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WHEN: Tuesday, March 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



Contents

Federal Register

Vol. 72, No. 46

Friday, March 9, 2007

Agricultural Research Service

NOTICES

Meetings:

Biotechnology and 21st Century Agriculture Advisory Committee, 10630

Agriculture Department

See Agricultural Research Service

See Animal and Plant Health Inspection Service

See Forest Service

Alcohol and Tobacco Tax and Trade Bureau

RULES

Alcohol; viticultural area designations:

Snake River Valley, ID and OR, 10598–10603

Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10786–10788

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine, domestic:

Karnal bunt, 10593

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10630–10632

Army Department

See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10765–10766

Children and Families Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10766–10767

Coast Guard

RULES

Drawbridge operations:

Maryland, 10605

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement list; additions and deletions, 10639–10641

Consumer Product Safety Commission

NOTICES

Settlement agreements:

Fisher-Price, Inc., 10713–10715

Defense Department

See Defense Logistics Agency

See Engineers Corps

See Navy Department

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10715–10717

Meetings; Sunshine Act, 10717–10718

Defense Logistics Agency

NOTICES

Environmental statements; availability, etc.:

National Defense Stockpile; removal of low-activity contamination, 10718–10719

Drug Enforcement Administration

NOTICES

Registration revocations, restrictions, denials, reinstatements:

Abbey, Julian A., M.D., 10788–10789

Education Department

RULES

Innovation and improvement:

Magnet Schools Assistance Program, 10605–10607

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10722

Grants and cooperative agreements; availability, etc.:

Innovation and improvement—

Magnet Schools Assistance Program, 10722–10731

Safe and drug-free schools programs—

School-Based Student Drug-Testing Programs, 10731–10735

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

South Bay Salt Pond, CA; restoration plan, 10719–10720

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Kansas, 10608–10610

Missouri, 10610–10616

PROPOSED RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Missouri, 10626–10627

Air quality implementation plans; approval and promulgation; various States:

Kansas, 10627

Missouri, 10627–10628

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10735–10747

Environmental statements; availability, etc.:
Agency comment availability, 10748–10749
Agency weekly receipts, 10749–10750
Pesticides; experimental use permits, etc.:
Circle One Global, Inc., 10750–10751
Interregional Research Project No. 4, 10751–10752
Reports and guidance documents; availability, etc.:
National Coastal Condition Report III; draft, 10752–10753
Superfund; response and remedial actions, proposed settlements, etc.:
Omega Chemical Site, CA, 10753–10754
St. Joe Chat Pile Site, OK, 10754
Toxic and hazardous substances control:
New chemicals; receipt and status information, 10754–10761

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

PROPOSED RULES

Airworthiness directives:
APEX Aircraft, 10624–10626
Turbomeca Arriel, 10622–10624
Vulcanair S.p.A., 10620–10622

Federal Bureau of Investigation

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10789

Federal Election Commission

NOTICES

Special elections; filing dates:
Georgia, 10761–10762

Federal Highway Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10811–10812

Meetings:

National Safe Routes to School Task Force, 10812

Federal Railroad Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10812–10813

Federal Reserve System

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 10762–10764

Banks and bank holding companies:

Formations, acquisitions, and mergers, 10764–10765

Fish and Wildlife Service

NOTICES

Environmental statements; availability, etc.:

Incidental take permits—

Contra Costa County Flood Control and Water District, CA; multiple species habitat conservation plan, 10781–10784

South Bay Salt Pond, CA; restoration plan, 10719–10720

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:

Enrofloxacin; implantation or injectable dosage form, 10596–10597

Fenbendazole paste, 10595

Imidacloprid and Moxidectin, 10597–10598

Oxfendazole suspension, 10595–10596

NOTICES

Reports and guidance documents; availability, etc.:

Animal drug user fees; industry guidance, 10767–10768

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:

Illinois, 10642

Michigan

Perrigo Co.; pharmaceutical products manufacturing facilities, 10642

New Jersey, 10642–10643

South Carolina

Leiner Health Products LLC; pharmaceutical products manufacturing facility, 10643

Forest Service

RULES

Oil and gas operations:

Onshore Federal and Indian oil and gas leases; approval of operations (Order No.1)

Correction, 10608

NOTICES

Reports and guidance documents; availability, etc.:

Forest Service Manual; travel management, 10632–10639

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

NOTICES

Reports and guidance documents; availability, etc.:

Explosion pressure design criteria for new seals in U.S. mines, 10765

Health Resources and Services Administration

RULES

Health resources development:

Organ Procurement and Transplantation Network—Intestines, 10616–10619

Homeland Security Department

See Coast Guard

See U.S. Citizenship and Immigration Services

PROPOSED RULES

Real ID Act of 2005:

Driver's licenses and identification cards; minimum standards accepted by Federal agencies, 10820–10858

Housing and Urban Development Department

NOTICES

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties, 10781

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See Minerals Management Service

See National Indian Gaming Commission

See Reclamation Bureau

International Trade Administration**NOTICES**

Antidumping:

Ball bearings and parts thereof from—
Italy, 10643–10645

Frozen warmwater shrimp from—

Brazil, 10680–10689

China, 10645–10658

Ecuador, 10698–10707

India, 10658–10669

Thailand, 10669–10680

Vietnam, 10689–10698

Individually quick frozen red raspberries from—
Chile, 10707

Small diameter seamless carbon and alloy steel standard,
line, and pressure pipe from—

Argentina, 10707–10709

Countervailing duties:

Pasta from—

Italy, 10709

Meetings:

Exporters' Textile Advisory Committee, 10709

Overseas trade missions:

2007 trade missions—

Turkey, Jordan, and Egypt; healthcare technologies,
10709–10710

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

See Drug Enforcement Administration

See Federal Bureau of Investigation

Labor Department**NOTICES**

Grants and cooperative agreements; availability, etc.:

Strengthening Career Civil Service Systems of Labor
Inspectorates in Central America, 10790

Land Management Bureau**RULES**

Oil and gas operations:

Onshore Federal and Indian oil and gas leases; approval
of operations (Order No.1)

Correction, 10608

NOTICES

Off-road vehicle route designations:

Hassayampa Field Office, AZ; meeting, 10784

Public land orders:

Oregon; correction, 10784

Maritime Administration**NOTICES**

Coastwise trade laws; administrative waivers:

MYSTIQUE, 10813–10814

RENDEZVOUS, 10814–10815

Minerals Management Service**NOTICES**

Environmental statements; availability, etc.:

Gulf of Mexico OCS—

Oil and gas operations, 10784–10785

National Credit Union Administration**RULES**

Credit unions:

Share insurance appeals; NCUA Board clarification of
enforcement authority, 10593–10595

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 10790

National Highway Traffic Safety Administration**NOTICES**

Meetings:

Crash Injury Research and Engineering Network, 10815

Motor vehicle defect proceedings; petitions, etc.:

Jeffers, William B., III; petition denied, 10815–10817

National Indian Gaming Commission**NOTICES**

Environmental statements; availability, etc.:

Graton Rancheria Casino and Hotel Project, CA, 10790–
10792

National Institutes of Health**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 10768–10769

Inventions, Government-owned; availability for licensing,
10769–10770

Meetings:

Clinical Center, 10770

National Cancer Institute, 10770–10771

National Human Genome Research Institute, 10771–
10772

National Institute of Allergy and Infectious Diseases,
10775

National Institute of Arthritis and Musculoskeletal and
Skin Diseases, 10774–10775

National Institute of Child Health and Human
Development, 10776–10778

National Institute of Diabetes and Digestive and Kidney
Diseases, 10776

National Institute of Environmental Health Sciences,
10772

National Institute of General Medical Sciences, 10776–
10777, 10779

National Institute of Mental Health, 10774, 10779–10780

National Institute of Neurological Disorders and Stroke,
10773–10774

National Institute on Aging, 10772–10773

National Institute on Alcohol Abuse and Alcoholism,
10778–10779

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Highly migratory species, 10628–10629

NOTICES

Endangered and threatened species:

Cusk; status review, 10710–10711

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

American Samoa Longline Limited Entry Program,
10711

Meetings:

Mid-Atlantic Fishery Management Council, 10711–10712

New England Fishery Management Council, 10712

North Pacific Fishery Management Council, 10712–10713

National Science Foundation**NOTICES**

Meetings:

Mathematical and Physical Sciences Advisory
Committee, 10792

Navy Department**RULES**

Navigation, COLREGS compliance exemptions:

USS MESA VERDE, 10603–10605

NOTICES

Environmental statements; availability, etc.:

Apra Harbor Naval Complex, Guam; Kilo Wharf extension; public hearing, 10721–10722

Presidential Documents**EXECUTIVE ORDERS**

Holy See, Permanent Observer Mission to the United Nations; extension of privileges and immunities (EO 13427), 10877–10879

ADMINISTRATIVE ORDERS

Narcotics and drugs:

Largest exporting and importing countries of certain precursor chemicals (Presidential Determination) No. 2007-14 of February 28, 2007, 10881

