD believes there is a greater likelihood that arbitrators from each initial list would remain on the list after the parties exercise their strikes and the lists are consolidated.[97] This, in turn, should reduce the likelihood that extended lists would be necessary, thus providing parties with more control in the arbitrator selection process. In addition, in light of the comments concerning Proposed Rule 12400(b), NASD is proposing to amend Proposed Rule 12403 to clarify that chair-qualified arbitrators also would be included in the roster of non-chair public arbitrators, but would only appear on one list in a particular case. The proposed rule change is amended as

[90] Similarly, the requirements that the chair have a law degree and be a member of the Bar are also objective standards, subject only to verification.

[91] NASD stated that this average is based on data on NASD's Web site under Dispute Resolution Statistics, How Arbitration Cases Close (visited Apr. 13, 2006) at *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&nodeId=516&ssSourceNodeId=12*.

[92] Caruso.

[93] *See* Rule 10308(b)(1)(A)(ii) of the current Code.

[94] The Commission approved NASD's generating lists of only three names per arbitrator slot in the smaller hearing locations. *See* Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers, Securities Exchange Act Rel. No. 40555, 63 FR 56670, 56673 (Oct. 22, 1998) (SR–NASD–98–48).

[95] Boliver, Canning, Caruso, Estell, Evans, Greco, Ilgenfritz, Josel, Komninos, Lapidus, Layne, Lea, Lipner, Lopez, Magary, Meissner, Miller, Pounds, Rosenfield, Sadler, Shewan, Stoltmann, Sutherland, and Willner.

[96] *Id.*

[97] NLSS will select randomly one name at a time for each list (*i.e.*, chair-qualified, non-chair public, non-public), and list the names in the order in which they were selected. The first arbitrator selected would be Arbitrator #1; the second would be Arbitrator #2, etc. After the parties have made their selections and the lists have been consolidated, in the unlikely event of a tie among arbitrators, NLSS will break the tie based on the order in which the arbitrators were initially placed on the list. So, for example, if Arbitrators 3 and 5 are ''tied'' after the non-chair public lists are consolidated, NLSS will select Arbitrator 3 for the non-chair public position.

follows (new language in *italics*; deleted language in [brackets]):

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of [seven] *eight* public arbitrators from the NASD's chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of [seven] *eight* arbitrators from the NASD's non-public arbitrator roster;
- A list of [seven] *eight* arbitrators from the NASD's public arbitrator roster; and
- A list of [seven] *eight* public arbitrators from the NASD's chairperson roster.

(3) *If the panel consists of three arbitrators, the Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.*

(4) No change.

(b) Sending Lists to Parties

No change.

* * * * *

12404. Striking and Ranking Arbitrators

(a) Each separately represented party may strike up to [five] *four* of the arbitrators from each list for any reason by crossing through the names of the arbitrators. [Two] *At least four* names must remain on each list.

(b) No change.

(c) No change.

* * * * *

2. Pre-Screening for Conflicts

One commenter suggested that Proposed Rule 12404 should include a procedure for replacing arbitrators who have disqualifying conflicts before the parties are required to submit their rankings.[98]

In Amendment 5, NASD responded that it intends to implement a new computer platform, MATRICS,[99] which would be programmed to check for certain conflicts before the lists are sent to the parties. For example, MATRICS would eliminate from a list any arbitrator who is currently employed by a firm that is a party to the case. MATRICS would also eliminate any arbitrator with a securities account at a firm that is a party to the case. In these instances, parties would not have to use a strike to eliminate an arbitrator with such conflicts.

Z. Proposed Rule 12406—Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

Proposed Rule 12406 provides that each three-arbitrator panel will consist of a non-public arbitrator, a chair-qualified public arbitrator, and a non-chair public arbitrator. Many commenters opposed the inclusion of a non-public arbitrator on three-person panels.[100] In Amendment 5, NASD noted that because Proposed Rule 12406 would not change the substantive requirements in Rule 10308(c)(4) of the current Code concerning arbitrator appointments, the comments are outside the scope of the rule filing. NASD also noted that it proposed changes to the definition of ''public arbitrator'' in a separate rule filing.[101] In addition, NASD stated that in approving the NLSS, the Commission found that NASD had created reasonable procedures for implementing the list selection process, which it determined should give investors and other parties more input into the selection of the arbitration panel, and were consistent with the Exchange Act.[102] Finally, NASD indicated that independent studies performed on the NASD arbitration forum do not show bias on the part of industry arbitrators.[103] For these reasons, NASD is not proposing to amend the proposed rule at this time.

In the Customer Code Notice, the Commission noted that under Proposed Rules 12406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List), 12410 (Removal of Arbitrator by Director), and 12411 (Replacement of Arbitrators), parties to an arbitration would not be given a peremptory strike for arbitrators appointed from an extended list. The Commission specifically asked for commenters' views on which is the better alternative when the Uniform Code differs from the proposed NASD rules with respect to appointment of arbitrators by the Director.

Many commenters stated that allowing a peremptory strike when an arbitrator is appointed from an extended list would be preferable.[104] In their view, the proposed requirements for the removal of an arbitrator would be overly restrictive and unlikely to provide assurances of impartiality to an investor regarding an arbitrator whom he or she had no voice in selecting.

In Amendment 5, NASD noted that because Proposed Rule 12410 has not changed the substantive requirements concerning arbitrator removal in Rules 10308(d)(1)–(3) and (f), and Rule 10312(d) of the current Code, the comments are outside the scope of the rule filing. NASD also believes that the changes proposed to Proposed Rules 12403 and 12404 in Amendment 5 would minimize the need for extended lists. Therefore, NASD is not proposing to allow peremptory strikes when the list is extended.

AA. Proposed Rule 12408—Disclosures Required of Arbitrators

As published in the Customer Code Notice, Proposed Rule 12408(a) provides, in relevant part, that arbitrators must disclose ''any existing or past service as a mediator.'' In the Customer Code Notice, the Commission indicated that Proposed Rule 12408(a)(4) could be interpreted as either requiring arbitrators to disclose (1) only any service as a mediator that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or (2) any existing or past service as a mediator, even if it has no connection with the proceeding. The Commission asked whether the proposed rule should be amended to reflect one or the other interpretation.

Many commenters thought the proposed rule should require disclosure of service as a mediator on any case, not just service that the arbitrator thinks would affect his/her impartiality in a particular proceeding.[105] One commenter asserted an arbitrator's

[98] SIA.

[99] *See supra* note 79.

[100] *See, e.g.*, Boliver, Canning, Caruso, Estell, Evans, Fynes, Greco, Ilgenfritz, Jones, Josel, Komninos, Lapidus, Layne, Lea, Lipner, Lopez, Magary, Meissner, Miller, PIABA, Pounds, Rosenfield, Sadler, Shewan, Stoltmann, Sutherland, and Willner.

[101] These proposed rule changes were recently approved by the Commission. *See supra* note 35.

[102] *See* Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers, *supra* note 94.

[103] *See* Industry Arbitration Award Survey, Securities Arbitration Commentator, Volume 2005, No. 4 (May 2005); U.S. General Accounting Office, Securities Arbitration: How Investors Fare, GAO/GGD 92–74 (May 11, 1992); E-mail from Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, to Gena Lai, Special Counsel, Division of Market Regulation, SEC, dated Dec. 1, 2006.

[104] Boliver, Canning, Caruso, Evans, Greco, Ilgenfritz, Josel, Komninos, Lapidus, Layne, Lea, Lipner, Lopez, Magary, Meissner, Miller, PACE, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[105] Boliver, Canning, Caruso, Estell, Evans, Greco, Ilgenfritz, Josel, Komninos, Lapidus, Layne, Lea, Lipner, Lopez, Magary, Meissner, Miller, PACE, PIABA, Pounds, Rosenfield, Sadler, Shewan, Stoltmann, Sutherland, and Willner.

ethical obligations would preclude a more constrained reading of the rule.[106]

In Amendment 5, NASD responded that it believes interpreting Proposed Rule 12408(a)(4) to require disclosure of all existing or past service as a mediator is too broad. NASD stated that some of the arbitrators in NASD's forum have served as mediators for a significant number of cases, and the list of cases could change frequently. NASD believes that it would be unduly burdensome and of little value to parties, and may result in a significant reduction in the arbitrator roster, to require these arbitrators to disclose all of their existing or past service as a mediator on any case. In Amendment 5, NASD stated that it believes that arbitrators who serve as mediators should disclose whether they have served as a mediator for any of the parties in the case for which they have been selected. NASD also stated that it plans to update its arbitrator disclosure forms to include a question that will require arbitrators to provide this information.

In Amendment 7, NASD determined to include the requirement to make this disclosure in the proposed rule. NASD amended the proposed rule as follows (new language in *italics*):

12408. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

(1) No change;

(2) No change;

(3) No change; and

(4) Any existing or past service as a mediator *for any of the parties in the case for which the arbitrator has been selected.*

(b) No change.

(c) No change.

* * * * *

One commenter suggested that NASD's arbitrator disclosure obligations should parallel those established by the California Judicial Council, which require a prospective arbitrator to disclose, among other things, all arbitrations in which he or she was a panelist, which forums conducted the arbitrations, and whether any of the parties or their counsel in the current proceeding were involved in any proceeding in which the arbitrator was a panelist.[107]

In Amendment 5, NASD noted that, apart from subparagraph (a)(4) of Proposed Rule 12408, which was added to reflect approval of a proposed rule change by the SEC on March 7, 2005,[108] Proposed Rule 12408 does not contain any substantive changes from Rules 10312(a), (b), (c), and (e) of the current Code, and that therefore, this comment is outside the scope of the rule filing.

BB. Proposed Rule 12409—Arbitrator Recusal

Proposed Rule 12409 provides that any party may ask an arbitrator to recuse himself or herself from the panel for good cause, and that such requests are decided by the arbitrator who is the subject of the recusal. One commenter asserted that parties have attempted to engage in ''panel shopping'' by requesting the recusal of an arbitrator on the grounds that an adverse ruling prior to the hearing on the merits constituted good cause.[109] This commenter suggested that NASD should amend the rule to provide that a prior ruling adverse to the party requesting recusal does not constitute good cause.

In Amendment 5, NASD responded that arbitrators are aware that some parties may use recusal requests as a way to obtain a more favorable panel. NASD believes that arbitrators have the discretion to determine whether the party making the request has demonstrated good cause for its request and does not believe it is appropriate to limit this discretion. Therefore, NASD is not proposing to amend the rule at this time.

CC. Proposed Rule 12410—Removal of Arbitrator by Director

In pertinent part, Proposed Rule 12410 provides that the Director will grant a party's request to remove an arbitrator if the arbitrator ''is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration,'' and that close questions regarding challenges to an arbitrator by a customer will be resolved in favor of the customer. One commenter asserted that the term ''indirect'' is vague and should not be used in the rule.[110] This commenter also stated that the rule would create a ''double standard'' that lacks justification and suggested revising the proposed rule to provide that arbitrator challenges will be resolved in favor of the party making the challenge.

In Amendment 5, NASD responded that because Proposed Rule 12410 does not change the substantive requirements of current Rules 10308(d)(1)–(3) and (f), and Rule 10312(d) of the current Code, concerning arbitrator removal, these comments are outside the scope of the rule filing.

DD. Proposed Rule 12411—Replacement of Arbitrators

In pertinent part, Proposed Rule 12411 provides that, if an arbitrator is removed or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator, unless the parties agree in writing to proceed with the two remaining arbitrators. Rule 10308(d) of the current Code, on the other hand, provides that the director ''shall provide the parties information'' concerning the proposed replacement arbitrator, and the parties ''shall have the right to object.'' One commenter, noting that Proposed Rule 12411 lacks the notice requirement, expressed concern that the Director could replace an arbitrator before the parties become aware of the vacancy.[111]

In Amendment 5, NASD stated that Proposed Rule 12411 codifies current practice in the forum, which NASD has determined is the most efficient method for addressing arbitrator replacements. Currently, if an arbitrator becomes unavailable and must be replaced, the parties rarely agree to proceed with only the two remaining arbitrators. To expedite the replacement process, NASD selects the replacement arbitrator and notifies the parties of the replacement simultaneously. NASD currently gives the parties five business days from the date of the notice to accept the replacement or agree to proceed with the two remaining arbitrators. This procedure would continue under Proposed Rule 12411, except that the parties have an unlimited time to elect to proceed with only the remaining arbitrators.[112]

[106] PACE.

[107] Canning.

[108] *See* Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Proposal to Adopt a New IM–10308 on Mediators Serving as Arbitrators, Securities Exchange Act Rel. No. 51325 (Mar. 7, 2005), 70 FR 12522 (Mar. 14, 2005) (SR-NASD–2005–007).

[109] SIA.

[110] *Id.*

[111] Ryder.

[112] Parties may at any time stipulate to the removal of an arbitrator, including a replacement arbitrator. Telephone conversation among Jean Feeney, Vice President, NASD; Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution; and Gena Lai, Special Counsel, Division of Market Regulation, SEC (Dec. 19, 2006).

EE. Proposed Rule 12500—Initial Prehearing Conferences; Proposed Rule 12501—Other Prehearing Conferences

Proposed Rules 12500 and 12501 establish procedures for scheduling initial and other prehearing conferences. Two commenters expressed concern that, in contrast to the current Code, Proposed Rules 12500 and 12501 would not give the Director the authority to hold an initial prehearing conference (''IPHC'') with the parties before the panel is selected.[113]

In Amendment 5, NASD agreed that the proposed rules would not grant the Director the explicit authority to hold an IPHC before the panel is selected. It also agreed that on rare occasions, parties may need to request a prehearing conference before the panel is appointed to resolve discovery disputes or to discuss jurisdictional issues. Thus, NASD proposed to revise Proposed Rule 12501 to make this authority explicit. Proposed Rule 12501 is amended as follows (new language in *italics*):

12501. Other Prehearing Conferences

(a) *A prehearing conference may be scheduled upon the joint request of the parties or at the discretion of the Director. The Director will set the time and place of the prehearing conference and appoint a person to preside.*

(b) No change.

(c) No change.

* * * * *

FF. Proposed Rule 12503—Motions

Proposed Rule 12503 establishes procedures to make and decide motions or responses to motions.

1. Oral Motions

One commenter contended that Proposed Rule 12503(a)(1) would allow a party to make an oral motion on short notice and would allow the panel to decide on motions without giving the opposing party an adequate opportunity to respond.[114] The commenter suggested that oral motions should be limited to matters that could not have been anticipated and that require immediate consideration. The commenter also suggested that the party opposing the oral motion should be given 10 days to respond, unless there is good cause for deciding the motion on a shorter timeframe.

In Amendment 5, NASD responded that Proposed Rule 12503(a)(1) requires a party to make an effort to resolve a matter with the other parties before making a motion, and that both oral and written motions must describe that effort. Therefore, the panel would be able to consider these factors, and any objections, in ruling on a motion or in deferring a decision to allow more time to respond.