Reclamation Bureau**NOTICES**

Environmental statements; notice of intent:

New Melones Lake Project, CA, 10785–10786

Securities and Exchange Commission**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 10792

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 10793–10795

Chicago Board Options Exchange, Inc., 10795–10796

Depository Trust Co., 10796–10797

NASDAQ Stock Market LLC, 10797–10805

National Association of Securities Dealers, Inc., 10805–10807

National Securities Clearing Corp., 10807–10808

New York Stock Exchange LLC, 10808–10809

State Department**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 10809–10811

Meetings:

Private International Law Advisory Committee, 10811

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Railroad Administration

See Maritime Administration

See National Highway Traffic Safety Administration

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau

U.S. Citizenship and Immigration Services**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 10780–10781

Veterans Affairs Department**PROPOSED RULES**

Compensation, pension, burial, and related benefits:

Veterans, dependents, and survivors; special and ancillary benefits, 10860–10876

Separate Parts In This Issue**Part II**

Homeland Security Department, 10820–10858

Part III

Veterans Affairs Department, 10860–10876

Part IV

Executive Office of the President, Presidential Documents, 10877–10881

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list

archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Executive Orders:**

13427 10879

Administrative Orders:**Presidential****Determinations:**

No. 2007-14 of

February 28, 2007 10881

6 CFR**Proposed Rules:**

37 10820

7 CFR

301 10593

12 CFR

745 10593

747 10593

14 CFR**Proposed Rules:**

39 (3 documents) 10620,
10622, 10624

21 CFR

520 (2 documents) 10595

522 10596

524 10597

27 CFR

9 10598

32 CFR

706 10603

33 CFR

117 10605

34 CFR

280 10605

36 CFR

228 10608

38 CFR**Proposed Rules:**

5 10860

40 CFR

52 (3 documents) 10608,
10610, 10613

70 10613

Proposed Rules:

52 (3 documents) 10626,
10627

70 10627

42 CFR

121 10616

43 CFR

3160 10608

50 CFR**Proposed Rules:**

665 10628

Rules and Regulations

Federal Register

Vol. 72, No. 46

Friday, March 9, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0149]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to remove certain areas or fields in Maricopa and Pinal Counties, AZ, and Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton, and Young Counties, TX, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. The interim rule was necessary to relieve restrictions that are no longer necessary.

DATES: Effective on March 9, 2007, we are adopting as a final rule the interim rule published at 71 FR 67432–67436 on November 22, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–3769.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule¹ effective November 16, 2006, and published in

the **Federal Register** on November 22, 2007 (71 FR 67432–67436, Docket No. APHIS–2006–0149), we amended the karnal bunt regulations contained in Subpart—Karnal Bunt (7 CFR 301.78 through 301.78–10) by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and in Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton and Young Counties, TX, from the list of regulated areas in § 301.89–3(g). That action was based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). The interim rule relieved restrictions on fields within those areas that were no longer necessary. As a result of the interim rule, there are no longer any regulated areas in Archer, McCulloch, and San Saba Counties, TX, and the size of the regulated areas in each of the four remaining regulated Texas counties and in two of the three regulated Arizona counties has been reduced.

Comments on the interim rule were required to be received on or before January 22, 2007. We received two comments by that date. The comments were from a State agricultural agency and a wheat industry group. Both commenters supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

Note: In the preamble of the interim rule, the text of the economic analysis mistakenly stated that in 2004, Pinal County, AZ, was the largest contributor to the total U.S. wheat market of the deregulated counties. Throckmorton County, TX, was the largest contributor of the listed counties for that year. The information given in Table 2 for percentage shares of U.S. wheat production was correct.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 67432–67436 on November 22, 2006.

Done in Washington, DC, this 5th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–4238 Filed 3–8–07; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 745 and 747

Share Insurance Appeals; Clarification of Enforcement Authority of the NCUA Board

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to implement amendments to the Federal Credit Union Act (FCU Act) made by the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act) enacted by Congress on October 13, 2006. This final rule amends NCUA's regulations to assure they are consistent with the statutory changes made by the Reg Relief Act. The final rule adopts the amendments as stated in the interim final rule issued in November 2006. It clarifies: That an appeal from a final NCUA Board decision regarding share insurance coverage shall be to the appropriate Federal District Court; that the NCUA Board may terminate the share insurance of any insured credit union for violation of any condition imposed by the Board in connection with any action on any application, notice, or other request by the credit union or an institution-affiliated party; and that Orders of Suspension, Prohibition and Removal issued by the NCUA Board remain effective against institution-affiliated parties regardless of whether they remain institution-affiliated parties at the time the Order is considered or issued.

DATES: The interim rule is adopted as final April 9, 2007.

¹ To view the interim rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2006–0149, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Senior Trial Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION: NCUA issued the interim rule published in the **Federal Register** on November 22, 2006 (71 FR 67439).

A. Overview of Comments Received

NCUA received three comment letters regarding the interim final rule. Two were from national credit union trade associations and a third was from a state credit union league.

In general, each of the commenters agreed with the proposed changes. Two letters requested that NCUA provide examples or issue guidelines to explain the circumstances under which the NCUA Board might undertake formal administrative action in order to terminate the insured status of a credit union. The Board does not believe it would be helpful to try and enumerate the various situations when it might conclude that it is necessary to institute a formal administrative action against a particular credit union. Experience indicates that each case tends to be fact specific. There are many variables that influence a decision on what an appropriate course of action would be to correct a specific problem. Generally the Board will begin a formal administrative action such as termination of insurance only after it has exhausted other informal attempts to correct problems that have been identified. These less formal mechanisms include but are not limited to: (1) Action items contained in a document of resolution; (2) letters of understanding and agreement; (3) preliminary warning letters; and (4) cease and desist orders.

One commenter asked that the NCUA Board clarify the effective date of the change in venue for insurance appeals. The Board notes that when enacting the Reg Relief Act Congress did not indicate what venue would be appropriate for pending insurance appeals. Neither the text of the statute nor its legislative history clearly indicates whether petitions for review that were pending in the Courts of Appeal before the Act's passage should be reviewed in the District Courts under the new provision or remain in the Courts of Appeal under the old. Because there is no statutory provision that would allow a Court of Appeals to transfer a pending insurance appeal filed prior to the October 13, 2006 enactment of the statute, the Board believes that such cases should remain in the Court of Appeals. Venue for appeals of NCUA Board insurance determinations filed on or after that date

shall be filed in the appropriate U.S. district court.

B. Insurance Appeals

The Reg Relief Act amended section 207(d) of the FCU Act, which addresses the resolutions of disputes relating to any claim for insurance coverage. 12 U.S.C. 1787(d). The final rule amends the provision in NCUA's regulations, 12 CFR 745.203(c), that sets forth the appropriate venue for seeking judicial review of a final determination by the Board relating to a claim for insurance coverage.

The current regulation provides for judicial review by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal circuit where the credit union's principal place of business is located. The final rule revises the regulation to reflect the statutory change that a final agency determination by the Board on a claim for insurance coverage is reviewable by the United States district court for the Federal judicial district where the principle place of business of the credit union is located.

C. Expansion of Enforcement Authority

The Reg Relief Act amended three provisions of Section 206 of the FCU Act, 12 U.S.C. 1786, to broaden the NCUA Board's authority to take enforcement actions for violations of conditions imposed in any action on any application, notice, or other request by a credit union or an institution-affiliated party. Such violations can serve as a basis for cease and desist orders, removal and prohibition orders, and civil money penalties. Previously such enforcement actions could only be taken upon a violation of conditions imposed in "the granting of any application or other request by the credit union." The amendments to Sections 747.1 and 202 of NCUA's Regulations conform the language of the regulation to that of the FCU Act as amended.

D. Clarification of Suspension, Prohibition and Removal Authority

The Reg Relief Act amended Section 206(i)(1) of the FCU Act, 12 U.S.C. 1786(i)(1) to clarify the NCUA Board's authority to issue Orders against institution-affiliated parties regardless of whether they remain institution-affiliated parties of a credit union when the Order is considered or issued. The new statutory language makes clear that the NCUA Board has the authority to issue the Order even if the subject is no longer affiliated with the institution. The amendments to Sections 747.303 and 304 of NCUA's Regulations conform

the language of the regulation to that of the FCU Act as amended.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule clarifies NCUA's enforcement authority and identifies the appropriate venue for appeals of final share insurance determinations. It does not impose any additional regulatory burden. The interim final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), provides

generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects

12 CFR Part 745

Credit unions, Share insurance.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal access to justice, Investigations, Lawyers, Penalties.

■ Accordingly, NCUA adopts as final the interim rule amending 12 CFR parts 745 and 747.

By the National Credit Union Administration Board on March 1, 2007.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E7-4225 Filed 3-8-07; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Intervet, Inc. The supplemental NADAs provide for a revised human food safety warning for fenbendazole paste, used for the control of various internal parasites in horses and cattle. **DATES:** This rule is effective March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301 827 7540, e-mail: melanie.berson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 29160 Intervet Lane,

Millsboro, DE 19966, filed a supplement to NADA 120-648 that provides for use of PANACUR (fenbendazole) Paste in horses for the control of various internal parasites, and to NADA 132-872 that provides for use of SAFE-GUARD (fenbendazole) Paste in cattle for the control of various internal parasites. The supplemental NADAs provide for a revised human food safety warning on product labeling. The supplemental NADAs are approved as of February 8, 2007, and the regulations are amended in 21 CFR 520.905c to reflect the approval and a current format.

Approval of these supplemental NADAs did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Amend § 520.905c as follows:

- a. Revise paragraph (a);
- b. Redesignate paragraph (d) as paragraph (e);
- c. Add new paragraph (d); and
- d. Revise newly redesignated paragraph (e).

The revisions, redesignation, and addition read as follows:

§ 520.905c Fenbendazole paste.

(a) *Specifications.* Each gram of paste contains 100 milligrams (mg) fenbendazole (10 percent).

* * * * *

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use—(1) Horses—(i) Indications for use and amounts—(A)*

For control of large strongyles (*Strongylus edentatus*, *S. equinus*, *S. vulgaris*), small strongyles, pinworms (*Oxyuris equi*), and ascarids (*Parascaris equorum*): 2.3 mg per pound (lb) of body weight, or for foals and weanlings (less than 18 months of age), 4.6 mg/lb of body weight. Retreatment at intervals of 6 to 8 weeks may be required.

(B) For control of arteritis caused by the fourth-stage larvae of *S. vulgaris*: 4.6 mg/lb of body weight daily for 5 days. Treatment should be initiated in the spring and repeated in 6 months.

(C) For treatment of encysted mucosal cyathostome (small strongyle) larvae including early third-stage (hypobiotic), late third-stage, and fourth-stage larvae: 4.6 mg/lb of body weight daily for 5 consecutive days.

(D) Fenbendazole paste 10 percent may be used concomitantly with approved forms of trichlorfon for the indications provided in paragraph (e)(1)(i)(A) of this section and for treating infections of stomach bots as provided in § 520.2520.

(ii) *Limitations.* Do not use in horses intended for human consumption.

(2) *Cattle—(i) Amount.* 2.3 mg/lb of body weight. Re-treatment may be needed after 4 to 6 weeks.

(ii) *Indications for use.* For the removal and control of lungworms (*Dictyocaulus viviparus*), stomach worms (*Haemonchus contortus*, *Ostertagia ostertagi*, *Trichostrongylus axei*), and intestinal worms (*Bunostomum phlebotomum*, *Nematodirus helvetianus*, *Cooperia punctata*, *C. oncophora*, *Trichostrongylus colubriformis*, and *Oesophagostomum radiatum*). (iii) *Limitations.* Cattle must not be slaughtered within 8 days following last treatment.

Dated: February 28, 2007.

Steven D. Vaughn,

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

[FR Doc. E7-4204 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxfendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA provides for over-the-counter (OTC) marketing status for oral use of oxfendazole suspension in cattle.

DATES: This rule is effective March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7571, e-mail: joan.gotthardt@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 140-854 for SYNANTHIC (oxfendazole) Bovine Dewormer Suspension, approved for oral use in cattle for the removal of various internal parasites. The supplemental NADA provides for OTC marketing status. The supplemental application is approved as of January 29, 2007, and the regulations are amended in 21 CFR 520.1630 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Parts 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Amend § 520.1630 as follows:

■ a. Redesignate paragraph (d) as paragraph (e);

■ b. Add new paragraph (d);

■ c. Revise the introductory text in newly redesignated paragraphs (e)(1) and (e)(2); and

■ d. Revise paragraph (a) and newly redesignated paragraphs (e)(1)(i), (e)(1)(iii), (e)(2)(i), and (e)(2)(iii).

The redesignation, addition, and revisions read as follows:

§ 520.1630 Oxfendazole suspension.

(a) *Specifications.* Each milliliter of suspension contains:

(1) 90.6 milligrams (mg) oxfendazole (9.06 percent).

(2) 225.0 mg oxfendazole (22.5 percent).

* * * * *

(d) *Special considerations.* See § 500.25 of this chapter. If labeled for administration by stomach tube: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e) *Conditions of use—(1) Horses.* Use the product described in paragraph (a)(1) of this section as follows:

(i) *Amount.* 10 mg per kilogram (/kg) of body weight by stomach tube or dose syringe. Horses maintained on premises where reinfection is likely to occur should be retreated in 6 to 8 weeks.

* * * * *

(iii) *Limitations.* Withholding feed or water prior to use is unnecessary. Administer drug with caution to sick or debilitated horses. Do not use in horses intended for human consumption.

(2) *Cattle.* Use the products described in paragraphs (a)(1) and (a)(2) of this section as follows:

(i) *Amount.* 4.5 mg/kg of body weight by dose syringe. Treatment may be repeated in 4 to 6 weeks.

* * * * *

(iii) *Limitations.* Cattle must not be slaughtered until 7 days after treatment. Do not use in lactating dairy cattle.

Dated: February 21, 2007.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine. [FR Doc. E7-4205 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Enrofloxacin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bayer HealthCare LLC. The supplemental NADA provides for changing scientific nomenclature for a bovine respiratory pathogen on labeling for enrofloxacin injectable solution.

DATES: This rule is effective March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7571, e-mail: joan.gotthardt@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 141 068 for BAYTRIL 100 (enrofloxacin) Injectable Solution used for the treatment of bovine respiratory disease associated with several bacterial pathogens. The supplemental NADA provides for changing a pathogen name from *Pasteurella haemolytica* to *Mannheimia haemolytica* on product labeling. The supplemental NADA is approved as of February 15, 2007, and the regulations in 21 CFR 522.812 are amended to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 522.812 to read as follows:

§ 522.812 Enrofloxacin.

(a) *Specifications.* Each milliliter (mL) of solution contains:

(1) 22.7 milligrams (mg) enrofloxacin or

(2) 100 mg enrofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Related tolerance.* See § 556.228 of this chapter.

(d) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extra-label use of this drug in food-producing animals.

(e) *Conditions of use—(1) Dogs.* Use the product described in paragraph (a)(1) of this section as follows:

(i) *Amount.* 2.5 mg per kilogram (/kg) of body weight (1.13 mg per pound) as a single, intramuscular, initial dose followed by use of tablets twice daily for 2 to 3 days beyond cessation of clinical signs to a maximum of 10 days.

(ii) *Indications for use.* For the management of diseases associated with bacteria susceptible to enrofloxacin.

(2) *Cattle.* Use the product described in paragraph (a)(2) of this section as follows:

(i) *Amount.* Single-dose therapy: 7.5 to 12.5 mg/kg of body weight (3.4 to 5.7 mL per 100 pounds) by subcutaneous injection. Multiple-day therapy: 2.5 to 5.0 mg/kg of body weight (1.1 to 2.3 mL per 100 pounds) by subcutaneous injection once daily for 3 to 5 days.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Haemophilus somnus*.

(iii) *Limitations.* Animals intended for human consumption must not be slaughtered within 28 days from the last treatment. Do not use in cattle intended for dairy production. A withdrawal period has not been established for this product in pre-ruminating calves. Do

not use in calves to be processed for veal. The effect of enrofloxacin on bovine reproductive performance, pregnancy, and lactation have not been determined.

Dated: February 28, 2007.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. E7-4206 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 524****Ophthalmic and Topical Dosage Form New Animal Drugs; Imidacloprid and Moxidectin**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by Bayer HealthCare LLC. The NADAs provide for the topical use by veterinary prescription of topical solutions containing imidacloprid and two strengths of moxidectin, one for use on dogs and the other for use on cats, for the prevention of heartworm disease, the treatment of flea infestations, and the treatment and control of several internal parasites.

DATES: This rule is effective March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; tel: 301-827-7540; e-mail: melanie.berson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 141-251 that provides for veterinary prescription use of ADVANTAGE MULTI (imidacloprid 10% and moxidectin 2.5%) for Dogs, a topical solution used for the prevention of heartworm disease, the treatment of flea infestations, and the treatment and control of several internal parasites. Bayer HealthCare LLC also filed NADA 141-254 that provides for veterinary prescription use of ADVANTAGE MULTI (imidacloprid 10% and

moxidectin 1%) for Cats, a topical solution used for the prevention of heartworm disease, the treatment of flea infestations, and the treatment and control of ear mites and several internal parasites. NADA 141-251 is approved as of December 20, 2006, and NADA 141-254 is approved as of January 19, 2007. Accordingly, the regulations are amended in part 524 (21 CFR part 524) by adding § 524.1146 to reflect these approvals.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval under NADA 141-251 qualifies for 3 years of marketing exclusivity beginning December 20, 2006, and this approval under NADA 141-254 qualifies for 3 years of marketing exclusivity beginning January 19, 2007.