2. Service Methods

One commenter suggested that Proposed Rule 12503(a)(2) should allow for some variation in service methods, rather than requiring all parties to be served at the same time and in the same manner.[115] NASD responded that, based on current practice in the forum, NASD believes the service requirements in Proposed Rule 12503(a)(2) are reasonable because they would prevent a party from attempting to gain an advantage in the proceeding by delaying service of a motion on some parties.

3. Panel Approval of Motions on Short Notice

Two commenters opposed requiring panel approval in Proposed Rule 12503(a)(3) for motions filed within 20 days before the hearing.[116] In their experience, motions are usually filed because of an emergency, and requiring a panel to grant advance permission would reduce the time for the panel to decide a motion. They suggested that parties should not need permission to file a motion in arbitration, and that Proposed Rule 12503(a)(4) should be amended to allow a party to submit additional documents with a motion to amend a pleading to add a party.

In Amendment 5, NASD responded that, in order to prevent any unnecessary delays to the start of a hearing, it believes the panel should control events and procedures that occur close to that time. In addition, NASD noted that Proposed Rule 12300 (Filing and Serving Documents) allows for additional information to be submitted in connection with amended pleadings.

4. Deadlines for Responses

One commenter urged NASD to delete the provision in Proposed Rule 12503(b) requiring responses to written motions within 10 calendar days of receipt.[117] The commenter suggested that NASD continue with current procedure, in which responses to motions are due after the first IPHC. The commenter suggested that thereafter, deadlines to respond to motions should be set by the panel at the prehearing conference or otherwise.

In Amendment 5, NASD responded that, if a party submits a motion before the IPHC, NASD staff forwards it to the panel, along with any responses that were voluntarily submitted by other parties. Based on current practice in the forum, NASD believes Proposed Rule 12503(b) would provide parties with adequate time to respond to written motions. In addition, the parties and the panel have the ability to extend the 10-day timeframe under Proposed Rule 12207.

5. Motions Regarding Hearing Location

Two commenters opposed giving the Director authority to decide motions regarding hearing location, under Proposed Rule 12503(c)(2).[118] In their view, the hearing location should always be set where it would be most convenient for the customer, as indicated on the customer's statement of claim. In Amendment 5, NASD responded that, under the Customer Code, a party may request a convenient hearing location, but there may be reasons that a party's request is not granted. NASD believes the Director should have the authority to change the hearing location before a panel is appointed.[119]

6. Number of Arbitrators to Hear Motions

One commenter, noting that Proposed Rule 12503(c)(3) would allow the full panel to hear discovery motions only under certain circumstances (*e.g.*, at the request of a party or on the arbitrator's initiative), contended that the full panel should be required to hear and decide any discovery-related motion.[120] In Amendment 5, NASD responded that Proposed Rule 12503(c)(3) is based on current practice in the forum and allows the parties or designated arbitrator to determine which motions require consideration by the full panel. Further, NASD believes the commenter's suggestion would increase the costs of arbitration, since the parties would have to pay the honorarium for two additional arbitrators.

For the reasons stated above, NASD is not proposing to amend Proposed Rule 12503 at this time.

GG. Proposed Rule 12504—Motions to Decide Claims Before a Hearing on the Merits

As published in the Customer Code Notice, Proposed Rule 12504 provided that, except in connection with time limits under arbitration, motions to decide a claim before a hearing

[113] Canning and Feinberg.

[114] SIA.

[115] Krosschell.

[116] Canning and Feinberg.

[117] Krosschell.

[118] Canning and Stolle.

[119] *See also* discussion concerning hearing locations in Section 0, above.

[120] SIA.

(''dispositive motions'') ''are discouraged and may only be granted in extraordinary circumstances.'' Most commenters criticized the proposed rule. Some industry commenters argued that it would improperly discourage dispositive motions and improperly impose an ''extraordinary circumstances'' requirement.[121] In their view, dispositive motions could be appropriate in circumstances that are not extraordinary. One industry commenter also contended that NASD should continue to allow arbitrators to decide whether to grant dispositive motions on a case-by-case basis, instead of codifying a limit on dispositive motions.[122] Moreover, this commenter argued that the lack of guidance on the meaning of ''extraordinary circumstances'' would have a chilling effect on the filing of dispositive motions and may expose respondents' counsel to sanctions.[123]

Investor representatives also criticized the proposed rule, but for different reasons.[124] Most of these commenters asserted that a party has a fundamental right to a hearing in arbitration and that Proposed Rule 12504 would eliminate this right. They also predicted that the proposed rule would be a tool for abuse by defense counsel to delay the arbitration process and would hinder claimants' attempts to have their claims heard by an arbitration panel. In addition, they believed that the proposed rule would cause claimants, who have already suffered losses, to incur additional expense and delay in responding to these motions. In their view, Proposed Rule 12504 would cause the use of these motions to become more prevalent.

Some commenters believed the proposed rule should be amended to expressly safeguard the rights of the non-moving party, particularly an investor who has suffered harm or loss.[125] Another commenter also supported the safeguards, while also stating that the rule should not be included in the Customer Code.[126]

Two commenters suggested that Proposed Rule 12504 should be amended to require the costs incurred in opposing a dispositive motion to be awarded against the firm immediately and automatically upon the denial of a motion.[127] In their view, the panel should not wait to include costs in the final award, as the deterrent effect would be lost with a delay in assessing penalties. NASD responded that Proposed Rule 12504 is not intended to change the current practice of assessing costs and expenses of a hearing at the end of a case, in the award. Thus, NASD stated that these comments are outside the scope of the rule filing.

Finally, another commenter suggested that a claimant should not have to respond to a dispositive motion if it is frivolous or without merit.[128] This commenter also noted that the proposed rule does not expressly state that the panel can deny leave to make such a motion, and contended that by setting forth timeframes for briefing and consideration, it implies that all motions will be considered. In Amendment 5, NASD responded that it would revisit this issue when the forum has some experience with the new motions practice rules.

Acknowledging the commenters' concerns, NASD stated that it had considered the effects the proposed rule would have on public and industry users of the forum. NASD noted, however, that the current Code does not provide any guidance with respect to motions to dismiss, and that arbitrator decisions in this area may lack uniformity. NASD stated that, as motions to dismiss are filed more frequently, the proposed rule is necessary to provide some uniform guidelines to arbitrators and users of the forum concerning this practice. NASD believes that the proposed rule would provide valuable guidance to parties and arbitrators and make the administration of arbitrations more uniform and transparent.

NASD also agreed with commenters that the term ''extraordinary circumstances'' should be explained to clarify when Proposed Rule 12504 would apply and that more guidance should be provided on the standards to use when deciding a motion to dismiss. NASD stated that, in meeting with various constituent groups of the arbitration forum, including investor and industry representatives, it suggested amending the proposed rule to provide that a panel may grant a motion to dismiss before a hearing only if it determines that there are no material facts in dispute or that there are no credibility determinations to be made. NASD stated that none of the constituencies indicated that they would support the suggested amendments, and that they were unable to reach a consensus on any amendments to the proposed rule. As a compromise, NASD suggested amending the narrative portion of the rule filing to explain under what circumstances a motion to dismiss might be granted. NASD stated that it believed the various constituencies supported this compromise.

Therefore, in Amendment 5, NASD proposed the following guidance:

> For purposes of this rule, if a party demonstrates affirmatively the legal defenses of, for example, accord and satisfaction, arbitration and award, settlement and release, or the running of an applicable statute of repose, the panel may consider these defenses to be extraordinary circumstances. In such cases, the panel may dismiss the arbitration claim before a hearing on the merits if the panel finds that there are no material facts in dispute concerning the defense raised, and there are no determinations of credibility to be made concerning the evidence presented.

The Commission received 125 comment letters on Amendment 5. Most of the commenters objected to NASD's proposed guidance. As a result, NASD filed Amendment 6 to the proposed rule change, withdrawing Proposed 12504 and all references to the rule from the Customer Code.[129] The text of Amendment 6 is available on NASD's Web site: *http://www.nasd.com/RulesRegulation/RuleFilings/2003RuleFilings/NASDW_009306?=802.*

HH. Proposed Rule 12505—Cooperation of Parties in Discovery

As published in the Customer Code Notice, Proposed Rule 12505 provides that the parties must cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. One commenter contended that the proposed rules should explicitly provide that the discovery procedures

[121] R. Davis, Schwab, and SIA.

[122] Schwab.

[123] *Id.*

[124] Ball, Boliver, Brannan, Canning, Estell, Finer, Ilgenfritz, Krosschell, Layne, Ledbetter, Lopez, Miller, Page, Pounds, Schultz, Schultz #2, Shewan, Sonn, Speyer, Steinberg, Stolle, Sutherland, Tepper, Williams, and Woska.

[125] PACE, PIABA, Lea, Josel, Evans, Komninos, Stoltmann, Willner, Rosenfield, Lapidus, Lipner, Magary, and Eccleston. In particular, they suggested that:

- All factual allegations made by the non-moving party are to be taken as true for the purposes of the motion.
- The motion must be denied whenever credibility is at issue, there are any facts in dispute, or the panel must make factual findings against the non-moving party.
- If the non-moving party asserted that it can cure any defect by filing an amended statement of claim, that party should be given an opportunity to do so.
- The rule should clarify that arbitrators should not apply a ''failure to state a claim'' standard, since claimants are not required to plead legally cognizable claims.

[126] Schultz #2.

[127] Canning and Lipner.

[128] Ryder.

[129] Proposed Rule 12504 has been re-filed as a separate proposed rule change and published for public comment. *See supra* note 23.

are mandatory and suggested eliminating the word ''voluntary'' from Proposed Rule 12505.[130]

NASD agreed with this comment, stating that this change would help to ensure that the parties understand the importance of complying with the discovery process. The proposed rule change is amended as follows (new language in *italics*; deleted language in [brackets]):

12505. Cooperation of Parties in Discovery

The parties must cooperate to the fullest extent practicable in the [voluntary] exchange of documents and information to expedite the arbitration.

* * * * *

II. Proposed Rule 12506—Document Production Lists

Proposed Rule 12506 establishes procedures for producing or objecting to document production requirements under the Discovery Guide and the document production lists it contains (''Document Production Lists''), as amended in the Customer Code.

1. ''Control''

As published in the Customer Code Notice, Proposed Rule 12506(b) provides that parties must produce to all other parties all documents in their ''possession or control'' that are described in the applicable Document Production Lists. Similarly, Proposed Rule 12514(a) (Exchange of Documents and Witness Lists Before Hearing) provides that parties must exchange certain materials in their ''possession or control'' that they intend to use at the hearing that have not already been produced. Several commenters argued that the term ''control'' should be deleted from Proposed Rules 12506(b) and 12514(a), noting that the concept of ''control'' in the discovery context has been defined, through case law, to include not only possession of the requested documents, but also the legal right to obtain those documents.[131] As a result, these commenters contended that customers could incur increased costs to comply with these proposed rules, or face sanctions if they are unable to gain access to documents from third-parties or unable to do so in a timely manner.

In Amendment 5, NASD responded that the addition of the term ''control'' to Proposed Rules 12506(b) and 12514(a) is intended to expand, not narrow, the range of documents that are to be produced in discovery. NASD believes that under these proposed rules, it should be easier for customers to gain access to documents held by third-parties on behalf of respondents, because respondents would be required to produce documents, regardless of where the documents are stored or maintained. NASD believes that, under these proposed rules, the customer would have more control in the discovery process. For these reasons, NASD did not propose to amend Proposed Rules 12506(b) and 12514(a) in response to this issue. In Amendment 7, however, noting additional comments submitted on this issue,[132] NASD stated that it is sensitive to customers' concerns regarding the costs they could incur under the discovery process and amended Proposed Rule 12508 to address this issue.[133]

2. Good Faith Standard

Proposed Rules 12506(b)(1) and 12507(b)(1) provide that, in response to a Document Production List requirement or a discovery request, a party has the option of identifying and explaining the reason that a particular document or piece of information cannot be produced within the required time, and stating when the documents would be produced (''delay provisions''). Several commenters asserted that parties would abuse the delay provisions by setting a self-imposed deadline with the purpose of impeding and delaying discovery.[134] They also noted that the proposed rules would not subject a party to sanctions for using the delay provisions in bad faith, including Proposed Rule 12511 (Discovery Sanctions).

NASD responded that it believes the expectation for parties to act in good faith is implied in the discovery provisions of both the current Code and the Customer Code. NASD agreed, however, that Proposed Rules 12506(a) and 12507(b) of the Customer Code should be amended to eliminate any ambiguity concerning the applicability of a ''good faith'' standard. Therefore, NASD proposed in Amendment 5 to include an explicit ''good faith'' standard so that frivolous delays, unreasonable timeframes, or bad faith objections would be subject to sanctions. Proposed Rule 12506 is amended as follows (new language in *italics*):

12506. Document Production Lists

(a) No change.

(b) Time for Responding to Document Production Lists

(1) Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third-party claim, within 60 days of the date that their answer is due, parties must either:

* * * * *

(2) A party must act in good faith when complying with subparagraph (1) of this rule. ''Good faith'' means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document.

(c) No change.

* * * * *

3. Discovery Deadlines

Proposed Rules 12506(b) and 12507(b) would extend the time to produce documents from 30 days under the current Code to 60 days. Some commenters viewed this as authorizing a delay of another month before parties may initiate the process to compel discovery and suggested that the standard timeframe for document exchange should remain 30 days.[135] In Amendment 5, NASD responded that this extension of time is intended to address concerns of many frequent users of the forum that the current time frame is unrealistic and sometimes leads to unnecessary disputes.

Several commenters observed that because Proposed Rule 12506 would require parties to produce documents required by the Document Production Lists within 60 days of the date the answer to the statement of claim is due, and Proposed Rule 12303 would provide that an answer is due 45 days from the receipt of the statement of claim, respondents would have 105 days to produce documents required by the Document Production Lists.[136] They argued that Proposed Rule 12506 should be amended to require a party to provide substantial justification for the failure to produce documents within 105 days, or face sanctions.

In Amendment 5, NASD responded that a party would face sanctions for

[130] PACE.

[131] Boliver, Canning, Estell, Evans, Feinberg, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stolle, Stoltmann, Sutherland, and Willner.

[132] *See supra* note 21 and accompanying text.

[133] *See* Section 0, Proposed Rule 12508 (Objecting to Discovery; Waiver of Objection), below.

[134] Boliver, Canning, Evans, Feinberg, Ilgenfritz, Josel, Komninos, Lapidus, Lipner, Lea, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stolle, Stoltmann, Sutherland, and Willner.

[135] Canning, Estell, Feinberg, Feldman, Komninos, and Stolle.