The agency has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 524.1146 to read as follows:

§ 524.1146 Imidacloprid and moxidectin.

(a) *Specifications*—(1) Each milliliter of solution contains 100 milligrams (mg) imidacloprid and 25 mg moxidectin for use as in paragraph (d)(1) of this section.

(2) Each milliliter of solution contains 100 mg imidacloprid and 10 mg moxidectin for use as in paragraph (d)(2) of this section.

(b) *Sponsor*. See No. 000859 in § 510.600(c) of this chapter.

(c) *Special considerations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*. Topically apply 4.5 mg/lb body weight (10 mg/kg) imidacloprid and 1.1 mg/lb (2.5 mg/kg) moxidectin, once a month.

(ii) *Indications for use*. For the prevention of heartworm disease caused by *Dirofilaria immitis*; and the treatment and control of intestinal roundworms (*Toxocara canis* and *Toxascaris leonina*), hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), and whipworms (*Trichuris vulpis*); kills adult fleas and treats flea infestations (*Ctenocephalides felis*).

(2) *Cats*—(i) *Amount*. Topically apply 4.5 mg/lb body weight (10 mg/kg) imidacloprid and 0.45 mg/lb (1.0 mg/kg) moxidectin, once a month.

(ii) *Indications for use*. For the prevention of heartworm disease caused by *Dirofilaria immitis*; for the treatment and control of ear mite (*Otodectes cynotis*) infestations, intestinal roundworms (*Toxocara cati*), and hookworms (*Ancylostoma tubaeforme*); kills adult fleas and treats flea infestations (*Ctenocephalides felis*).

Dated: February 27, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7-4226 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[T.D. TTB-59; Re: Notice No. 60]

RIN 1513-AB22

Establishment of the Snake River Valley Viticultural Area (2005R-463P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 8,263-square mile

“Snake River Valley” viticultural area in southwestern Idaho and southeastern Oregon. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415-271-1254.

SUPPLEMENTARY INFORMATION:**Background on Viticultural Areas***TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Snake River Valley Viticultural Area*Background*

The wine grape growers of the Snake River Valley in Idaho, the Idaho Grape Growers and Wine Producers Commission, and the Idaho Department of Commerce and Labor, collectively referred to as the “petitioner,” submitted a petition to establish the 8,263-square mile Snake River Valley viticultural area. The proposed viticultural area includes Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding, Jerome, Owyhee, Payette, Twin Falls, and Washington Counties in southwestern Idaho and Baker and Malheur Counties in southeastern Oregon. The proposed boundary encompasses 15 wineries, 46 vineyards, and 1,107 acres of commercial vineyard production. We summarize below the supporting evidence presented with the petition.

Name Evidence

The petitioner provided multiple sources of “Snake River Valley” name evidence for the proposed viticultural area. References include winemaking and vineyards, agriculture, early regional exploration, and other name uses.

The Fall 2001 edition of Wine Press Northwest ran an article titled “Idaho Wineries at a Glance,” which states, “At first glance, the Snake River Valley seems an idyllic place to grow grapes

* * * and continues to explain that most of the grapes are grown in the Snake River Valley area west of Boise, Idaho. The February 17, 2005, edition of Wine Press Northwest ran an article describing the Snake River Valley as a beautiful area in southwestern Idaho. The article noted that most of the Idaho wineries and vineyards are at elevations between 1,500 and 2,500 feet in the western portion of the Snake River Valley.

The official Web site of the State of Idaho has a link to the history of Idaho, noting that in 1811 the Pacific Fur Company expedition explored the Snake River Valley and discovered the Boise Valley, which is within the boundary of the proposed viticultural area. An undated Sunset Magazine article, "The Snake River Valley of Idaho-Eastern Oregon," discusses the significant agricultural production in the Snake River Valley of Idaho and eastern Oregon.

The USGS maps used to identify the proposed Snake River Valley viticultural area prominently show the Snake River at the low elevations of the proposed viticultural area. The American Automobile Association Western States/Provinces map, dated February 2003 through May 2005, shows the Snake River flowing from its headwaters in Wyoming, through Idaho and Oregon, and into Washington to where it joins the Columbia River near Pasco and Kennewick.

Boundary Evidence

The proposed Snake River Valley viticultural area covers portions of southwestern Idaho and southeastern Oregon. The basis for the proposed boundaries, the petitioner explains, is the extent of ancient Lake Idaho, a deep lake that filled the western part of the Snake River Valley approximately 4 million years ago. The proposed boundary line, with a maximum elevation of 1,040 meters, or 3,412 feet, surrounds the now dry, ancient Lake Idaho at the highest elevation conducive to viticulture, according to the petitioner.

The Snake River Plain, a crescent-shaped belt of lava and sediment ranging from 40 to 62 miles wide, extends about 372 miles in length across southern Idaho, according to the petitioner. The geology of the western portion of the Snake River Plain, the petitioner continues, has lower elevations and a rift-bounded basin, which contrast to the higher elevations of the eastern section of the Snake River Plain. Also, according to the petitioner, the colder and drier climate of the eastern area is not conducive to

successful viticulture, unlike the warmer weather and lower elevations of ancient Lake Idaho.

An April 21, 1997, article, "Hydrogeologic Framework of the Boise Valley of Southwest Idaho," by Spencer H. Wood, Department of Geosciences, Boise State University, describes the Snake River Plain as a great geologic bathtub with layers of mud sediment and interconnected layers of sand. According to the article, the depth of the basin plain averages 3,500 feet but extends to 6,000 feet. Also, in prehistoric times ancient Lake Idaho was 800 feet deep in places and covered 5,000 square miles. Today, this region is a flat, semiarid plain that is irrigated for agriculture with water from the Boise River and with ground water, according to the article.

Distinguishing Features

The proposed Snake River Valley viticultural area includes a series of distinguishing features. According to the petitioner its topography includes elevations lower than the surrounding areas and a fault-bounded, rift basin geography. Also, the area is primarily underlain by sedimentary rock. The comparatively warm climate of the proposed Snake River Valley viticultural area creates better grape-growing conditions than those in the surrounding higher elevations and the Snake River Valley in eastern Idaho.

Geology

The petitioner states that the geologic history of the proposed Snake River Valley viticultural area includes flood basalts, northwest-trending structures, loess mantles, and outburst floods. The ancient Lake Idaho extends 149 miles northwest to southeast as a system of lakes and flood plains, from the Oregon-Idaho State line to west of Twin Falls, Idaho.

North of the proposed Snake River Valley viticultural area boundary line, the petitioner explains, are Cretaceous granites of the Idaho Batholith, Eocene volcanoes, older sedimentary rocks, and volcanic flows. To the south of the proposed boundary line, volcanic rocks overlie the southern extension of the granite basement.

Regional Summary

The petitioner includes a map of the Snake River Plain Aquifer System and information modified from the "Ground Water Atlas of the United States: Idaho, Oregon, Washington, U.S. Geological Survey Hydrologic Atlas HA 730-H, 1994." The map shows that the Western Plain, which is within the proposed Snake River Valley viticultural area, is

underlain by aquifers in basaltic rock but mainly in unconsolidated (sedimentary) deposits. In contrast, the Eastern Plain, to the east of the proposed Snake River Valley viticultural area, is underlain predominantly by aquifers in Pliocene and younger basaltic rocks.

The petitioner includes a second map that documents the distribution of rock types in the Pacific Northwest States, based on information taken from the same USGS Hydrologic Atlas noted above. The proposed Snake River Valley viticultural area, according to the map, is underlain primarily by sedimentary rocks, distinguishing the area from basaltic and other igneous rocks in the surrounding regions.

Geography

Physical Features: The petitioner describes the ancient Lake Idaho as the physical focus and an important distinguishing feature of the proposed Snake River Valley viticultural area. Historically, the ancient Lake Idaho was a trough-like structure of lakes. The proposed Snake River Valley viticultural area boundary encircles the now dry, ancient Lake Idaho, a low elevation, fault-bounded, rift basin with a relatively flat, sedimentary bottom. The surrounding areas, beyond the proposed boundary, have a mountainous topography with generally higher elevations.

Elevation: Low elevation, between 660 and 1,040 meters, or 2,165 and 3,412 feet, when compared to the surrounding mountains and the eastern portion of the Snake River Valley, is a significant distinguishing feature of the proposed Snake River Valley viticultural area, as shown on the USGS maps and described by the petitioner. Oxbow Dam, along the Snake River in Adams County, Idaho, lies at an elevation of 660 meters, or 2,165 feet, but the encircling proposed viticultural area boundary line generally adheres to an elevation of 1,040 meters, or 3,412 feet, according to the boundary outlined in the petition. The proposed boundary line deviates from its prescribed 1,040-meter elevation twice at the northernmost boundary on the McCall map and again along the western boundary of the Vale map. The petitioner explains that the 1,040-meter contour line, past the boundaries of the McCall and Vale maps, continues into regions not associated with the Snake River Valley or with viticulture. The region's viticulture, according to the petitioner, is successful between elevations of 664 and 950 meters, or 2,180 and 3,117 feet.