[136] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

failing to comply with the discovery provisions of the Customer Code under Proposed Rule 12511, unless the panel determines that there is substantial justification for the failure to comply. A party would have to provide evidence of substantial justification for the panel to make this determination. For the above reasons, NASD is not proposing to amend these proposed rules at this time in response to these issues.

4. Discovery of Insurance Coverage

Several commenters contended that the Document Production Lists should be revised to require the production of information and documents regarding insurance policies that might provide coverage on the dispute.[137] They stated that courts uniformly require production of this information because it assists the parties in evaluating settlement possibilities and aids in screening for conflicts. In Amendment 5, NASD responded that Proposed Rule 12506(a) has not changed the documents or information required under the current Document Production Lists, and that therefore these comments are outside the scope of the rule filing.

5. Standard by Which Documents are Discoverable

One commenter believes that the documents on the Document Production Lists should be automatically, not presumptively, discoverable.[138] This commenter also expressed the view that brokerage firms do not have grounds to assert confidentiality of compliance manuals and recommended amending the Customer Code to state that the party asserting confidentiality has the burden of establishing that the documents in question legitimately require confidential treatment. In Amendment 5, NASD responded that, although this comment is outside the scope of the rule filing, it would be considered when NASD determines whether future amendments are warranted.

JJ. Proposed Rule 12507—Other Discovery Requests

Proposed Rule 12507 establishes procedures for making and responding to discovery requests for items that are not included in the Document Production Lists. This and certain other discovery provisions of the Customer Code would codify provisions of the current Discovery Guide. Three commenters recommended also incorporating into the Customer Code the provisions of the Discovery Guide concerning the limited purpose of information requests, to discourage the use of overly broad information requests that are the equivalent of interrogatories.[139]

In light of these comments, NASD incorporated Section V of the Discovery Guide into Proposed Rule 12507(a). In addition, as discussed under Proposed Rule 12506, NASD included an express ''good faith'' standard in 12507(b).[140] Proposed Rule 12507 is amended as follows (new language in *italics;* deleted language in [brackets]):

12507. Other Discovery Requests

(a) Making Other Discovery Requests

(1) Parties may also request additional documents or information from any party by serving a written request directly on the party. *Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in arbitration.*

(2) [Such] *Other discovery* requests may be served:

Remainder of subparagraph (2)—No change.

(b) Responding to Other Discovery Requests

(1) Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either:

Remainder of subparagraph (1)—No change.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. ''Good faith'' means that a party must use its best efforts to produce all documents or information required or agreed to be produced. If a document or information cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document or information.

* * * * *

KK. Proposed Rule 12508—Objecting to Discovery; Waiver of Objection

Proposed Rule 12508(a) describes how a party may object to producing a document required by the proposed Document Production Lists or requested by a party. Proposed Rule 12508 requires a party to specifically identify which documents or requested information the party is objecting to and why. One commenter contended that the proposed rule would impose a burden on the parties to locate and identify the specific documents and information to which they are objecting.[141] This commenter suggested amending the proposed rule to require an objecting party to specify only the request for documents or information that it is objecting to and the reasons for its objection.

In Amendment 5, NASD responded that it believes the provisions of Proposed Rule 12508(a) are appropriate, and that allowing parties to object to an entire document or information request would undermine the purpose of the proposed rule, which is to require more specificity in objections.

Proposed Rule 12508(b) provides that any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time. One commenter contended that this provision would unnecessarily require the parties to anticipate every possible objection or face the penalty of waiver.[142] In this commenter's view, the proposed rule would encourage objections as a protective measure, even though a party may be sanctioned under Proposed Rule 12511 for frivolous objections. Stating that parties would need to balance the risk of waiver against the risk of sanctions, this commenter suggested deleting Proposed Rule 12508(b). In Amendment 5, NASD responded that Proposed Rule 12508 is based on current practice in the forum, and that it believes the provisions and intent of Proposed Rule 12508(b) are clear.

For the above reasons, NASD is not proposing to amend the proposed rule in connection with these issues at this time.

In connection with commenters' concerns regarding the term ''control'' in Proposed Rules 12506 and 12514, discussed above,[143] NASD amended Proposed Rule 12508 as follows (new language in *italics*):

12508. Objecting to Discovery; Waiver of Objection

(a) No change.

(b) No change.

(c) In making any rulings on objections, arbitrators may consider the relevance of documents or discovery

[137] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltman, Sutherland, and Willner.

[138] PACE.

[139] PACE, PIABA, SIA.

[140] *See* Section 0, above.

[141] SIA.

[142] *Id.*

[143] *See* Section 0, Proposed Rule 12506 (Document Production Lists), above, and Section 0, Proposed Rule 12514 (Exchange of Documents and Witness Lists Before Hearing), below.

requests and the relevant costs and burdens to parties to produce this information.

LL. Proposed Rule 12509—Motions to Compel Discovery

Proposed Rule 12509 provides that a party may make a motion asking the panel to order another party to produce documents or information if the other party has: (1) Failed to comply with Proposed Rules 12506 or 12507; or (2) objected to the production of documents or information under Proposed Rule 12508. Two commenters contended that the proposed rule should include other reasons that a motion to compel may be filed, such as a bad faith use of the delay provisions of Proposed Rules 12506(b) and 12507(b), which would allow parties to name self-imposed deadlines for producing specified documents.[144] These commenters argued that a motion to compel may be warranted if the parties' reason for using the delay provisions is in bad faith or the self-imposed deadline is unreasonably long and expressed concern that this conduct would not be subject to sanctions under Proposed Rule 12511.

As discussed in connection with Proposed 12506 and 12507, above, NASD stated in Amendment 5 that the concept of ''good faith'' is implied in the discovery provisions of the current Code and the Customer Code, and proposed to amend those rules to explicitly include a ''good faith'' standard for compliance. NASD believes the issues raised concerning Proposed Rule 12509 would be addressed with these proposed changes.

Several commenters suggested that costs and attorneys fees be assessed immediately against the losing party in a discovery motion seeking the production of documents and information required by Document Production Lists 1 and 2, absent a finding by the panel of substantial justification.[145] In Amendment 5, NASD responded that motions to compel are issued to enforce compliance with the discovery rules and are not meant to be punitive. It noted, however, that arbitrators may impose a range of sanctions, as provided in Proposed Rules 12212 and 12511, in appropriate circumstances.

For the reasons stated above, NASD is not proposing to amend Proposed Rule 12509 at this time.

MM. Proposed Rule 12510—Depositions

Proposed Rule 12510 provides that depositions are discouraged but may be approved by the panel in very limited circumstances. Some commenters contended that, when time is of the essence, the requirement to receive arbitrator approval in advance could result in the loss of testimony or evidence.[146] They suggested that the proposed rule should include a procedure that permits a deposition to be taken before a panel is selected.

In Amendment 5, NASD responded that it is sensitive to the commenters' concerns and noted that the proposed rule would not prevent parties from mutually agreeing to take the testimony of an ill or dying witness before a panel has been selected. For this reason, NASD is not proposing to amend Proposed Rule 12510 at this time.

NN. Proposed Rule 12511—Discovery Sanctions

Under Proposed Rule 12511, a party would face sanctions for failing to cooperate in the exchange of documents and information as required under the Customer Code. Several commenters suggested that the proposed rule also should permit sanctions if parties do not timely produce the requisite documents from Document Production Lists 1 and 2 without good cause.[147] In Amendment 5, NASD responded that Proposed Rule 12511 specifically states that the panel may issue sanctions against any party in accordance with Proposed Rule 12212(a) for failure to comply with the discovery provisions of the Customer Code. It thus believes the commenters' concern is sufficiently addressed under Proposed Rule 12511.

One commenter noted that Proposed Rule 12511 expands the scope of a panel's authority beyond current practice by permitting arbitrators to impose sanctions for violations of the Customer Code, rather than for violations of panel orders only.[148] In Amendment 5, NASD explained that the purpose of this provision is to specify that the panel has the authority to control all aspects of an arbitration, not just discovery, and therefore must have the ability to enforce the rules of the forum as well as its orders.

Two commenters noted that a bad faith use of the delay provisions in Proposed Rules 12506 and 12507 is not subject to sanctions under Proposed Rule 12511 and suggested amending Proposed Rule 12511 to address this issue.[149] As previously discussed, NASD proposed in Amendment 5 to amend Proposed Rules 12506 and 12507 to include expressly a ''good faith'' standard for compliance. NASD believes the issues raised concerning Proposed Rule 12511 will be addressed with the proposed changes in Proposed Rules 12506 and 12507.

For these reasons stated above, NASD is not proposing to amend Proposed Rule 12511 at this time.

OO. Proposed Rule 12512—Subpoenas

Proposed Rule 12512 provides that subpoenas may be issued ''as provided by law.'' Similarly, Rule 10322 of the current Code provides, ''The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law.'' Seven commenters contended that brokerage firms abusively issue overly broad subpoenas to non-parties, while failing to provide notice of the subpoena to claimants in a timely manner.[150] These commenters stated that claimants usually receive a copy of the subpoena only after the subpoenaed party has produced the requested documents, thereby eliminating the opportunity to make a meaningful objection. They argued that parties should be allowed to object to the subpoena before it is issued. Several commenters also suggested that the proposed rule should state clearly that only arbitrators may issue subpoenas.[151]

In Amendment 5, NASD agreed that changes to the subpoena process were needed and noted that it had separately filed proposed rule changes relating to subpoenas.[152] NASD stated that it intends to incorporate any approved changes into the Customer Code.

PP. Proposed Rule 12513—Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas

Proposed Rule 12513 allows the panel to order the appearance of any employee

[144] Feinberg and Canning. *See* Section 0, Proposed Rule 12506 (Document Production Lists), above, concerning delay provisions.

[145] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[146] Canning and Feinberg.

[147] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[148] SIA.

[149] Canning and Feinberg.

[150] Canning, Feinberg, Greco, Layne, Miller, Stolle, and Stoltmann.

[151] Canning, Feinberg, Greco, Layne, Stolle, Stoltman.

[152] The Commission recently approved these proposed rule changes. *See* Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to Revise Rule 10322 of the NASD Code of Arbitration Procedure Pertaining to Subpoenas and the Power to Direct Appearances, Securities Exchange Act Rel. No. 55038 (Jan. 3, 2007), 72 FR 1353 (Jan. 11, 2007) (SR–NASD–2005–079).

or associated person of an NASD member without the use of subpoenas. One commenter noted that Proposed Rules 12100(a) and (r) consider former associated persons to be associated persons.[153] In this commenter's view, while Proposed Rule 12513 would permit a panel to order a former associated person to attend an arbitration hearing, this would be impractical because the panel would have no means to enforce an order compelling that person's attendance. This commenter suggested limiting the proposed rule to current associated persons and stated that the attendance of former associated persons should be compelled by subpoena only.

In Amendment 5, NASD responded that Proposed Rule 12100(r) is a codification of current policy, under which, in the arbitration context, NASD maintains jurisdiction over a former associated person for events that occurred while the person was associated with a member firm (or are related to the person's termination of employment with a member firm). It also noted that such arbitrations would be subject to any applicable statute of limitations and the six-year eligibility rule under both the current Code and Proposed Rule 12206. With regard to Proposed Rule 12513, NASD acknowledged that arbitrators have limited means of requiring former associated persons to appear or produce documents. Nevertheless, some former associated persons may cooperate with these orders to facilitate resolution of the matter. If they do not, they may be subject to a subpoena. Because Proposed Rule 12513 is substantively the same as current policy, NASD is not proposing to amend this proposed rule at this time.

QQ. Proposed Rule 12514—Exchange of Documents and Witness Lists Before Hearing

As published in the Customer Code Notice, Proposed Rule 12514(c) provides that parties may not present at the hearing any documents or other materials not already produced or any witnesses not already identified at an earlier stage in the arbitration, unless the panel determines that good cause exists for the earlier failure. Proposed Rule 12514(c) also specifically states that the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing constitutes good cause.

1. ''Control''

Proposed Rule 12514(a) (Documents and Other Materials) provides that at least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. Several commenters objected to the use of the term ''control'' in Proposed Rule 12514(a) and Proposed Rule 12506.[154] NASD responded in Amendment 5 that it believed the use of the term ''control'' would make it easier for customers to gain access to documents held by third-parties on behalf of respondents, because respondents would be required to produce documents regardless of where the documents are stored or maintained. In Amendment 7, NASD proposed to amend Proposed Rule 12508 to address this issue.[155]

2. Scope of ''Rebuttal''

Several commenters suggested that, to avoid any misunderstanding of what constitutes rebuttal, Proposed Rule 12514(c) should include information currently contained in a form letter that NASD sends to the parties advising them of the hearing date and location.[156] This information instructs parties that documents and lists of witnesses in defense of a claim are not considered rebuttal and, therefore, must be exchanged by the parties. In response to this comment, NASD agreed in Amendment 5 to include this provision, noting that it would be codifying current practice.[157] The proposed rule is amended as follows (new language in *italics*; deleted language in [brackets]):

12514. Exchange of Documents and Witness Lists Before Hearing

(a) Documents and Other Materials
No change.
(b) Witness Lists
At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. At the same time, [each party] *all parties* must file their witness lists with the Director, with enough copies for each arbitrator.

(c) Exclusion of Documents or Witnesses

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing. *Documents and lists of witnesses in defense of a claim are not considered rebuttal or impeachment information and, therefore, must be exchanged by the parties.*

* * * * *

3. ''Good Cause''

One commenter expressed concern that the exception allowing documents not exchanged to be admitted for ''good cause'' would create uncertainty that a panel would accept documents or witnesses not produced or identified during the 20-day exchange during the hearing.[158] Similarly, two commenters expressed concern that the phrase ''impeachment purposes based on developments during the hearing'' is ambiguous, would create more uncertainty in the hearing preparation process, and would be difficult for arbitrators to apply.[159] These commenters recommended retaining the ''good cause'' requirement, but replacing the standard of ''rebuttal or impeachment purposes'' with the cross-examination standard from Rule 10321 of the current Code.[160] Another commenter objected to the provision in Proposed Rule 12514(c) that would require parties to exchange documents contemplated for use on cross-examination, stating that this disclosure is antithetical to the concept of cross-examination because it would give each party time to formulate responses.[161] This commenter suggested that the proposed rule should specifically except cross-examination documents from the

[153] SIA. *See also* Section 0, Proposed Rule 12100(a) (Definition of Associated Person) and Proposed Rule 12100(r) (Definition of Person Associated with a Member), above.

[154] Boliver, Canning, Estell, Evans, Feinberg, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stolle, Stoltmann, Sutherland, and Willner.

[155] *See* Sections 0, Proposed Rule 12506 (Document Production Lists), and 0, Proposed Rule 12508 (Objecting to Discovery; Waiver of Objection), above.

[156] Boliver, Canning, Evans, Feinberg, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[157] NASD also proposed to amend Proposed Rule 12514(b) to correct a grammatical error.

[158] Ryder.

[159] Canning and Feinberg.

[160] Canning and Feinberg. Current Rule 10321 (General Provisions Governing Pre-Hearing Proceedings) provides in relevant part that parties do not need to exchange documents or identify witnesses ''which parties may use for cross-examination or rebuttal.''

[161] Schwab.

20-day exchange, as under the current Code.

In Amendment 5, NASD responded that the proposed rule creates a presumption that, at the hearing, parties may not present any documents that were not exchanged or witnesses who were not identified within the time provided by the proposed rule. NASD stated, however, that the ''good cause'' exception is intended to allow for the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments at the hearing. NASD also stated that in developing Proposed Rule 12514(c), it learned from some of its constituents that parties have been abusing the ''cross examination'' exception of Rule 10321 of the current Code by inappropriately designating certain documents as cross-examination documents. Subsequently, at the hearing, parties allegedly ''surprised'' their opponents with these documents, which limited the opponents' ability to effectively rebut their significance. NASD stated that Proposed Rule 12514(c) is intended to prevent this practice. For these reasons, NASD is not proposing to amend the proposed rule at this time.

4. Other Comments

Under the current and proposed Discovery Guides, if a party states that no responsive information or documents exist in connection with a discovery request, that party must make certain affirmations at the request of the party seeking the discovery request. Specifically, the responding party must: (1) State in writing that he/she conducted a good faith search for the requested information or documents; (2) describe the extent of the search; and (3) state that, based on the search, no such information or documents exist. Two commenters asserted that these affirmations are inadequate and suggested that they be amended.[162] NASD responded that the Customer Code is not changing the affirmation provision in the Discovery Guide, and thus that this comment is outside the scope of this rule filing.

Two commenters asserted that Proposed Rule 12514 would cause parties to provide more documents than they intend to use at the hearing, thus limiting any meaningful analysis of the evidence that the opposing parties actually intend to offer at the hearing.[163] They suggested that Proposed Rule 12514 should require parties to provide notebooks of numbered exhibits with an index to opposing parties 20 days before hearing, and to the panel at the hearing.

In Amendment 5, NASD responded that Proposed Rule 12514 is meant to provide general guidance on the exchange or documents and witness lists before a hearing, and is substantively the same as Rule 10321(a) of the current Code. Thus, it stated that these comments are outside the scope of the rule filing.

RR. Proposed Rule 12600—Required Hearings

As published in the Customer Code Notice, Proposed Rule 12600(c) provides that if a hearing will be held, the Director will notify the parties of the time and place of the hearing at least 10 days before the hearing begins, unless the parties agree to a shorter time. The Commission specifically solicited comment on whether parties need notice of the hearing earlier than 10 days in advance. Several commenters indicated that the proposed 10-day notice could be insufficient.[164] One commenter stated that such short notice might cause a small investor to lose his or her counsel, as that counsel's schedule might not allow an appearance for a hearing on 10 days' notice, which in turn could mean that the investor could be forced to proceed at the hearing without counsel.[165] Other commenters suggested that it would be difficult for parties and witnesses who are traveling from out of town to make travel arrangements on 10 days' notice.[166] In Amendment 5, NASD explained that the term ''place'' in Proposed Rule 12600(c) refers to the specific facility where the hearings will be held, and that under current practice, parties normally are notified of the city in which the hearing will take place prior to the IPHC. Parties also generally agree to hearing dates at the IPHC. NASD stated that it does not expect this practice to change under Proposed Rule 12600(c). In response to the comments and to ensure consistent timeframes under the Customer Code, however, NASD is proposing to amend Proposed Rule 12600(c) to increase the notice period from 10 to 20 days. The proposed rule change is amended as follows (new language in *italics*; deleted language in [brackets]):

12600. Required Hearings

(a) No change.

(b) No change.

(c) The Director will notify the parties of the time and place at least [10] *20* days before the hearing begins, unless the parties agree to a shorter time.

* * * * *

In addition, Proposed Rule 12600 provides that hearings will be held, unless the arbitration is administered under the provisions under the Customer Code applicable to simplified arbitrations or default proceedings, the parties agree otherwise in writing, or the arbitration has been settled, withdrawn, or dismissed. One commenter noted that Proposed Rule 12600(a) would not include cases dismissed without a hearing under Proposed Rule 12504 and suggested amending the proposed rule to include this additional exception.[167]

In Amendment 5, NASD responded that it believes the language and intent of Proposed Rule 12600(a) are clear, and as a result, did not propose to amend this rule. In Amendment 6, NASD withdrew Proposed Rule 12504 and all references to that rule from the Customer Code.[168] Therefore, this comment is no longer applicable to this rule filing.

SS. Proposed Rule 12601—Postponement of Hearings

Proposed Rule 12601 governs the postponement of hearings and provides, in relevant part, that a panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

One commenter asserted that, at times, arbitrators have attempted to ignore the agreement of the parties to postpone an arbitration and compel parties to proceed.[169] To eliminate this possibility, this commenter suggested that the proposed rule should provide that a hearing must be postponed by agreement of the parties and may be postponed under the other listed circumstances. Another commenter noted that Proposed Rule 12601(a) appears to give the parties the unfettered right to postpone the hearing whenever they agree to do so, which would contradict an arbitrator's duty to keep cases moving toward resolution.[170] This commenter suggested

[162] Canning and Feinberg.

[163] Canning and Layne.

[164] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PACE, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[165] PACE.

[166] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[167] SIA.

[168] Proposed Rule 12504 has since been re-filed as a separate proposed rule change. *See supra* note 23.

[169] SIA.

[170] Elster. While this commenter's views pertained to Proposed Rule 13601(a) of the Industry Code, his comments are relevant to the Customer Code as well. *See supra* note 5.

incorporating some provisions from Rule 10319(c) of the current Code to give the panel express control over the number of times a case may be postponed and to eliminate repeat postponements.

NASD responded that it believes the parties should have the discretion to postpone a hearing if they mutually agree, to facilitate settlement negotiations among the parties. NASD believes, however, that the proposed postponement fees in the rule, which are non-refundable, should serve as a deterrent to multiple postponements.[171] Moreover, Proposed Rule 12601(c) would allow a panel to dismiss an arbitration without prejudice if the parties request or agree to more than two postponements. In this situation, a party could re-file the claim, subject to all applicable fees and costs under the Customer Code.

In light of these comments, however, NASD also amended Proposed Rule 12601 to expressly distinguish between when a hearing may be postponed and when a hearing must be postponed. NASD also added paragraph (b)(2) to the rule, which includes provisions of a proposed rule change that had been approved by the Commission, but were inadvertently omitted from the last amendment to the Customer Code.[172] The proposed rule change is amended as follows (new language in *italics*; deleted language in [brackets]):

12601. Postponement of Hearings

(a) [When a Hearing May Be Postponed] *Postponement of Hearings*

(1) When a Hearing Shall Be Postponed

A hearing shall be postponed by agreement of the parties.

(2) When a Hearing May Be Postponed

A hearing may be postponed [only]:

- [By agreement of the parties;]
- By the Director, in extraordinary circumstances;
- By the panel, in its own discretion; or
- By the panel, upon motion of a party. The panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

(b) Postponement Fees

(1) No change.

(2) *If a postponement request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of $100 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the $100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the $100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, the arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.*

(3) No change.

(c) No change.

* * * * *

One commenter asked whether a motion for postponement outside of the 10-day window under Proposed Rule 12601(a) would require a ''good cause'' explanation.[173] In Amendment 5, NASD explained that if a party requests to postpone a hearing more than 10 days from the date the hearing is scheduled to begin, it would not need to demonstrate good cause. Rather, a panel may grant a party's request based solely on the request, and the party would be required to pay any applicable fees.

TT. Proposed Rule 12602—Attendance at Hearings

Proposed Rule 12602 provides that the parties and their representatives are entitled to attend all hearings, and the panel will decide who else may attend any or all of the hearings. Several commenters viewed Proposed Rule 12602 as inconsistent with directions given in the Securities Industry Conference on Arbitration Manual, which creates a presumption for the attendance of expert witnesses and an investor's representative.[174] They suggested that the proposed rule should expressly allow expert and other fact witnesses to attend hearings.

In Amendment 5, NASD agreed that expert witnesses should be allowed to attend all hearings, but stated that the panel should have the discretion to allow other persons to attend hearings (*e.g.*, an individual assisting an elderly or disabled party) or to bar someone who may be disruptive to the proceeding.

In response to comments, the proposed rule change is amended as follows (new language in *italics*):

12602. Attendance at Hearings

The parties and their representatives are entitled to attend all hearings. *Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.* The panel will decide who else may attend any or all of the hearings.

* * * * *

UU. Proposed Rule 12607—Order of Presentation of Evidence and Arguments

Proposed Rule 12607 provides that while the claimant generally will present its case, followed by the respondent's defense, the panel may vary the order in which the hearing is conducted, as long as each party is given a fair opportunity to present its case. Three commenters noted that no other proposed rule addresses the order of the presentation of evidence.[175] They recommended that Proposed Rule 12607 should expressly address opening statements and closing arguments, and clarify that rebuttal testimony is allowed. Several commenters suggested that Proposed Rule 12607 should give claimants the right to reserve any or all of their closing argument for rebuttal, some noting that this would be consistent with current practice and IM–10317 under the current Code.[176]

NASD responded that it believes the panel has the authority to control a hearing, which includes determining the order in which the hearing is conducted. Consistent with that principle, Proposed Rule 12607 is intended to provide the panel with discretion to vary the order in which the hearing is conducted, provided each

[171] Both Rule 10319(b) of the current Code and Proposed Rule 12601(b) require parties to pay a postponement fee equal to the applicable hearing session fee if the party's postponement request is granted. Under Rule 10319(b), a party would pay twice the hearing session fee for each subsequent postponement, whereas under Proposed Rule 12601(b), the fee would not increase for subsequent requests. *See* Section 0, below.

[172] *See* Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session, Securities Exchange Act Rel. No. 49716 (May 17, 2004), 69 FR 29342 (May 21, 2004) (SR–NASD–2003–164).

[173] Ryder.

[174] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Page, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, and Sutherland.

[175] Canning, Feinberg, and Stoltmann.

[176] Boliver, Canning, Evans, Feinberg, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Page, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

party is given a fair opportunity to present its case. For these reasons, NASD is not proposing to amend this rule at this time.

VV. Proposed Rule 12700—Dismissal of Proceedings Prior to Award

Proposed Rule 12700 lists the circumstances in which a panel may or must dismiss an arbitration or claim prior to award. One commenter stated that dismissals under Proposed Rule 12700(b) should be classified as an award and put into writing pursuant to Proposed Rule 12904 (Awards).[177] In this commenter's opinion, because dismissal orders require a dispositive determination of the arbitrators and are subject to vacatur challenges in court, they are legally ''awards.''

In Amendment 5, NASD responded that it believes its proposed definition of ''award'' under Proposed Rule 12100 addresses this commenter's concern.[178] Moreover, NASD explained that panels issue awards under current practice if they determine that cases should be dismissed, with or without prejudice. For these reasons, NASD is not proposing to amend Proposed Rule 12700(b) at this time.

WW. Proposed Rule 12702—Withdrawal of Claims

Proposed Rule 12702(a) provides that before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice. Proposed Rule 12702(b) provides that after a claim has been answered by a party, the claimant may only withdraw the claim against that party with prejudice unless the panel decides, or the parties agree, otherwise. In the Customer Code Notice, the Commission asked whether Proposed Rule 12702(b) appropriately addresses the concern of allowing claimants to withdraw claims without prejudice, while protecting respondents from expending significant resources to respond to a claim that is later withdrawn or having to respond to the same claim multiple times.

Several commenters opposed Proposed Rule 12702(b), contending that, in their collective experiences, there are few instances in which a claim had to be withdrawn after an answer was filed.[179] These commenters argued that, at the very least, the proposed rule should provide arbitrators with the authority to decide whether a claim, if withdrawn after an answer is filed, should be withdrawn with or without prejudice.

In Amendment 5, NASD responded that Proposed Rule 12702(b) is intended to deter claimants' gamesmanship in withdrawing and refiling claims in order to select a new panel. NASD noted that under Proposed Rule 12702, if claimants have legitimate reasons to withdraw claims without prejudice after the answer is filed, they may ask the arbitrators to allow them to do so. NASD believes that this provision is a reasonable accommodation of the competing interests in the forum and declined to amend Proposed Rule 12702(b) at this time.

XX. Proposed Rule 12800—Simplified Arbitration

Proposed Rule 12800 establishes procedures for simplified arbitration, which are claims of $25,000 or less. While respondents have only 20 days to answer a simplified arbitration claim under the current Code, they would have 45 days to do so under the Customer Code, consistent with cases submitted under regular arbitration. In the Customer Code Notice, the Commission asked whether the proposed 45-day deadline should be shortened in simplified cases to reflect the fact that they are meant to take place more expeditiously than regular cases.

Several commenters opposed the proposed 45-day deadline, contending that firms should be able to respond more quickly to small, uncomplicated claims.[180] Moreover, these commenters believe that the longer deadline would diminish the benefits of simplified arbitrations as a quick, inexpensive option for small investors. As an alternative, several commenters suggested a 30 day deadline, similar to the requirements in most state courts for the filing of an answer.[181]

In Amendment 5, NASD responded that it is sensitive to the commenters' concerns, but noted that the 45-day deadline reflects current practice in the forum. NASD stated that frequent users of the forum and NASD staff report that parties routinely extend the deadlines in simplified arbitration that are provided under Rule 10302 of the current Code. Because parties so often extend existing deadlines, NASD believes that Proposed Rule 12800 would simplify and streamline the administration of simplified arbitrations without resulting in additional delay.

One commenter contended that, while the current Code permits a claimant to reply to the respondent's answer, the Customer Code does not explicitly authorize this practice.[182] In this commenter's view, because many claimants filing simplified arbitration claims are *pro se*, the procedures controlling these arbitrations should be expressly stated. This commenter suggested defining ''pleadings'' to clarify that replies can be filed to respondents' answers in simplified arbitration. This commenter also suggested providing that claimants have 10 days to file such replies following the close of the discovery period.

In Amendment 5, NASD responded that although it agrees that a definition of ''pleadings'' should be included in the Customer Code, (*see* Section 0, above) it does not agree with the suggestion that claimants be given 10 days to file a reply following the close of the discovery period. NASD explained that, because time limits under the Customer Code are meant to be standardized, the proposed rule does not include the special time limits or deadlines for simplified cases from the current Code.

One commenter objected that the only arbitrators eligible to hear simplified arbitration cases are those included on the chairperson-eligible arbitrator roster.[183] In Amendment 5, NASD responded that, because simplified arbitration cases are decided by only one arbitrator, it believes the arbitrator should have had the experience of sitting on prior cases. Proposed Rule 12800, however, would give parties the option to select an arbitrator from a different roster if they mutually agree.