Mountains surrounding the western Snake River Valley region exceed 7,000 feet in elevation, especially to the east of the proposed viticultural area boundary line in the Boise National Forest, as shown on the Idaho City, Idaho, USGS map. The City of Twin Falls, Idaho, about 2½ miles southeast of the proposed Snake River Valley viticultural area's eastern boundary line, as shown on the USGS Twin Falls, Idaho, map, lies at an elevation of 3,729 feet, or about 320 feet higher than the elevation of the proposed viticultural area boundary line.

The petitioner provides three topographic profiles of the proposed Snake River Valley viticultural area drawn from various points of the compass. The three profiles include (1) California Mountain, Oregon, to Bruneau, Idaho, (2) Oreana, Idaho, to Danskin Peak, Idaho, and (3) Marsing, Idaho, to Emmett, Idaho. The profiles show the lower elevations of the ancient Lake Idaho basin in comparison to the surrounding higher mountain elevations beyond the proposed viticultural area boundary line. Payette, Idaho, is at an elevation of about 2,300 feet in the basin, but California Mountain, Oregon, reaches a height of approximately 5,150 feet, significantly higher than the proposed viticultural area boundary line.

Soils

The petitioner describes the soils of the proposed Snake River Valley viticultural area as being diverse and not a distinguishing feature, because the soils have developed in various parent materials, during various time frames, and under varying climatic conditions. The soils are broadly classified as Aridisols, the petitioner adds, and no single soil series or association is dominant.

Vineyards within the proposed Snake River Valley viticultural area are on soils that have underlying parent material derived from weathered sediment from the ancient Lake Idaho, according to the petitioner. At the surface are loess, sand, and, in slack water areas, flood-deposited silt. Typically, vineyards in the proposed area are on very shallow soils on slopes.

Climate

The distinguishing climatic features of the proposed Snake River Valley viticultural area, the petitioner states, include precipitation, air temperature, heat-unit accumulation, and growing season length. The factors affecting climate, the petitioner continues, include the region's topography, a basin depression with surrounding mountainous terrain; the continental inland location approximately 310 miles east of the Cascade Range; and the 43

degree north latitude line. The petitioner adds that the proposed Snake River Valley viticultural area is in a climatic transition zone with both continental and maritime regimes. The combination of elevation and latitude of the proposed Snake River Valley viticultural area, the petitioner continues, creates a shorter grape-growing season than those in many other viticultural regions in the Western United States.

Climatic data from four weather stations in the West Snake River Valley (WSRV) and for other grape-growing districts in the Western United States are noted in the climatic data table below.

The petitioner used online data from 1971 to 2000 compiled and archived by the National Climatic Data Center (NCDC), National Oceanic and Atmospheric Administration, for four areas within the proposed Snake River Valley viticultural area and for three viticultural regions outside of Idaho. The petitioner averaged the collected data for the four Idaho weather stations listed in the climatic data table below. The data are listed separately in the table for each station outside of Idaho, including Umpqua Valley, Oregon; Walla Walla Valley, Washington; and Napa Valley, California, all of which are in established American viticultural areas.

ELEVATION, LOCATION, AND CLIMATIC DATA FOR FOUR WEATHER STATIONS WITHIN IDAHO AND FOR THREE WEATHER STATIONS IN WESTERN STATES, OUTSIDE OF IDAHO

[In the column headings, Elev. (m) means elevation in meters; MAT, mean annual temperature in degrees Celsius; MAP, mean annual precipitation in millimeters; GDD, growing (Celsius) degree-days; GSL, growing season length in days; XMT, 30-year extreme minimum temperature in degrees Celsius (with event year); and CNT, degrees of continental influence (mean annual temperature range that increases as the coastal marine influence decreases, in degrees Celsius).]

Weather stations in the proposed Snake River Valley viticultural area	Elev. (m)	Location (lat./long.)	MAT (°C)	MAP (mm)	GDD	GSL	XMT (°C)	CNT (°C)
Parma Experiment Station, ID.	677	43°48' N./116°57' W	9.9	283	1,342	140	- 32 (1990)	25
Weiser, ID	722	44°15' N./116°58' W	11.0	307	1,637	136	- 34 (1990)	27
Deer Flat Dam, ID	765	43°35' N./116°45' W	11.6	258	1,626	165	- 30 (1989)	24
Glenns Ferry, ID	753	42°56' N./115°19' W	10.5	248	1,413	125	- 32 (1989)	24
Averages of above four Idaho stations in WSRV.	729	N/A	10.8	274	1,504	142	N/A	25
Other Western Viticultural Areas (Reporting Station).								
Umpqua Valley (Roseburg, OR).	128	43°2' N./123°36' W	13.0	855	1,484	218	3 (1989)	15
Walla Walla Valley (Walla Walla, WA).	357	46°5' N./118°28' N	12.3	530	1,715	206	- 11 (1985)	23
Napa Valley (Napa, CA)	18	38°28' N./122°27' W	15.0	672	1,753	259	14 (1990)	11

Precipitation: The proposed Snake River Valley viticultural area is a

semiarid desert with minimal summer precipitation, the petitioner explains.

The proposed viticultural area has a mean annual precipitation of 10 to 12

inches, occurring mostly in winter. The low precipitation rate combines with warm weather during the growing season, and the vineyards therefore need irrigation.

According to the petitioner, the Idaho weather stations within the proposed Snake River Valley viticultural area record about half the annual precipitation of the weather stations at Umpqua Valley, Oregon; Walla Walla Valley, Washington; and Napa Valley, California. The petitioner explains that the lower annual precipitation of the proposed Snake River Valley viticultural area may be partially due to the rain shadows of the Cascade, Sierra Nevada, and Owyhee Ranges.

Temperature: The proposed Snake River Valley viticultural area's mean annual temperature, based on an average of the four Idaho stations monitored, is 51 degrees F, or 10.8 degrees C. The midwinter mean temperatures are below 0 degrees C for several months, and potential vineyard damage is a hazard, the petitioner explains. The California, Oregon, and Washington weather stations listed in the climatic data table above record warmer average winter temperatures. The differences in the extreme winter temperatures and the mean annual temperature ranges between the proposed Snake River Valley viticultural area and the three weather stations monitored in California, Oregon, and Washington show significant variations in viticultural growing conditions.

The petitioner explains that the difference in winter temperatures between the colder proposed Snake River Valley viticultural area and the stations at Umpqua Valley, Oregon; Walla Walla Valley, Washington; and Napa Valley, California, results, to a great extent, from the higher elevations in the proposed viticultural area, which are between 660 and 1,040 meters, or 2,165 and 3,412 feet. Elevations of the other stations are Umpqua Valley, about 460 feet; Walla Walla Valley, 1,200 feet; and Napa Valley, 40 feet.

Also, distances from the Pacific Ocean affect the amount of moderating, marine air temperatures the seven weather stations receive. Oceans tend to moderate air temperatures over land; hence, a wider annual temperature range indicates a greater degree of continental influence, or distance from an ocean. The proposed Snake River Valley viticultural area and the Walla Walla Valley both have, as a measure of continental influence, mean annual temperature ranges of about 25 degrees C. In comparison, the Umpqua Valley and the Napa Valley, both of which are

closer to the Pacific Ocean and are at low elevations, have a smaller mean annual temperature range—about 15 degrees C.

The temperatures of the proposed Snake River Valley viticultural area, according to the petitioner, rise rapidly during the growing season, from June through August. The Umpqua Valley in Oregon and the proposed Snake River Valley viticultural area have similar, annual, total growing degree-days, as shown in the climatic data table above; but, they have between 200 and 250 fewer heat units than the Walla Walla Valley, Washington, and the Napa Valley, California. Each degree that a day's mean temperature is above 50 degrees F, which is the minimum temperature required for grapevine growth, is counted as 1 degree-day (see "General Viticulture," Albert J. Winkler, University of California Press, 1975).

The length of the proposed Snake River Valley viticultural area's growing season correlates to the frost-free period from about May 10 to September 29 annually, according to the petitioner. The total measurement of annual viticultural growth is between 64 and 117 days less than that measured at Walla Walla Valley, Washington; Umpqua Valley, Oregon; and Napa Valley, California.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 60 regarding the proposed Snake River Valley viticultural area in the **Federal Register** on July 17, 2006 (71 FR 40458). In that notice, TTB invited comments by September 15, 2006, from all interested persons. We expressed particular interest in receiving comments on whether the proposed area name would result in a conflict with currently used brand names. We also solicited comments on the appropriateness of the proposed eastern boundary line and asked whether the boundary should be extended into southeastern Idaho. Finally, we specifically solicited comments on the appropriateness of the name "Snake River Valley" and asked whether "West Snake River Valley" or another alternative name would be more appropriate for this area. We received three comments in response to that notice. All three comments supported the establishment of the Snake River Valley viticultural area as proposed.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the

authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Snake River Valley" viticultural area in southwestern Idaho and southeastern Oregon, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Snake River Valley," is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using "Snake River Valley" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin. No single part of the "Snake River Valley" viticultural area name standing alone, such as "snake" or "Snake River", has viticultural significance. The word "snake" alone is not routinely identified with the "Snake River Valley." The name "Snake River" applies to 13 streams in 9 States, spanning from Florida to Alaska, according to the USGS Geographic Names Information System.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term specified as having viticultural significance in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term of viticultural significance as an appellation of origin and that name or other term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural

significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

■ 2. Amend subpart C by adding § 9.208 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.208 Snake River Valley.