For these reasons, NASD is not proposing to amend Proposed Rule 12800 at this time.

YY. Proposed Rule 12801—Default Proceedings

Proposed Rule 12801 addresses the applicability of, and procedures involved in, default proceedings. One commenter noted that default proceedings under Rule 10314(e) of the current Code apply to defunct firms only, and asserted that the reference to default proceedings in Proposed Rule 12308, concerning failure to answer claims, would expand the use of default proceedings to all respondents who fail

[177] Ryder.

[178] *See* discussion in Section 0, Proposed Rule 12100(b) (Definition of Award), above.

[179] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[180] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PACE, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[181] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[182] PACE.

[183] Caruso.

to answer, whether active or defunct.[184] NASD explained that, like Rule 10314(e) of the current Code, Proposed Rule 12801 would apply only to a respondent within one of the following four categories: (1) A member whose membership has been terminated, suspended, canceled, or revoked; (2) a member that has been expelled from the NASD; (3) a member that is otherwise defunct; or (4) or an associated person whose registration is terminated, revoked, or suspended. Therefore, Proposed Rule 12801 would not apply to active firms and would not change the substantive requirements of the default procedures under the current Code.

Two commenters suggested that Proposed Rule 12801 should: (1) Permit default proceedings when a respondent (including current members and associated persons with active registrations) has failed to file both an answer and a uniform submission agreement; (2) limit the time a party has to file the answer and uniform submission agreement; (3) provide that, under the proposed default process, determinations should be dispositive only in favor of the claimant; and (4) give movants the opportunity to present the case in evidentiary hearing on any issues not favorably ruled on.[185]

In Amendment 5, NASD responded that Proposed Rule 12801 has not changed the substantive requirements concerning default procedures in Rule 10314(e) of the current Code, which requires claimants to present a sufficient basis to support the granting of an award. It therefore stated that this comment is outside the scope of the rule filing.

ZZ. Proposed Rule 12900—Fees Due When a Claim Is Filed

Proposed Rule 12900 establishes filing fees due from each party based on the amount in controversy. Several commenters contended that industry members should pay the majority of the customer filing fee, suggesting that the filing fee for public customers should be limited to $200.[186] In their view, while public customers should be subject to the panel's allocation of fees in the award, they should not have to incur undue expense at the outset to file a claim.

Another commenter suggested that the lack of an increase in fees for claims above one million dollars seems to favor wealthier claimants.[187] This commenter indicated that the fee schedules could be perceived as unfair because mid-level claimants appear to be shouldering a disproportionate percentage of the forum fees. To shift the cost burden to those who stand to benefit the most, while eliminating the perception that the fee changes impact the middle-class investor the most, this commenter suggested that NASD should amend Proposed Rule 12900 to charge a fixed percentage as an additional fee for any amounts claimed over one million dollars.

In Amendment 5, NASD responded that Proposed Rule 12900 made very minimal changes to the fee schedules in Rule 10332 of the current Code, and that the proposed changes would not result in an increase in the total amount of fees paid by customers or associated persons when filing a claim. As NASD explained, for claims of $30,000 to $50,000, the customer's overall filing fees would decrease by $50, and for claims of $1 million to $3 million, the customer's overall filing fees would decrease by $100. NASD also stated that its fee schedules are commensurate with the dollar amount of the claims filed and damages requested. In its view, the proposed, simplified fee schedules would make it easier for parties to understand the total amount due upon filing. For these reasons, NASD is not proposing to amend Proposed 12900 at this time.

One commenter expressed concern that the expense of arbitration (*i.e.*, filing fees) may prevent access to the forum and suggested that NASD amend Proposed Rule 12900(d) to expressly disclose that fee waivers may be granted to parties who can demonstrate financial hardship.[188] This commenter also stated that the proposed rule should explain the practice and procedure for applying for fee waivers and NASD's criteria for granting them. In Amendment 5, NASD responded that, although this comment is beyond the scope of the rule filing, it would consider the comment in considering whether future amendments are warranted. In Amendment 7, NASD noted that the procedures to request a filing fee waiver already are located on NASD's Web site in the Uniform Forms Guide, at: *http://www.nasd.com/web/groups/med_arb/documents/mediation_arbitration/nasdw_007954.pdf.*

AAA. Proposed Rule 12902—Hearing Session Fees, and Other Costs and Expenses

Proposed Rule 12902 establishes hearing session fees due from the parties based on the amount in controversy. Several commenters noted that, although Proposed Rule 12902 would require a party to pay one fee, which includes the filing fee and the hearing session deposit fee, it does not provide that any of the fee will be applied to any hearing fees incurred.[189] These commenters contended that a claimant would pay for the first hearing session twice—once through the filing fee and then again when the hearing session fees are assessed.

NASD responded that it did not intend to increase the fee for submitting a claim to arbitration under the Customer Code and agreed that clarification is needed. Thus, NASD proposed to amend Proposed Rule 12902(b) to provide that an amount equal to one hearing session fee would be deducted from the total amount of the hearing session fees assessed against the party who paid the filing fee. The proposed rule change is amended as follows (new language in *italics*):

12902. Hearing Session Fees, and Other Costs and Expenses

(a) No change.
(b) Payment of Hearing Session Fees
(1) No change.
(2) No change.
(3) In the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under the Code, the balance will be refunded to the party.
(c) No change.
(d) No change.

* * * * *

In Amendment 5, NASD also proposed to amend Proposed Rule 12902 to address the issue of refund payments. NASD stated that it receives numerous requests from non-parties to make refunds payable to the attorneys or other non-parties that may have made payment on behalf of named parties. Currently, when any money remains in a party's account after all fees and charges are assessed, NASD's practice is to refund the money directly to the party. Because parties themselves sign the uniform submission agreement and

[184] Ryder.

[185] Canning and Feinberg.

[186] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, Page, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

[187] Ryder.

[188] PACE.

[189] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

are liable for any fees or costs incurred under the current Code, NASD believes it is inappropriate to issue refunds to anyone other than a party. Therefore, NASD is proposing to codify its practice by adding a new provision to Proposed Rule 12902. The proposed rule change is amended as follows (new language in *italics*):

12902. Hearing Session Fees, and Other Costs and Expenses

* * * * *

(e) Refund Payments

Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made a payment on behalf of the named parties.

* * * * *

BBB. Proposed Rule 12904—Awards

Proposed Rule 12904, in pertinent part, establishes the required content of awards. One commenter suggested defining the term ''award'' under the Customer Code.[190] In Amendment 5, NASD agreed with this comment and included a definition of ''award.'' [191] The same commenter also stated that dismissal of an entire claim should be considered an award. In Amendment 5, NASD agreed and stated that the proposed definition of ''award'' under Proposed Rule 12100 addresses this issue.

Finally, this commenter noted that although Rule 10330 requires all awards to be in writing and signed by a majority of the arbitrators, parties nonetheless may agree to permit one arbitrator to sign a stipulated award that directs expungement relief on behalf of the whole panel. In this commenter's view, parties should not be allowed to have one arbitrator sign a stipulated award on behalf of the entire panel, even if the parties mutually agree.

In Amendment 7, NASD explained that under current practice, which would continue under the Customer Code, parties are not permitted to agree to the appointment of selected arbitrators for the sole purpose of entering a stipulated award.[192] Moreover, parties may not agree to having only one arbitrator of a three-member panel sign the stipulated award. Stipulated awards, like awards issued after a hearing on the merits, must be signed by a majority of the panel.[193]

IV. Summary of Comments on the Industry Code as Amended by Amendments 1, 2, 3, and 4 and Description of Amendments 5, 6, and 7 to the Industry Code

A. Summary of Comments on the Industry Code as Amended by Amendments 1, 2, 3, and 4

NASD filed Amendment 5 to the Industry Code with the Commission on May 4, 2005. Only one commenter specifically addressed the Industry Code Notice.[194] This commenter noted that Proposed Rule 13601(a) appears to give the parties the unfettered right to postpone the hearing whenever they agree to do so, which the commenter viewed as contradicting an arbitrator's duty to keep the cases moving toward resolution. The commenter suggested incorporating some provisions from current Rule 10319(c) (Adjournments) to give the panel some express control over the number of times a case may be postponed and to eliminate repeat postponements. NASD's response to the commenter's concerns is discussed above in Section 0, Proposed Rule 12601 (Postponement of Hearings). NASD amended Proposed Rule 13601 of the Industry Code consistent with Proposed Rule 12601 of the Customer Code.

B. Amendment 5 to the Industry Code

As noted above, the Commission received 51 comments on the Customer Code. While none of these comments specifically addressed the Industry Code, because the two codes contain similar rules and procedures, comments on the Customer Code were also relevant to the Industry Code. Thus, NASD made corresponding amendments to both the Customer Code and the Industry Code. Amendment 5 to the Industry Code also corrects typographical, grammatical, and other technical errors. NASD requested accelerated approval for the amendments to the Industry Code that were not yet published. As with the Customer Code, this request applies to the amendments filed after the Customer Code Notice.

The table below shows which Industry Code and Customer Code rules were similarly amended in Amendments 5 to each proposed code.

CHANGES TO CUSTOMER & INDUSTRY CODES AS A RESULT OF COMMENT LETTERS

Customer Code	Industry Code
12100—Definitions	13100—Definitions.
12203—Denial of NASD Forum	13203—Denial of NASD Forum.
12204—Class Action Claims	13204—Class Action Claims.
12213—Hearing Locations	13213—Hearing Locations.
12214—Payment of Arbitrators	13214—Payment of Arbitrators.
12301—Service on Associated Persons	13301—Service on Associated Persons.
12309—Amending Pleadings	13309—Amending Pleadings.
12312—Multiple Claimants	13312—Multiple Claimants.
12313—Multiple Respondents	13313—Multiple Respondents.
12400(b)—Arbitrator Rosters	13400(b)—Arbitrator Rosters.
12403—Generating and Sending Lists to Parties	13403—Generating and Sending Lists to Parties.
12404—Striking and Ranking Arbitrators	13404—Striking and Ranking Arbitrators.
12501—Other Prehearing Conferences	13501—Other Prehearing Conferences.
12505—Cooperation of Parties in Discovery	13505—Cooperation of Parties in Discovery.
12506(b)—Time for Responding to Documents Production Lists	
12507(b)—Responding to Other Discovery Requests	13507(b)—Responding to Discovery Requests.
12507(a)—Making Other Discovery Requests	13506(a)—Discovery Requests.
12514(c)—Exclusions of Documents or Witnesses	13514(c)—Exclusion of Documents or Witness.
12600—Required Hearings	13600—Required Hearings.

[190] Ryder.

[191] *See* Section 0, Proposed Rule 12100 (Definitions), above.

[192] Telephone conversation between Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, and Gena Lai, Special Counsel, Division of Market Regulation, SEC (Sept. 15, 2006). In Amendment 5, NASD responded that, under the current Code and Customer Code, if the parties mutually agree for one arbitrator to sign a stipulated award on behalf of the panel, the request should be honored.

[193] *See* Proposed Rule 12904(a).

[194] *See* Elster, *supra note* 5.

CHANGES TO CUSTOMER & INDUSTRY CODES AS A RESULT OF COMMENT LETTERS—Continued

Customer Code	Industry Code
12601—Postponement of Hearings	13601—Postponement of Hearings.
12602—Attendance at Hearings	13602—Attendance at Hearings.
12902(b)—Payment of Hearing Session Fees	13902(b)—Payment of Hearing Session Fees.
12902(e)—Refund Payments	13902(e)—Refund Payments.

C. Amendment 6 to the Industry Code

In Amendment 6 to the Industry Code, in response to commenters' concerns regarding Proposed Rule 12504 (Motions to Decide Claims Before a Hearing on the Merits) of the Customer Code, NASD withdrew Proposed Rule 13504 (Motions to Decide Claims Before a Hearing on the Merits) and all references to that rule.[195]

D. Amendment 7 to the Industry Code

In Amendment 7 to the Industry Code, NASD made changes that correspond to those in Amendment 7 to the Customer Code.[196] NASD also amended Proposed Rule 13800(c) (Simplified Arbitration) to provide that no hearing will be held in simplified arbitrations of industry cases unless the claimant requests a hearing. Previously, the rule inaccurately provided that a customer could request a hearing under the rule, although Proposed Rule 13800(c) does not apply to customer cases. Proposed Rule 13800(c) is amended as follows (new language in *italics;* deleted language in [brackets]):

13800. Simplified Arbitration

(a)–(b) No change.

(c) Hearings

(1) No hearing will be held in arbitrations administered under this rule unless the [customer] *claimant* requests a hearing.

(2) No change.

(d)–(f) No change.

* * * * *

For the text of Amendments 5, 6, and 7 to the Industry Code, including amendments to the narrative portion and exhibits of the Industry Code filing, please see NASD's Web site at the following URL: *http://www.nasd.com/RulesRegulation/RuleFilings/2004RuleFilings/NASDW_009295.*

V. Discussion

After careful review, the Commission finds that the proposed rule changes (SR–NASD–2003–158 and SR–NASD–2004–011), as amended, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[197] In particular, the Commission finds that the proposals, as amended, are consistent with the provisions of Section 15A(b)(6) of the Act,[198] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that NASD's proposals, as amended, are designed to protect investors and the public interest by providing an accessible and clearly organized set of rules to facilitate the resolution of disputes by users and administrators of the arbitration forum. The revision of the current NASD rules into plain English will make the process of arbitration more transparent and more accessible to users of the forum, including those who may file arbitration claims pro se. Moreover, the reorganization of the current Code into three separate codes should minimize confusion as to which rules apply to customer cases or industry cases and further improve the transparency of the arbitration process, thereby improving the efficiency with which cases are processed in the NASD dispute resolution forum.[199]

Particular provisions of the Customer Code and Industry Code that vary substantively from the current Code are discussed below.

A. Proposed Rules 12105 and 13105—Agreement of the Parties

The current Code does not specifically address the parties' modification of a provision of the current Code or a decision of the Director or the panel by written agreement. Proposed Rules 12105(a) and 13105(a) of the Customer Code and Industry Code, respectively, generally allow these modifications. Furthermore, Proposed Rules 12105(b) and 13105(b) provide that if the Director or the panel determines that a named party is inactive in the arbitration or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. Proposed Rules 12105(b) and 13105(b) are designed to allow the active parties in an arbitration to continue to exercise the control intended by Proposed Rules 12105(a) and 13105(a), in the event that a party whose agreement is needed is not participating in the arbitration or is otherwise unresponsive. The Commission notes that NASD has clarified the meaning of ''inactive party'' by amending Proposed Rules 12105(b) and 13105(b) to provide examples of who an inactive party is in the rule text. As amended, these proposed rules should improve the efficacy and efficiency with which arbitration cases can proceed.