(a) *Name.* The name of the viticultural area described in this section is "Snake River Valley". For purposes of part 4 of this chapter, "Snake River Valley" is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Snake River Valley viticultural area are 14 United States Geological Survey 1:100,000 scale, metric topographic maps. They are titled,

(1) Baker, Oregon-Idaho, 1981;

(2) Brogan, Oregon-Idaho, 1980;
(3) McCall, Idaho-Oregon, 1980, Photoinspected 1990;
(4) Weiser, Idaho-Oregon, 1980, Photoinspected 1990;
(5) Boise, Idaho-Oregon, 1981;
(6) Idaho City, Idaho, 1982;
(7) Murphy, Idaho, 1986;
(8) Mountain Home, Idaho, 1990;
(9) Fairfield, Idaho, 1978;
(10) Twin Falls, Idaho, 1979;
(11) Glenns Ferry, Idaho, 1992;
(12) Triangle, Idaho, 1990;
(13) Mahogany Mountain, Idaho, 1978; and

(14) Vale, Oregon-Idaho, 1993.

(c) *Boundary.* The Snake River Valley viticultural area is located in Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding, Jerome, Owyhee, Payette, Twin Falls, and Washington Counties in southwestern Idaho and in Baker and Malheur Counties in southeastern Oregon. The boundary of the Snake River Valley viticultural area is as described below:

(1) The beginning point is on the Baker map in Oregon at the intersection of the 1,040-meter contour line and Interstate 84, between Pleasant Valley and Oxman in Baker County, T10S/R42E;

(2) From the beginning point proceed east following the 1,040-meter contour line along the eastern side of the Burnt River Valley, then crossing over to the Brogan map, proceed northerly along the western side of the Snake River Valley and, crossing back over to the Baker map, proceed westerly along the southern side of the Powder River Valley to the 1,040-meter contour line's intersection with the northern boundary of Baker County, T7S/R40E, on the Baker map;

(3) Proceed 7.5 miles straight east along the northern boundary of Baker County to its intersection with the 1,040-meter line east of Oregon State Road 203 and three unnamed creeks, T7S/R41E, on the Baker map;

(4) Proceed generally southeast along the 1,040-meter contour line onto the McCall map, to its intersection with the 45 degree north latitude line, to the immediate west of North Creek in the Hell's Canyon National Recreation Area, T6S/R47E, on the northern border of the McCall map;

(5) Proceed straight east along the 45 degree north latitude line to its intersection with the 1,040-meter contour line, to the immediate east of North Creek, T6S/R47E, on the McCall map;

(6) Follow the 1,040-meter contour line, which encircles the northern portion of McLain Gulch, to its third intersection with the 45 degree north

latitude line, west of the Snake River in Baker County, Oregon, T6S/R48E, on the McCall map;

(7) Proceed straight east along the 45 degree north latitude line to its intersection with the 1,040-meter contour line, to east of the Snake River and Indian Creek in Adams County, Idaho, T6S/R48W, on the McCall map;

(8) Continue following the 1,040-meter contour line in a generally clockwise rotation on the McCall map, proceeding southerly on the southeast side of the Snake River, northeasterly north of the Crooked River, crossing the Crooked River, T7S/R3W, proceeding southwesterly south of the Crooked River, crossing Brownlee Creek, T16N/R4W, proceeding generally southwesterly onto the Baker map, continuing southwesterly, crossing Sturgill Creek, T15N/R6W, and Dennett Creek, T14N/R6W, proceeding onto the Brogan map, proceeding southeasterly, crossing Rock Creek, T13N/R6W, proceeding onto the Weiser map, proceeding northeasterly, north of the Mann Creek State Recreation Area, crossing Mann Creek, T13N/R5W, continuing northeasterly onto the McCall map;

(9) Continue following the 1,040-meter contour line in a clockwise rotation on the McCall map, proceeding northeasterly, crossing Pine Creek, T15N/R4W, and Hornet Creek, T8S/R2W, passing west of the Payette National Forest, proceeding southerly, passing east of Mesa, onto the Weiser map, proceeding southerly, crossing Crane Creek, T12N/R1W, turning westerly, rounding north of the Paddock Valley Reservoir, crossing Willow Creek, T9N/R1W, turning southerly onto the Boise map, looping southerly and northerly north of the Black Canyon Reservoir and moving back onto the Weiser map;

(10) Continue following the 1,040-meter contour line in a clockwise rotation on the Weiser map, proceeding northerly, crossing Squaw Creek, T12N/R1E, and then southerly, crossing Cottonweed Creek, T11N/R1E, and then southerly again onto the Boise map, rounding south of South Mountain, back onto the Weiser map, proceeding northeasterly north of the Payette River, crossing the North Fork Payette River, T10N/R3E, then proceeding southwesterly south of the Payette River, onto the Boise map, proceeding generally southerly, crossing Cartwright Creek, T6N/R2E, and proceeding westerly and southeasterly towards Lucky Peak Lake, and then turning northward onto the Idaho City map;

(11) Continue following the 1,040-meter contour line in a clockwise

rotation on the Idaho City map, proceeding northerly, crossing Grimes and Mores Creek, T5N/R4E, and then proceeding southerly to Lucky Peak Lake, turning northeasterly north of the Lucky Peak Lake, Arrowrock Reservoir, and Middle Fork Boise River to T4N/R7E, crossing the Middle Fork Boise River and proceeding southwesterly south of the Middle Fork Boise River, to the South Fork Boise River, crossing the South Fork Boise River, T2N/R6E, proceeding onto the Boise map proceeding southwesterly south of Lucky Peak Lake onto the Murphy map;

(12) Continue following the 1,040-meter contour line in a clockwise rotation southeasterly on the Murphy map to the Mountain Home map, proceeding southeasterly, crossing Canyon Creek, passing north of Mountain Home Reservoir, crossing King Hill Creek, onto the Fairfield map, proceeding easterly, crossing Clover Creek, T4S/R13E, proceeding southerly onto the Twin Falls map;

(13) Continue following the 1,040-meter contour line in a clockwise rotation on the Twin Falls map, proceeding southeasterly to the Snake River, T9S/R14E, following north of the Snake River and crossing at T10S/R18E, northeast of Twin Falls, proceeding westerly south of the Snake River to the Salmon River, following east of the Salmon River and crossing at T10S/R13E, proceeding northerly west of the Salmon River and the Hagerman Wildlife Management Area, proceeding west onto the Glenns Ferry map;

(14) Continue following the 1,040-meter contour line in a clockwise rotation on the Glenns Ferry map, proceeding generally west to Rosevear Gulch, turning south between Rosevear Gulch and Pilgrim Gulch, near Deadman Creek, heading northwesterly, continuing through the Bruneau Desert, crossing Hole Creek in Pot Canyon and proceeding to Bruneau Canyon, proceeding southeasterly east of Bruneau Canyon, crossing Bruneau Canyon, T10S/R7E, proceeding west of Bruneau Canyon then west onto the Triangle map;

(15) Continue following the 1,040-meter contour line in a clockwise rotation on the Triangle map, heading northwesterly, crossing Shoofly Creek and Alder Creek, T6S/R1W, onto the Murphy map, continuing northwesterly to Sinker Creek, crossing Sinker Creek, T4S/R2W, continuing northwesterly to Jump Creek, crossing Jump Creek, T1N/R5W, proceeding northwesterly onto the Boise map, crossing its southwestern corner, T2N/R5W, onto the Mahogany Mountain map;

(16) Continue following the 1,040-meter contour line in a clockwise rotation onto the Mahogany Mountain map, proceeding westerly onto the Vale map, generally northwesterly then southwesterly onto the Mahogany Mountain map, proceeding southwest, west, and generally north onto the Vale map, passing through Succor Creek State Recreational Area, returning to the Mahogany Mountain map, and, passing east of McIntyre Ridge, crossing Succor Creek, T1N/R46E, proceeding northerly back onto the Vale map;

(17) Continue following the 1,040-meter contour line in a clockwise rotation on the Vale map, proceeding northerly east of Owyhee Ridge and Long Draw to north of Lake Owyhee, southwesterly and southerly south of Lake Owyhee onto the Mahogany Mountain map, southwesterly south of Lake Owyhee, the Owyhee River, and Owyhee Canyon, crossing Owyhee Canyon at T29S/R41E, proceeding northerly west of Owyhee Canyon, northeasterly west of Owyhee River and Owyhee Reservoir, and northerly onto the Vale map;