B. Proposed Rules 12203 and 13203—Use of the Forum

Rule 10301(b) of the current Code allows the Director of Arbitration to decline the use of the NASD arbitration forum only if the ''dispute, claim, or controversy is not a proper subject matter for arbitration,'' and only upon approval of the NAMC or its Executive Committee. Proposed Rules 12203(a) and 13203(a) of the Customer Code and Industry Code, respectively, provide that the Director ''may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives.'' Proposed Rules 12203 and 13203 are intended to give the Director the flexibility needed in emergency situations. The proposed rules also would provide that this authority may be exercised only by the Director or the President of NASD Dispute Resolution and cannot be delegated.

[195] *See* Section 0, Proposed Rule 12504 (Motions to Decide Claims Before a Hearing on the Merits), above.

[196] There were no changes corresponding to those for Proposed Rule 12200 (concerning insurance business activities of a member), however, because there is no corollary in the Industry Code.

[197] In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[198] 15 U.S.C. 78o–3(b)(6).

[199] The Commission already has approved the Mediation Code. *See supra* note 8.

The Commission believes that the proposed rules should facilitate excluding cases from the NASD arbitration forum that are beyond its mandate, allowing it to focus on the cases that are appropriately in the forum. This, in turn, should promote the efficacy and efficiency of the arbitration forum in processing its claims. The Commission agrees that in emergency situations, it is reasonable for the Director to have the authority and flexibility to act quickly to protect the health and safety of users and administrators of the forum. We note that this authority, which cannot be delegated by the Director or President of NASD Dispute Resolution, should be limited by application in only a very narrow range of unusual circumstances.

C. Proposed Rules 12205 and 13205—Shareholder Derivative Actions

The current Code does not specifically address whether shareholder derivative actions may be arbitrated at NASD. NASD has stated that such claims are not eligible for arbitration in it is forum because, by definition, they involve corporate governance disputes that do not arise out of, or in connection with, the business of a member firm or an associated person. Nonetheless, the question arises from time to time, occasionally after a claimant has filed a statement of claim. Proposed Rules 12205 and 13205 of the Customer Code and Industry Code, respectively, would provide that shareholder derivative actions are not eligible for arbitration at NASD.

The Commission believes that the inclusion of these proposed rules should provide guidance to parties and obviate the need for parties to expend resources in an attempt to arbitrate shareholder derivative claims at NASD, thereby improving the efficiency of the arbitration forum. Clarifying which cases may be heard in the Customer Code and Industry Code is consistent with the purposes of the proposed rule changes.

D. Proposed Rules 12207 and 13207—Extensions of Deadlines

Rule 10314(b)(5) of the current Code provides that deadlines established by the Code for filing or serving pleadings may be extended by the Director, or with the consent of the initial claimant. It further provides that extensions for filing an answer are disfavored and will only be granted in extraordinary circumstances, but does not provide guidance with respect to the extensions of other deadlines established by the Code, the panel, or the Director.

Proposed Rules 12207(a) and 13207(a) of the Customer Code and Industry Code, respectively, provide that the parties, with written notification to the Director, may agree in writing to extend or modify any deadline for serving an answer, returning arbitrator or chairperson lists, responding to motions, or exchanging documents or witness lists. Proposed Rules 12207(b) and 13207(b) provide that the panel also may extend or modify any of the specified deadlines, or any other deadline set by the panel, either on its own initiative or upon motion of a party. Finally, Proposed Rules 12207(c) and 13207(c) provide that the Director may extend or modify any deadline set by the Customer Code or Industry Code, respectively, for good cause, or by the panel in extraordinary circumstances.

The Commission believes that Proposed Rules 12207 and 13207 should give parties more control over various aspects of the arbitration process, subject to their mutual agreement. The proposed rules also would give arbitrators and the Director more authority to manage the arbitration process. We note that under Proposed Rules 12207(c) and 13207(c), respectively, the Director must satisfy a good cause standard to extend a deadline established by the Customer Code or Industry Code, or find that extraordinary circumstances exist to extend a deadline established by the panel. By introducing more flexibility into the arbitration process and providing parties, arbitrators, and the Director with more authority to control the process, the proposed rules should promote the efficacy and efficiency of the arbitration process and forum.

E. Proposed Rules 12210 and 13210—Ex Parte Communications

The current Code does not explicitly address ex parte communications. Proposed Rules 12210 and 13210 in the Customer Code and Industry Code, respectively, are intended to provide additional guidance to arbitrators and parties and to further ensure the integrity of the NASD arbitration process. Proposed Rules 12210 and 13210 would expressly prohibit ex parte communications between parties and arbitrators, except in accordance with Proposed Rules 12211 and 13211, respectively.[200] NASD stated that Proposed Rules 12210 and 13210 are based on general *ex parte* rules applicable in court proceedings, and current NASD practice, as reflected in the NASD Arbitrators' Manual, other NASD arbitrator training materials, and materials provided to parties, all of which advise against ex parte communications.

The Commission believes that the proposed rules should aid arbitrators in maintaining neutrality and avoiding the appearance of impropriety, thereby promoting the fairness of the arbitration process and forum.

F. Proposed Rules 12212 and 13212—Sanctions

Rule 10305(b) of the current Code, governing the dismissal of proceedings, provides that the ''arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.'' In addition, the current Discovery Guide states that ''[t]he panel has wide discretion to address noncompliance with discovery orders.'' For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys' fees caused by noncompliance.''

Proposed Rules 12212 and 13212 of the Customer Code and Industry Code, respectively, would codify the sanctions available to arbitrators that are described in the current Discovery Guide, and extend them beyond the discovery context to apply to non-compliance with any provision of the Customer Code or Industry Code, respectively, or order of the panel or a single arbitrator authorized to act on behalf of the panel. The rules also would allow a panel to dismiss a claim, defense, or arbitration under the same conditions as they may currently, although it would use the term ''prior,'' rather than ''lesser,'' sanctions, in order to avoid potential confusion regarding whether a prior sanction was ''lesser'' or ''greater.''

The Commission notes the authority of NASD arbitrators to impose sanctions for violations of any provision of the Customer Code or the Industry Code, rather than only for violations of orders of the panel, as under the current Code. The Commission believes that this expanded authority should help to promote just and equitable principles of trade, and in general, to protect investors and the public interest by

[200] Proposed Rules 12211 and 13211 (Rule 10334 in the current Code) allow direct communication between parties and arbitrators subject to certain conditions. These conditions include the representation of parties by counsel, an agreement to use direct communication by all arbitrators and parties, an agreement regarding the scope of the direct communication, and facsimile or e-mail capability by all arbitrators and parties.

deterring conduct that seeks to generate frivolous additional disputes or hinder dispute resolution, and by clarifying that arbitrators have the authority to ensure the fair and efficient administration of arbitration proceedings when parties fail to comply with the Customer Code or Industry Code or orders of the panel. The Commission also notes that under the Customer Code and Industry Code, arbitrators would continue to have the authority to make disciplinary referrals at the end of arbitrations in connection with potential violations of NASD rules.

G. Proposed Rules 12213 and 13213—Hearing Locations

In relevant part, Rule 10315 of the current Code provides that the Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether that meeting is a pre-hearing conference or a hearing, and shall notify the parties of the time and place at least 15 business days before the meeting. The arbitrators determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and give notice as the arbitrators may determine. Proposed Rule 12213(a)(1) of the Customer Code provides that the Director will select the hearing location for the arbitration, and that generally, this selection will be the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. Proposed Rule 13213(a)(1) of the Industry Code provides that the Director generally will select the hearing location closest to where the associated person was employed at the time the dispute arose.[201] Proposed Rules 12213(a)(2) and 13213(a)(2) also provide, however, that before arbitrator lists are sent to the parties, the parties may agree in writing to a hearing location other than the one selected by the Director, and that the Director or panel may change the hearing location upon a party's motion.

NASD stated that Proposed Rules 12213 and 13213 codify current practice and are intended to make the arbitration process more transparent. The proposed rules also would give the Director discretion to select another location that would be more appropriate or less burdensome to the parties given the specific facts of the case.

[201] This standard would be interpreted to refer to the time of the events giving rise to the dispute. Telephone conversation among Jean Feeney, Vice President, NASD; Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution; and Gena Lai, Specia Counsel, Division of Market Regualtion, SEC (Dec. 19, 2006).

The Commission believes that the proposed rules should provide useful guidance to the parties and thereby facilitate and improve the transparency of the arbitration process. We also note that NASD clarified in Amendments 5 to the Customer Code and Industry Code that parties may appeal the Director's selection of hearing location to the arbitration panel, once it is assembled.

H. Proposed Rules 12304, 12305, 13304 and 13305—Time to Answer Counterclaims and Cross Claims

Rule 10314 of the current Code provides that claimants have 10 days to answer a counterclaim, and respondents have 45 days to answer a cross claim. Proposed Rules 12304 and 13304 of the Customer Code and Industry Code, respectively, would extend the time that a claimant has to answer a counterclaim from 10 to 20 days from receipt of the counterclaim. In addition, Proposed Rules 12305 and 13305 of the Customer Code and Industry Code, respectively, would shorten the time that a respondent has to answer a cross claim from 45 days to 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim.

NASD stated that standardizing these time frames would give parties who have already filed or served a pleading the same amount of time to respond to subsequent pleadings, and would reduce unnecessary delay in the proceeding.

The Commission believes that standardizing the time frames within which parties may answer counterclaims and cross claims is consistent with the purpose of maintaining a transparent, efficient, and fair arbitration forum.

I. Proposed Rules 12307 and 13307—Deficient Claims

Under current NASD practice, if a claimant files a deficient, or incomplete, claim, NASD will notify the claimant, and the claimant has 30 days to correct the deficiency. If the deficiency is not corrected within that time, the claim is dismissed without prejudice. NASD stated that this practice is consistent with SICA's published Arbitration Procedures. The current Code, however, does not expressly address what constitutes a deficiency, or explain the process for identifying and correcting deficiencies.

Proposed Rules 12307 and 13307 of the Customer Code and Industry Code, respectively, would codify NASD's deficiency practice and provide that the Director will not serve a deficient, or incomplete, claim. They also would enumerate the most common types of deficiencies. The proposed rules also would make clear that the same standards apply to deficient counterclaims, cross claims, and third-party claims served directly by parties, and would prohibit arbitrators from considering such claims unless the deficiencies were corrected within the time allowed.

The Commission believes that, by including deficiency standards and procedures in the Customer Code and Industry Code and clarifying the information required in an initial statement of claim, the proposed rules should help to reduce delay in NASD arbitrations by reducing the number of deficient claims. They thus should improve the efficacy and efficiency of the arbitration process and of the forum generally. We note that NASD stated it would consider comments raised regarding Proposed Rule 12307 when considering whether future amendments are made.

J. Proposed Rules 12309 and 13309—Amending Pleadings to Add Parties

Under Rule 10328 of the current Code, parties may amend their pleadings at any time prior to the appointment of the arbitration panel but must obtain approval of the arbitrators before amending a pleading after panel appointment. If a party is added to an arbitration proceeding before the Director has consolidated the other parties' arbitrator rankings, the newly-added party may participate in the arbitrator selection process. However, if a party amends a pleading to add a new party to the proceeding between the time that the Director consolidates the arbitrator rankings and the time the panel is appointed, the newly-added party is not able to participate in the arbitrator selection process, or to object to being added to the arbitration.

Proposed Rules 12309 and 13309 of the Customer Code and Industry Code, respectively, would provide that no party may amend a pleading to add a party between the time that ranked arbitrator lists are due to the Director and the time the panel is appointed. Proposed Rules 12309(c) and 13309(c) would provide that the party to be added after panel appointment must be given an opportunity to be heard before the panel decides the motion to amend. This is intended to ensure that a party added to an arbitration by amendment either will be able to participate in the arbitrator selection process, or will have the opportunity to object to being added to the proceeding.

The Commission believes that the proposed rules should promote the

efficacy and efficiency of the arbitration process and of the forum generally. We also note that the proposed rules explain the rights of a party added to an NASD arbitration proceeding with respect to arbitrator selection.

K. Proposed Rules 12310 and 13310—Time to Answer Amended Pleadings

Rule 10328 of the current Code provides that parties have 10 business days to answer an amended pleading. Other rules in the current Code refer to calendar days. In the interest of uniformity, Proposed Rules 12100(j) and 13100(j) of the Customer Code and Industry Code, respectively, define the term ''day'' to mean calendar day. To reflect these definitions, Proposed Rules 12310 and 13310 would give parties 20 calendar days, rather than 10 business days, to respond to amended pleadings. NASD stated that, although this represents a slight extension of time, it is consistent with the time to respond to counterclaims and cross claims under Proposed Rules 12304 and 12305 under the Customer Code and Proposed Rules 13304 and 13305 under the Industry Code. NASD further stated that standardizing time frames is part of NASD's plain English initiative, and 20 calendar days is an appropriate time period for responding to amended pleadings.

The Commission believes that standardizing the time frames for answering amended pleadings is consistent with the purpose of maintaining a transparent, efficient, and fair arbitration forum.

L. Proposed Rules 12400 and 13400—Neutral List Selection System and Arbitrator Rosters

Under the current Code, NASD maintains a roster of public and non-public arbitrators. Whether a panel consists of public or non-public arbitrators, and in what combination, depends on the amount in dispute, and, in industry cases, the nature of the dispute. Once the panel is appointed, the parties jointly select the chairperson from the panel, or, if the parties do not agree, the Director appoints the highest-ranked arbitrator on the panel to serve as chairperson.[202] Although NASD provides voluntary chairperson training to its arbitrators, arbitrators who serve as chairpersons are not currently required to have chairperson training, to have any particular experience, or to meet any other specific criteria beyond the requirements for serving as an arbitrator. NASD stated that, over the years, one of the most frequent suggestions for improving the quality and efficiency of NASD arbitrations is to ensure that chairpersons, who play a vital role in the administration of cases, have some degree of arbitrator experience and training.

Both the Customer Code and Industry Code would require NASD to create and maintain a third roster of arbitrators who are qualified to serve as chairpersons. Proposed Rule 12400 would provide that, to be chair-qualified, an arbitrator would need to be a public arbitrator and complete the NASD training program or have ''substantially equivalent training or experience,'' and be either: (1) An attorney who has sat through two SRO arbitration cases through the award stage; or (2) a non-attorney who has sat through at least three such cases. Chairperson eligibility requirements under Proposed Rule 13400 of the Industry Code are the same as under the Proposed Rule 12400, except that chairpersons in industry cases could be public or non-public, depending on the nature of the claim.

The Commission believes that these specified criteria balance the need to have qualified and experienced chairpersons administer NASD arbitration cases with the goal of allowing arbitrators of all professional backgrounds to qualify as chairpersons. The proposed rules should help to ensure that chairpersons, who play a vital role in the administration of cases, have some degree of arbitrator experience and training, which in turn should improve the administration of cases in NASD's forum.

M. Proposed Rules 12401 and 13401—Number of Arbitrators

Rule 10308(b) of the current Code provides that if the amount of a claim is $25,000 or less, the arbitration panel consists of one arbitrator, unless that arbitrator requests a three-arbitrator panel. If the claim is more than $25,000 but not more than $50,000, the panel consists of one arbitrator, unless either that arbitrator, or any party in its initial pleading, requests a three-arbitrator panel. A claim of more than $50,000 is heard by a three-arbitrator panel.

Proposed Rules 12401 and 13401 of the Customer Code and Industry Code, respectively, would eliminate the ability of a single arbitrator to request a three-arbitrator panel for any claim of $50,000 or less. Parties, however, could still request a three-arbitrator panel in cases involving more than $25,000, but not more than $50,000. NASD stated that the proposed change is intended to streamline the administration of smaller claims and minimize the cost of pursuing small claims.

The Commission believes that allowing only the parties to decide whether additional arbitrators are needed in these smaller claims should give the parties more control over the costs of this aspect of arbitration. This, in turn, should improve the efficacy of the arbitration process.

N. Proposed Rules 12403 and 13403—Generating and Sending Lists to the Parties

Rule 10308 of the current Code provides that if the panel will consist of one arbitrator, NASD will send the parties one list of public arbitrators, unless the parties agree otherwise. If the panel will consist of three arbitrators, NASD will send the parties two lists, one with the names of public arbitrators and one with the names of non-public arbitrators. The lists of public and non-public arbitrators are provided in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators. The parties have an unlimited number of strikes. In addition, parties may request that the lists include arbitrators with particular, designated expertise.

Proposed Rules 12403 and 13403 of the Customer Code and Industry Code, respectively, would expand the number of arbitrators named on each list, but limit the number of strikes that each party may exercise. In addition, the proposed rules would eliminate the ability of parties to unilaterally request arbitrators with particular expertise, which NASD stated is an ongoing source of controversy, and burdensome for NASD staff to administer.

The Commission believes that expanding the lists, but limiting the number of strikes each party may exercise, should expedite panel appointment and reduce the likelihood that the Director will have to appoint an arbitrator who was not on the original lists sent to parties. The Commission notes that in Amendments 5 to the Customer Code and Industry Code, NASD proposed additional changes to the list selection procedures to further reduce the likelihood that extended lists would be needed. NASD also explained changes in the list selection software that would check for certain arbitrator conflicts before lists are sent to

[202] NASD estimates that parties agree on a chairperson only about 20% of the time. *See supra* note 3, Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Customer Disputes, Securities Exchange Act Rel. No. 51856, at n. 6, and Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Industry Disputes, Securities Exchange Act Rel. No. 51857, at n. 8.

parties.[203] Taken as a whole, these changes should improve the efficacy and efficiency of the arbitration process and of the forum generally.

O. Proposed Rules 12406 and 13406—Appointment of Arbitrators

While the current Code is silent on when arbitrators are appointed, it can be the subject of questions. NASD stated that Proposed Rules 12406(d) and 13406(d) under the Customer Code and Industry Code, respectively, would clarify that the appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. In addition, consistent with the purpose of reorganizing the current Code, the arbitrator oath requirement that is in Rule 10327 of the current Code would be included in Proposed Rules 12406 and 13406.

The Commission believes that these proposed rules should improve the clarity of the arbitration rules and promote the efficacy and efficiency of the arbitration process and forum generally.

P. Proposed Rules 12409 and 13409—Arbitrator Recusal

The current Code does not address arbitrator recusal. To provide guidance to parties, Proposed Rules 12409 and 13409 of the Customer Code and Industry Code, respectively, would provide that any party may ask an arbitrator to recuse himself or herself from the panel for good cause. The proposed rule would also clarify procedures for seeking an arbitrator's recusal.

The Commission believes that, in clarifying the procedures for seeking an arbitrator's recusal, the proposed rules promote the efficacy and efficiency of the arbitration process and forum.

Q. Proposed Rules 12411 and 13411—Replacement of Arbitrators

Under the current Code, the provisions regarding the replacement of arbitrators are contained in several different sections, and contain numerous cross-references to other rules. Proposed Rules 12411 and 13411 of the Customer Code and Industry Code, respectively, consolidate the various current rules, but contain no substantive changes, with two exceptions. Under Rule 10313 of the current Code, if an arbitrator is disqualified or becomes otherwise unable or unwilling to serve after the first pre-hearing conference or the first hearing begins, whichever is earlier, but before the award is issued, the parties may elect to proceed with the remaining arbitrators by notifying the Director within five business days of their being notified of the vacancy. Under Proposed Rules 12411 and 13411 of the Customer Code and Industry Code, respectively, the parties may agree to proceed with only the remaining arbitrators regardless of when the vacancy occurs.[204]

The Commission believes that, by allowing for more flexibility in the arbitration process and giving parties more control in arbitrator selection, the proposed rules should improve the efficacy and efficiency of the arbitration process and of the forum generally. We also note that NASD has explained that parties would be informed of the vacancy and their options simultaneously.

R. Proposed Rules 12414 and 13414—Determinations of Arbitration Panel

Rule 10325 of the current Code provides that all rulings and determinations of the panel must be made by a majority of the arbitrators. Proposed Rules 12414 and 13414 of the Customer Code and Industry Code, respectively, provide that all rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or unless the Customer Code or Industry Code, respectively, or applicable law, provides otherwise. The proposed rules reflect that under the Customer Code or Industry Code, and applicable law, some decisions of the panel may be made by a single member of a three-arbitrator panel.[205] Also, applicable law may permit a single arbitrator to issue a subpoena. The Commission notes, however, that an award must contain the signature of a majority of the panel, notwithstanding the agreement of the parties.[206]

The Commission believes that, by allowing for more flexibility in the arbitration process and by clarifying that arbitrators must make determinations in accordance with applicable law, the proposed rules promotes the efficacy and efficiency of the arbitration process and of the forum generally.

S. Proposed Rules 12500 and 13500—Initial Prehearing Conferences

Since the adoption of the current Discovery Guide in 1999, IPHCs have become standard practice in NASD arbitrations. The IPHC gives the panel and the parties an opportunity to organize the management of the case, set a discovery cut-off date, identify and establish a schedule for potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve many other preliminary issues. NASD stated that users of the forum have found the IPHC to be a valuable tool in managing the administration of arbitrations. Proposed Rules 12500 and 13500 of the Customer Code and Industry Code, respectively, would codify the portion of the current Discovery Guide relating to IPHCs.

The Commission believes that codifying the provisions in the current Discovery Guide concerning IPHCs should streamline the administration of arbitrations and clarify the purposes and procedures of IPHCs. Thus, the proposed rules should promote the efficacy and efficiency of arbitration proceedings and of the forum generally.

T. Proposed Rules 12502 and 13502—Recording Prehearing Conferences

The current Code is silent with respect to whether and under what circumstances a prehearing conference will be tape-recorded. Proposed Rules 12502 and 13502 of the Customer Code and Industry Code, respectively, would provide that prehearing conferences are generally not tape-recorded as a matter of course, but that a panel may decide to tape-record a prehearing conference on its own initiative, or at the request of a party.

The Commission believes that the proposed rules would inform parties that the option to tape-record a prehearing conference is available and provide useful guidance to parties and arbitrators regarding when and under what circumstances prehearing conferences may be tape-recorded. Thus, the proposed rules should promote the efficacy and efficiency of arbitration proceedings and of the forum generally.

U. Proposed Rules 12503 and 13503—Motions

Although motions are increasingly common in arbitration, the current Code does not refer to motions or provide any guidance with respect to motions practice. As a result, NASD stated that motions practice lacks uniformity, and

[203] For example, MATRICS would exclude from the lists sent to the parties arbitrators who are family members, employees, clients, or shareholders of a party, or have an account with, have initiated legal action against, or performed legal services for a party.

[204] In addition, parties may stipulate to the removal of an arbitrator, including a replacement arbitrator, at any time. Telephone conversation among Jean Feeney, Vice President, NASD; Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution; and Gena Lai, Special Counsel, Division of Market Regulation, SEC (Dec. 19, 2006).

[205] For example, Proposed Rules 12503 and 13503 provide that some motions may be decided by a single arbitrator.

[206] *See* Section 0, Proposed Rule 12904 (Awards).

that both parties and arbitrators are often unsure how motions should be made, responded to, or decided. Proposed Rules 12503 and 13503 of the Customer Code and Industry Code, respectively, would establish procedures and deadlines for making, responding to, and deciding motions.

The Commission believes that the proposed rules would provide standardized guidance to parties concerning a frequent practice in arbitration, while balancing the goal of maintaining the informal nature of arbitration. This is consistent with the purpose of providing an accessible, user-friendly set of rules to users and administrators of the arbitration forum and of improving the efficacy and efficiency of the arbitration forum. Infrequent users of the arbitration forum in particular should benefit from being informed that motions practice may be a part of arbitration, and what procedures may be involved.

In light of concerns expressed by commenters, the Commission expects NASD to monitor the effects of these rules on the efficacy and efficiency of the arbitration forum, including any increases in hearings scheduled as a result of motions, the length of time in which cases are resolved, or costs to the customer, in an ongoing effort to determine whether future amendments may be warranted.

V. Proposed Rules 12505–12511 and 13505–13511—Discovery

The current Discovery Guide establishes guidelines for discovery, rather than mandatory procedures. As a result, NASD stated that a frequent comment made by users of the NASD forum, particularly with respect to customer cases, is that discovery procedures are routinely ignored, resulting in significant delay and the frequent need for arbitrator intervention in the discovery process.

Proposed Rules 12505–12511 of the Customer Code would codify the discovery procedures outlined in the current Discovery Guide, with some changes designed to minimize the number of discovery disputes in NASD arbitrations. The Customer Code would not contain the Document Production Lists, which would remain in the Discovery Guide, but would make clear that either producing or objecting to documents on applicable lists, as well as other documents requested by parties, is mandatory. Proposed Rules 13505–13511 of the Industry Code would contain similar changes, providing specific guidance about how to make and respond to discovery requests, and clarifying that compliance with the discovery provisions of the Industry Code is mandatory.

The proposed rules would also extend the time that parties have to respond from 30 to 60 days. In addition, Proposed Rules 12512 and 13512 would codify the sanctions provisions of the Discovery Guide, and clarify the authority of arbitrators to sanction parties for non-compliance with discovery rules or orders of the panel.

The Commission believes that codifying the discovery procedures outlined in the Discovery Guide and the authority of arbitrators to impose sanctions for violating those procedures should encourage parties to comply with their discovery obligations, thereby minimizing discovery disputes and allowing cases to proceed as expeditiously as possible. Thus, the proposed rules should improve the efficacy and efficiency of the arbitration process and of the forum generally.

W. Proposed Rules 12512 and 13512—Subpoenas

Rule 10322 of the current Code provides that arbitrators and any counsel of record to a proceeding shall have the power of the subpoena process as provided by law, and that all parties must be given a copy of a subpoena upon its issuance. The rule also provides that parties shall produce documents and make witnesses available to each other to the fullest extent possible without resort to the subpoena process.

Proposed Rules 12512 and 13512 of the Customer Code and Industry Code, respectively, are substantially similar to Rule 10322, but also would require a party issuing a subpoena to send copies to all other parties at the same time and in the same manner as the party that was issued the subpoena.

The Commission believes that the proposed rules should help ensure that all parties receive notice of a subpoena in a timely manner. Thus, they should improve the efficacy and efficiency of the arbitration process and of the forum generally. We note that NASD acknowledged commenters' concerns and noted that a separate rule filing, recently approved by the Commission, addresses additional changes to the subpoena process.[207]

[207] *See* Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to Revise Rule 10322 of the NASD Code of Arbitration Procedure Pertaining to Subpoenas and the Power to Direct Appearances, *supra* note 152.

X. Proposed Rules 12514 and 13514—Exchange of Documents and Witness Lists

Rule 10321 of the current Code provides that, at least 20 calendar days before the first scheduled hearing date, all parties must serve on each other copies of the documents in their possession and identify the witnesses that they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified as part of this exchange. Parties need not exchange copies of documents or identify witnesses that may be used for cross-examination or rebuttal, however.

Proposed Rules 12514 and 13514 would provide that parties would only need to exchange the documents or identify the witnesses that they intend to present at the hearing that were not already exchanged or identified, *e.g.*, through the discovery process. The proposed rules would create a presumption that parties could not present any documents not exchanged or call any witnesses not identified within the time provided by the rules, unless the panel determines that good cause exists. The proposed rules specifically provide that good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments at the hearing.

The Commission believes that the proposed rules, by minimizing the volume of documents and amount of information that parties must exchange before a hearing, should improve the efficiency of the arbitration process. We particularly note that in Amendments 5 to the Customer Code and Industry Code, NASD clarified the meaning of ''rebuttal or impeachment purposes.''

Y. Proposed Rules 12601 and 13601—Postponements

Rule 10319 of the current Code provides that the arbitrator(s) may, in their discretion, adjourn any hearing either upon their own initiative or upon the request of any party to the arbitration. Proposed Rules 12601 and 13601 of the Customer Code and Industry Code, respectively, would provide that a panel may not grant requests to postpone a hearing that are made within 10 days of a scheduled hearing session unless the panel determines that good cause exists. NASD stated that these provisions are intended to reduce the number of last-minute requests for postponements, a practice that many users of the forum believe results in unnecessary delay and unfairness to parties. The proposed

rules also would codify applicable postponement fees. Under the Proposed Rule 12601(b), however, the postponement fee would no longer double for a subsequent postponement request by the same party, as under the current Code. According to NASD, this change is intended to avoid the confusion that may result when one party requesting a postponement has made a previous request, but another party requesting the same postponement has not. Instead, parties would pay the same amount per postponement request.

The Commission believes that the proposed rules strike a balance between providing parties with the flexibility to postpone hearings, while discouraging parties from abusing this flexibility by requiring good cause for last-minute postponements. The proposed rules also reasonably address potential confusion in the way postponement fees are imposed and respond to the unnecessary delay and potential unfairness that last-minute postponements may cause.

Z. Proposed Rules 12702 and 13702—Withdrawal of Claims

The current Code does not contain any guidance with respect to withdrawing claims. According to NASD, this occasionally causes confusion, particularly with respect to the consequences of withdrawing a claim at a particular stage in an arbitration. To provide guidance to parties, Proposed Rules 12702 and 13702 of the Customer Code and Industry Code, respectively, would provide that before a claim has been answered by a party, a claimant may withdraw the claim against that party with or without prejudice. However, after a claim has been answered by a party, a claimant may only withdraw its claim against that party with prejudice, unless the panel decides, or the claimant and that party agree, otherwise.