(18) Continue following the 1,040-meter contour line in a clockwise rotation on the Vale map, proceeding generally northerly to T20S/R42E, southwesterly east of Cottonwood Creek, crossing Cottonwood Creek, T22S/R40E, proceeding north to the Malheur River, following the Malheur River westerly to the intersection of the 1,040-meter contour line and the 118 degree west longitude line in Malheur County, Oregon, T21S/R38E, on the western border of the Vale map;

(19) Proceed straight north along the 118 degree west longitude line to its intersection with the 1,040-meter contour line, north of the Malheur River, T20S/R38E, proceeding easterly north of the Malheur River to Hog Creek, crossing Hog Creek, T20S/R40E, and proceeding northerly on the Vale map;

(20) Continue following the 1,040-meter contour line in a clockwise rotation, crossing onto the Brogan map, proceeding easterly, northerly, and westerly to and around Malheur Reservoir, T14S/R41E, proceeding easterly to Cottonwood Gulch then northerly to Dixie Creek, crossing Dixie Creek, T12S/RR41E, proceeding easterly and northerly onto the Baker map;

(21) Continue following the 1,040-meter contour line in a clockwise rotation on the Baker map, proceeding westerly south of the Burnt River, crossing the Burnt River, T10S/R41E, proceeding easterly north of the Burnt River to Gravel Pits, then northerly, returning to the beginning point.

Dated: January 18, 2007.

John J. Manfreda,
Administrator.

Approved: February 5, 2007.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E7-4230 Filed 3-8-07; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MESA VERDE (LPD 19) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: February 6, 2007.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MESA VERDE (LPD 19) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27, pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a),

pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k), pertaining to the vertical separation between anchor lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is

based on technical findings that the placement of lights on this vessel in a manner different from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy Department amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Three of § 706.2 is amended by adding, in numerical order, the following entry for USS MESA VERDE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance in-board of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
USS MESA VERDE ...	LPD 19	.....	.....	.....	.....	.....	.....	1.42m below.
*	*	*	*	*	*	*	*	*

■ 3. Table Four, in Paragraph 20 of § 706.2, is amended by adding, in

numerical order, the following entry for USS MESA VERDE (LPD 19):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
USS MESA VERDE	LPD 19	10

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MESA VERDE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS MESA VERDE	LPD 19	.....	.....	X	70.9
*	*	*	*	*	*

Approved: February 6, 2007.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E7-4254 Filed 3-8-07; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-07-018]

RIN 1625-AA-09

Drawbridge Operation Regulations; Susquehanna River, at Havre de Grace, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the National Railroad Passenger Corporation (AMTRAK) Bridge, at mile 1.0, across Susquehanna River at Havre de Grace, Maryland. This deviation allows the drawbridge to remain closed-to-navigation beginning at 6 p.m. on March 30, 2007, until and including 6 p.m. on June 8, 2007, to facilitate structural repairs.

DATES: This deviation is effective from 6 p.m. on March 30, 2007, until 6 p.m. on June 8, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

SUPPLEMENTARY INFORMATION: The AMTRAK Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of 52 feet, above mean high water.

AMTRAK, the bridge owner, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.575 and to close the

drawbridge to navigation to perform needed structural repairs.

The repairs will include the renewal of 3,184 bridge timbers as well as the installation of new rail and expansion joints. To facilitate this work, the AMTRAK Bridge will be maintained in the closed-to-navigation position beginning at 6 p.m. on March 30, 2007, until and including 6 p.m. on June 8, 2007.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 28, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7-4215 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF EDUCATION

34 CFR Part 280

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP) in 34 CFR part 280. These amendments allow the MSAP to use an approach similar to that in § 75.200 for establishing selection criteria in grant competitions. Under this approach the MSAP has the flexibility to use selection criteria from its program regulations, from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in § 75.210, based on statutory provisions in accordance with § 75.209, or from any combination of these.

DATES: These regulations are effective April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202-5970. Telephone: (202) 260-2476 or via Internet: steve.brockhouse@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On August 22, 2006 the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (71 FR 48866).

In the preamble to the NPRM, the Secretary discussed on pages 48866 and 48867 the major changes proposed in that document to provide the MSAP with the flexibility to use different types of selection criteria when evaluating grant applications in a specific grant competition. These included the following:

- Amending § 280.30 to give the Secretary the flexibility to use selection criteria from § 280.31, from the approved menu of general selection criteria in § 75.210 or from selection criteria based on statutory provisions governing the MSAP, established in accordance with § 75.209.

- Amending § 280.31 to remove the mandatory point values from the selection criteria in this section of the MSAP regulations.

There are no differences between the NPRM and these final regulations.

Analysis of Comments

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Section 280.30 How Does the Secretary Evaluate an Application?

Comment: Two commenters expressed the opinion that the current selection criteria work effectively to address the MSAP's statutory purpose and requirements, and consequently that a change in approach to permit the use of other selection criteria is not needed at this time.

Discussion: The Department proposed these changes because we have been constrained in past MSAP competitions to using only the program selection criteria in § 280.31, whether or not their use continues to work well in the

selection of new projects that are likely to be effective in achieving results. This approach limited our ability to tailor the selection criteria in a manner that allowed us to take into consideration current program needs, new research findings relating to magnet schools, or other appropriate information in order to facilitate the selection of applications that show the greatest promise of meeting the program's statutory purposes.

The amended regulations provide the flexibility to make adjustments to the selection criteria that are used for a particular competition. Implementation of this change does not mean that existing selection criteria that continue to work effectively in the selection of high-quality applications for awards will be disregarded or abandoned. In fact, it is unlikely that the use of this approach will result in major changes from one grant competition to the next. Nonetheless, the Department does believe that the flexibility gained in using this approach will enable us to more effectively tailor selection criteria to ensure projects best address the purpose and requirements of the MSAP statute.

Change: None.

Comment: Two commenters expressed concerns about the effects of different criteria, especially general criteria from EDGAR, and indicated that they believed that the use of such criteria would be detrimental to the quality of applications.

Discussion: Any criterion or factor from the approved menu in § 75.210 must be considered in the context of the MSAP and in conjunction with applicable statutory provisions and program regulations. As a result, we do not believe that the use of selection criteria or factors from § 75.210 will negatively affect program quality.

Change: None.

Comment: Two commenters criticized the approach in § 280.30 because they believed that it would provide too much flexibility to manipulate the MSAP's statutory purpose or disregard desegregation-related factors.

Discussion: Fears that this approach will allow the Secretary to supersede statutory provisions or program requirements are misplaced. The Secretary is bound by statutory provisions. In evaluating applications, the Department must adhere to selection criteria or other provisions related to the evaluation of applications that are required by statute and the regulations. In addition, the Department intends to use this approach to establish selection criteria in conjunction with the statute

and program requirements in the MSAP regulations, not instead of them.

Change: None.

Comment: One commenter criticized the approach in § 280.30 because the public would not be afforded the opportunity to comment formally on the Department's choice of selection criteria for a particular competition and another commenter indicated that rulemaking for each proposed change or set of changes would be preferable.

Discussion: The Magnet Schools Assistance Program (MSAP) Application for Grants is approved under OMB number 1855-0011. This information collection follows the streamlined grant application clearance procedures approved under OMB numbers 1890-0001 and 1890-0006. For special information collection processes such as the use of generic grant applications using the EDGAR selection criteria, public comment on the information collection is generally solicited at three year intervals. The current approval for the MSAP application package expires April 30, 2007 and the Department will publish a **Federal Register** notice shortly to solicit comments on that application package (1855-0011).

The Department welcomes comments and suggestions on selection criteria, and the application process generally, apart from formal opportunities to comment. Potential applicants, grantees, program beneficiaries, and others are encouraged to advise the Department about their experience with the selection criteria, and to provide recommendations for criteria for future competitions at any time, for the Department's use in designing selection criteria.

Moreover, as discussed earlier in these comments, the Department believes that this approach provides flexibility to make adjustments to the selection criteria that are used for a particular competition and that the flexibility gained in using this approach will enable us to more effectively tailor selection criteria to help ensure the selection of projects that best address the purpose and requirements of the MSAP statute.

Change: None.

Comment: Other commenters expressed varying views regarding the approach in § 280.30 that would give the Secretary the flexibility to use selection criteria from the approved menu of general selection criteria in § 75.210 or from selection criteria based on statutory provisions governing the MSAP, in accordance with § 75.209. One commenter indicated that the additional flexibility would be beneficial. Three others expressed

reservations about this approach, but only in the context of whether there would be sufficient time available to adequately address any new selection criteria. One other commenter also expressed concern that the change would have a detrimental effect on planning prior to the announcement of selection criteria.