In the Customer Code Notice and Industry Code Notice, the Commission solicited comment on whether Proposed Rules 12702 and 13702 of the Customer Code and Industry Code, respectively, appropriately address the concern of allowing claimants to withdraw claims without prejudice, while protecting respondents from expending significant resources to respond to a claim that is later withdrawn or having to respond to the same claim multiple times. Several commenters stated that Proposed Rule 12702(b) has no corollary in any court's civil procedure rules.[208] These commenters suggested that Proposed Rule 12702 should give arbitrators the authority to decide whether a claim, if withdrawn after an answer is filed, should be withdrawn with or without prejudice.

The Commission notes that Proposed Rules 12702(b) and 13702(b) would provide arbitrators with the authority suggested by the commenters and also allow a claim to be withdrawn without prejudice after an answer is filed if the parties mutually agree. The Commission believes that the rationale for the proposed rules would deter the withdrawal and refiling of claims in order to select a new panel, and are a reasonable accommodation of the competing interests in the forum.

AA. Proposed Rules 12800 and 13800—Simplified Arbitration

Rule 10302 of the current Code includes the provisions that apply to simplified arbitrations. Some of these provisions repeat procedures that also apply to regular cases, while others, such as deadlines for pleadings, are particular to simplified cases. Proposed Rules 12800 and 13800 of the Customer Code and Industry Code, respectively, would be streamlined, by including only those provisions that are unique to simplified cases. The proposed rules also would harmonize the deadlines for pleadings in simplified cases with those in regular cases. NASD stated that frequent users of the forum report that the deadlines in simplified cases are routinely extended under the current rule. To provide better guidance to parties, NASD stated that the Customer and Industry Codes should reflect that, in practice, the time to answer in simplified cases is typically the same as it is in regular cases. Therefore, as in regular cases, requests for extensions would now be governed by Proposed Rules 12207 or 13207 (Extension of Deadlines), as appropriate, which would provide that deadlines set by the Customer Code or Industry Code, as appropriate, may be extended by the Director for good cause. In simplified cases, the Director would consider the expedited nature of simplified cases in determining whether good cause existed.

In addition, Proposed Rules 12800 and 13800 would address the selection and use of a single arbitrator and when a three-arbitrator panel would be required, and would eliminate the ability of the single arbitrator to require a hearing, but still allow the customer to request a hearing. Furthermore, the arbitrator would no longer have the option of dismissing without prejudice a counterclaim or other responsive pleading that increased the amount in dispute above the simplified case threshold. If a pleading increased the amount in dispute above the threshold, the case would be administered under the regular provisions of the Code.

The Commission believes that these changes should make the simplified arbitration process easier for parties to understand, and should streamline and simplify the administration of small claims in the NASD forum. The proposed rules thus should promote the efficacy and efficiency of the arbitration process and of the forum generally, for simplified cases.

BB. Proposed Rules 12900–12903 and 13900–13903—Fees

NASD stated that a frequent criticism of the current Code is that the fee schedules are difficult to understand, particularly with respect to what claimants must pay at the time of filing. To address this issue, and to make the fee schedules easier to read, the fee schedules in Proposed Rules 12900–12903 and Proposed Rules 13900–13903 of the Customer Code and Industry Code, respectively, vary from those of the current Code in two significant ways.

First, the filing fee and the hearing session deposit—two separate fees due at filing—have been combined into one single fee that is paid when a claim is filed. With two exceptions, described below, the amounts paid by claimants would not change. Although what is now the refundable hearing session deposit would no longer be paid separately, an amount equal to the current hearing session deposit or a portion thereof may be refunded if NASD receives notice that the case has been settled more than 10 calendar days prior to the hearing on the merits. The consolidation of the filing fee and the hearing session deposit is intended to make it easier for claimants to understand how much they have to pay when they file a claim and what, if any, portion of that fee may be refunded.

Second, the filing fee schedule has been simplified. Currently, there are 14 separate fee brackets in the filing fee schedule for claimants. The proposed changes would result in little change to the total amount of fees paid by claimants when filing a claim. In particular, a claimant's overall filing fees would decrease by $50 for claims of $30,000 to $50,000, and would increase by $100 for claims of $1 million to $3 million. The member filing

[208] Boliver, Canning, Evans, Ilgenfritz, Josel, Komninos, Lapidus, Lea, Lipner, Lopez, Magary, PIABA, Pounds, Rosenfield, Shewan, Stoltmann, Sutherland, and Willner.

fee schedule includes corresponding changes.

The Commission believes that the proposed changes will simplify the fee schedule, eliminate three repetitive high-end brackets, and align the brackets in the filing fee schedule with the brackets in the member filing fee and surcharge schedules. Taken as a whole, the proposed rules should make the fee schedules easier to understand and therefore make the arbitration process more transparent. The Commission finds that these proposed changes are consistent with Section 15A(b)(5) [209] of the Act, which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In addition, the Commission finds that these proposed changes are consistent with Section 15A(b)(6),[210] which provide, among other things, that the rules of a national securities association may not be designed to permit unfair discrimination between customers, issuers, brokers or dealers, to fix minimum profits, or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

VI. Amendments 5, 6, and 7 to the Customer Code and Amendments 5, 6, and 7 to the Industry Code

The Commission finds that the proposed changes in Amendments 5, 6, and 7 to the Customer Code and Amendments 5, 6, and 7 to the Industry Code are consistent with the Act and, in particular, are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that the proposed changes are designed to accomplish these ends by providing a user-friendly, reorganized set of rules that make the arbitration process more transparent and by clarifying certain aspects and procedures of arbitration in the NASD forum.[211]

A. Amendment 5 to the Customer Code and Amendment 5 to the Industry Code

The Commission finds good cause for approving Amendment 5 to the Customer Code and Amendment 5 to the Industry Code prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that NASD's responses and proposed changes in Amendment 5 to the Customer Code and Amendment 5 to the Industry Code, as summarized in Sections 0 and 0, above, reasonably address concerns expressed in comments submitted in connection with the Customer Code and Industry Code. The changes proposed in Amendment 5 to the Customer Code and Amendment 5 to the Industry Code provide clarification and do not significantly alter the Customer Code and Industry Code, as amended by Amendments 1, 2, 3, and 4 of each respective code, which were subject to a full notice and comment period.

In connection with the Customer Code, commenters suggested various substantive changes relative to current practices or policies established under the current Code. NASD stated that many of these comments were beyond the scope of the rule filing, the principal purposes of which were stated in the Customer Code Notice as: (1) Revising the current Code into plain English; (2) reorganizing the current Code into more logical, user-friendly sections, including creating separate codes for customer and industry arbitrations and for mediations; and (3) implementing specific substantive rule changes, including codifying several common practices to provide more guidance to parties and arbitrators, and streamlining the administration of arbitrations in the NASD forum.[212] The Commission finds NASD's determination that these comments are beyond the scope of the rule filing to be reasonable because they suggest substantive changes from the current Code that were not intended to be addressed by this rule filing. Thus, the Commission finds NASD's determination not to amend the proposed rule changes in connection with these comments at this time also to be reasonable. We note that NASD has committed to consider some of these comments in determining whether future amendments are warranted, as indicated in Section 0.

For all the foregoing reasons and the overall importance of the proposed rules, the Commission finds good cause for granting accelerated approval to Amendments 5 to the Customer Code and Industry Code, and finds that these amendments are consistent with Section 19(b)(2) of the Act.

B. Amendment 6 to the Customer Code and Amendment 6 to the Industry Code

The Commission finds good cause for approving Amendment 6 to the Customer Code and Amendment 6 to the Industry Code prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In these amendments, NASD responded to concerns raised by commenters in connection with Amendment 5 to the Customer Code, which has not previously been published by the Commission for public comment but nonetheless was the subject of 125 comments after it was made public by NASD. These commenters' concerns centered on Proposed Rule 12504, summarized in Section 0, above. In Amendment 6 to the Customer Code and Amendment 6 to the Industry Code, respectively, NASD withdrew Proposed Rule 12504 and all references thereto from the Customer Code, and withdrew Proposed Rule 13504 and all references thereto from the Industry Code.[213]

The Commission finds that NASD's withdrawal of Proposed Rules 12504 and 13504 from the proposed rule changes is a reasonable response to commenters' concerns that will allow the present proposed rule changes to proceed while providing NASD with time to consider concerns relating to dispositive motions separately. For all the foregoing reasons and the overall importance of the proposed rules, the Commission finds good cause for granting accelerated approval to Amendment 6 to the Customer Code and Amendment 6 to the Industry Code, and finds that they are consistent with Section 19(b)(2) of the Act.

C. Amendment 7 to the Customer Code and Amendment 7 to the Industry Code

The Commission finds good cause for approving Amendment 7 to the

[209] 15 U.S.C. 78o–3(b)(5).

[210] 15 U.S.C. 78o–3(b)(6).

[211] In approving these amendments, the Commission has considered the amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[212] *See* comments relating to Proposed Rule 12100(n)—Definition of Public Arbitrator/Proposed Rule 12100(r)—Definition of Non-Public Arbitrator (Section 0); Proposed Rule 12200—Arbitration Under an Arbitration Agreement or the Rules of NASD (Section 0); Proposed Rule 12101—Elective Arbitration (Section 0); Proposed Rule 12206—Time Limits (Section 0); Proposed Rule 12300—Filing and Serving Documents/Proposed Rule 12302—Filing an Initial Statement of Claim (Section 0); Proposed Rule 12307—Deficient Claims/Proposed Rule 12308—Loss of Defenses Due to Untimely or Incomplete Answer (Section 0); Proposed Rule 12312—Multiple Claimants/Proposed Rule 12313 Multiple Respondents (Section 0); Proposed Rule 12401—Number of Arbitrators (Section 0); Proposed Rule 12406—Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List (Section 0); Proposed Rule 12408—Disclosures Required of Arbitrators (Section 0); Proposed Rule 12410—Removal of Arbitrator by Director (Section 0); Proposed Rule 12506—Document Production Lists (Sections 0, 0); Proposed Rule 12514—Exchange of Documents and Witness Lists Before Hearing (Section 0); Proposed Rule 12801—Default Proceedings (Section 0); Proposed Rule 12900—Fees Due When a Claim is Filed (Section 0).

[213] Proposed Rule 12504 has been re-filed as a separate proposed rule change and published for public comment. *See supra note* 23.

Customer Code and Amendment 7 to the Industry Code prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In these amendments, NASD makes further clarifications to the proposed rule changes and responds to certain comments, as described in Sections 0 and 0, above. The Commission believes that NASD's responses and proposed changes in these amendments reasonably address commenters' concerns. The Commission believes the changes proposed in Amendment 7 to the Customer Code and Amendment 7 to the Industry Code provide clarification and do not significantly alter the Customer Code and Industry Code, as amended by Amendments 1, 2, 3, and 4 of each code, which were subject to a full notice and comment period. For all the foregoing reasons and the overall importance of the proposed rules, the Commission finds good cause for granting accelerated approval to Amendment 7 to the Customer Code and Amendment 7 to the Industry Code, and finds that they are consistent with Section 19(b)(2) of the Act.

VII. Text of Amendments 5, 6, and 7 to the Customer Code

For the text of Amendment 5, 6, and 7 to the Customer Code, as well as amendments to the narrative portion and the exhibits of the Customer Code filing, please see NASD's Web site at the following URL: *http://www.nasd.com/RulesRegulation/RuleFilings/2003RuleFilings/NASDW_009306?=802.*

VIII. Text of Amendments 5, 6, and 7 to the Industry Code

For the text of Amendments 5, 6, and 7 to the Industry Code, as well as amendments to the narrative portion and exhibits of the Industry Code filing, please see NASD's Web site at the following URL: *http://www.nasd.com/RulesRegulation/RuleFilings/2004RuleFilings/NASDW_009295.*

IX. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendments 5, 6, and 7 to the Customer Code and Amendments 5, 6, and 7 to the Industry Code are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2003–158 or SR–NASD–2004–011, as appropriate, 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–NASD–2003–158 or SR–NASD–2004–011, as appropriate. The 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 will also be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–NASD–2003–158 or SR–NASD–2004–011, as appropriate, and should be submitted on or before February 21, 2007.

X. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[214] that the proposed rule changes (SR–NASD–2003–158 and SR–NASD–2004–011), as amended, be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[215]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1382 Filed 1–30–07; 8:45 am]

BILLING CODE 8011–01–P

[214] 15 U.S.C. 78s(b)(2).

[215] 17 CFR 200.30–3(a)(12).

Federal Register

Wednesday,
January 31, 2007

Part IV

The President

Proclamation 8103—National African American History Month, 2007

Federal Register
Vol. 72, No. 20
Wednesday, January 31, 2007

Presidential Documents

Title 3—

The President

Proclamation 8103 of January 26, 2007

National African American History Month, 2007

By the President of the United States of America

A Proclamation

African Americans have been an integral part of America for generations, and our Nation is stronger because of their contributions. During National African American History Month, we honor the achievements of African Americans and recognize our continued responsibility to strive for equality for all our citizens.

With grace and determination, African-American men and women have shaped our Nation and influenced American life. Frederick Douglass, W.E.B. DuBois, Rosa Parks, and Martin Luther King, Jr., advanced the cause of civil rights for all Americans and helped change the course of American history. Educators Booker T. Washington and Carter G. Woodson helped break down racial barriers in education to provide opportunity for all people. Americans have benefited from the achievements of scientists like George Washington Carver. Artists such as Pearl Bailey, Ella Fitzgerald, and Louis Armstrong inspired Americans and created some of the most celebrated music this Nation has ever produced.

The theme of this year's National African American History Month, ''From Slavery to Freedom: Africans in the Americas,'' recalls African Americans' long journey to justice and commemorates the courage and persistence of the heroes who called on our Nation to live up to its founding promise. A century after African-American soldiers fought for their freedom on the battlefields of the Civil War, African Americans struggled peacefully for their rights in the streets of Birmingham, Alabama, and on the Mall in Washington, D.C. Courageous civil rights leaders answered hate and discrimination with love and dignity, toppled segregation laws, and worked to make America a more just and hopeful Nation.

All Americans can be proud of the progress we have made, yet the work for a more perfect union is not done. As we celebrate National African American History Month, we reaffirm our commitment to build a society where every individual has the opportunity to achieve the promise of this great land.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2007 as National African American History Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate programs and activities that honor the significant contributions African Americans have made to our Nation.

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

[FR Doc. 07–455
Filed 1–30–07; 8:45 am]
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This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 159/P.L. 110–1

To redesignate the White Rocks National Recreation Area in the State of Vermont as the ''Robert T. Stafford White Rocks National Recreation Area''. (Jan. 17, 2007; 121 Stat. 3)

A cumulative list of Public Laws for the second session of the 109th Congress will be published in the **Federal Register** on January 31, 2007.

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