Discussion: The Secretary does not believe that the new approach will prevent potential applicants from beginning to prepare applications in advance of an application announcement. Applicants may begin work on the basis of statutory purposes and requirements. Additionally, it is unlikely that there will be substantial changes in the selection criteria used in evaluating applications from one competition to the next in the absence of statutory changes that might otherwise require more significant revisions. Further, under the Paperwork Reduction Act of 1995, an agency must obtain OMB approval to require responses to an information collection in less than 30 days. As a result, under most circumstances respondents will have a minimum of 30 days to prepare applications and in most instances an even longer period based on past practices. Over the previous four MSAP competitions, applicants have actually had a minimum of 42 days from the date of publication of the application notice to the application due date in which to prepare applications, and an average of more than 60 days in which to prepare applications over the course of these four competitions.

Change: None.

Section 280.31 What Selection Criteria Does the Secretary Use?

Comment: Two commenters addressed the amendment to § 280.31 that removes the mandatory point values from the selection criteria in this section of the MSAP regulations. One commenter expressed the opinion that removing point values was not a good idea, however the commenter offered no explanation of this position. The other commenter sought clarification regarding whether a different set of point values for selection criteria would be used.

Discussion: Removing the currently specified point values from the selection criteria in § 280.31 does not mean that point values will not be used. As set forth in § 280.30(e), there will continue to be 100 points awarded for the selection criteria. Removing the mandatory point values merely provides the flexibility to assign specific point values based on the selection criteria actually used in a particular

competition, consistent with the Department's approach for other discretionary grant programs that use selection criteria from § 75.210 and selection criteria based on the statute, as set forth in § 75.209, as well as selection criteria from program regulations.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (71 FR 48867).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/magnet/applicant.html>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program.)

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

Dated: March 6, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

■ For the reasons discussed in the preamble, the Assistant Deputy Secretary for Innovation and Improvement amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 1. The authority citation for part 280 continues to read as follows:

Authority: 20 U.S.C. 7231–7231j, unless otherwise noted.

■ 2. Section 280.30 is revised to read as follows:

§ 280.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under the procedures in 34 CFR part 75 and this part.

(b) To evaluate an application for a new grant the Secretary may use—

(1) Selection criteria established under 34 CFR 75.209;

(2) Selection criteria in § 280.31;

(3) Selection criteria established under 34 CFR 75.210; or

(4) Any combination of criteria from paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(c) The Secretary indicates in the application notice published in the **Federal Register** the specific criteria that the Secretary will use and how points for the selection criteria will be distributed.

(d) The Secretary evaluates an application submitted under this part on the basis of criteria described in paragraph (c) of this section and the priority factors in § 280.32.

(e) The Secretary awards up to 100 points for the extent to which an application meets the criteria described in paragraph (c) of this section.

(f) The Secretary then awards up to 30 additional points based upon the priority factors in § 280.32.

(Approved by the Office of Management and Budget under control number 1855–0011)

(Authority: 20 U.S.C. 7231–7231j)

§ 280.31 [Amended]

■ 3. Section 280.31 is amended:

■ A. In the introductory text, by removing the word “uses” and adding, in its place, the words “may use”.

■ B. In paragraph (a) introductory text, by removing the parenthetical “(25 points)”.

■ C. In paragraph (b) introductory text, by removing the parenthetical “(10 points)”.

■ D. In paragraph (c) introductory text, by removing the parenthetical “(35 points)”.

■ E. In paragraph (d) introductory text, by removing the parenthetical “(5 points)”.

■ F. In paragraph (e) introductory text, by removing the parenthetical “(15 points)”.

■ G. In paragraph (f) introductory text, by removing the parenthetical “(10 points)”.

[FR Doc. E7–4270 Filed 3–8–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 228**

RIN 0596-AC20

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Part 3160**

[W0-610-411H12-24 1A]

RIN 1004-AD59

**Onshore Oil and Gas Operations;
Federal and Indian Oil and Gas Leases;
Onshore Oil and Gas Order Number 1,
Approval of Operations; Correction**

AGENCIES: U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Joint final rule; correction.

SUMMARY: On March 7, 2007, the Forest Service and the Bureau of Land Management jointly published a final rule (72 FR 10308). The dates heading on page 10308 incorrectly set out the effective date as April 6, 2007. The correct effective date of the final rule is May 7, 2007, consistent with the chart on page 10328.

DATES: The effective date of the final rule published March 7, 2007 (72 FR 10308) is corrected to May 7, 2007.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, Bureau of Land Management, at (202) 452-5028.

Tony Ferguson,

Assistant Director, Minerals and Geology Management, United States Forest Service.

Ray Brady,

Acting Assistant Director, Minerals, Realty and Resource Protection, Bureau of Land Management.

[FR Doc. 07-1150 Filed 3-8-07; 8:45 am]

BILLING CODE 3410-11-P; 4310-84-P

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 12**

[EPA-R07-OAR-2007-0141; FRL-8286-3]

**Approval and Promulgation of
Implementation Plans; Kansas;
Interstate Transport of Pollution**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Kansas State Implementation Plan (SIP) for the

purpose of approving the Kansas Department of Health and Environment's (KDHE) actions to address the "good neighbor" provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. KDHE has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and efforts of other states to protect visibility. The requirements for public notification were also met by KDHE.

DATES: This direct final rule will be effective May 8, 2007, without further notice, unless EPA receives adverse comment by April 9, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-0141, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* jay.michael@epa.gov.

3. *Mail:* Michael Jay, 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 Michael Jay, 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-2007-0141. 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 through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.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 <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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. 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: Michael Jay at (913) 551-7460, or by e-mail at jay.michael@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 being addressed in this document?
What action is EPA taking?

What is being addressed in this document?

EPA is revising the SIP for the purpose of approving the KDHE's actions to address the requirements of the Clean Air Act (CAA) section 110(a)(2)(D)(i). This CAA section requires each state to submit a SIP that

prohibits emissions that could adversely affect another state. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, Kansas' analysis of its SIP with respect to the statutory requirements is consistent with the guidance.

The KDHE has addressed the first two of these elements by submitting a technical demonstration supporting the conclusion that emissions from Kansas do not significantly contribute to downwind nonattainment or interfere with maintenance of the NAAQS in another state. For PM_{2.5}, the state has relied upon existing EPA Clean Air Interstate Rule (CAIR) modeling that determined impacts from the state do not meet or exceed the 0.2 µg/m³ average annual threshold that EPA established to determine significant impact on another state in the projection year 2010. The state indicated that in EPA's CAIR modeling, Kansas' maximum downwind contribution to average annual nonattainment was 0.11 µg/m³ (70 FR 25247). The state has relied on this result to demonstrate that emissions from the state do not contribute significantly to downwind nonattainment of the annual PM_{2.5} standard.

For 8-hour ozone, the state was unable to rely on EPA CAIR modeling to determine the state's impact on projected 8-hour ozone nonattainment in downwind states. The EPA CAIR 8-hour ozone modeling domain did not include the entire state. As a result, impacts from the state were not provided in the analyses. Therefore, the state has provided additional analyses, as part of the technical demonstration, to support a negative declaration that the state contributes significantly to projected downwind 8-hour ozone nonattainment in the year 2010.

The technical demonstration includes analyses on a number of EPA guidance elements. For example, the technical demonstration includes a backtrajectory analysis to examine Kansas' impacts on the nearest EPA projected 8-hour ozone nonattainment area for the year 2010. CAIR modeling projects the ozone nonattainment counties nearest to Kansas will be Kenosha and Ozaukee,

Wisconsin. The backtrajectory analysis revealed that relatively few air masses pass over Kansas prior to arriving to these counties during high ozone days, thus demonstrating that emissions from Kansas have a minimal contribution to the 8-hour ozone nonattainment of the two counties. Additionally, the state has emphasized that St. Louis, Missouri, the nearest current nonattainment area, is projected by EPA to be in attainment of the 8-hour ozone standard in the year 2010. Based on this and other information provided by the state in the technical demonstration, EPA believes the state has sufficiently demonstrated that emissions from the state do not significantly contribute to downwind nonattainment or interfere with maintenance of the NAAQS. Additional supporting information can be found in the state's technical demonstration included in the docket.

The third element KDHE addressed was prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard and that the state is on track to meet the June 15, 2007, deadline for SIP submissions adopting any relevant requirements of the Phase II ozone implementation rule. For PM_{2.5}, the state has confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM₁₀ as a surrogate for PM_{2.5} for the purposes of PSD review. Once PM_{2.5} guidance is finalized by EPA, KDHE commits to transitioning from use of the interim PM_{2.5} guidance to the final PM_{2.5} implementation guidance after approval of the PM_{2.5} SIP revision. The submittal is due in April 2008.

It should be noted that Kansas is currently designated attainment for both the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards.

At this time, it is not possible for KDHE to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. Technical projects relating to visibility degradation source-receptor relationships are under development. Kansas will be in a more advantageous position to address the visibility projection requirements once the initial regional haze SIP has been developed. KDHE intends to meet the December 17, 2007, submittal deadline for the regional haze SIP.

A public hearing with regard to this action was held by the state. No comments were received.

With this action, the non-regulatory text in 40 CFR 52.870(e) is revised to reflect that KDHE addressed the elements of the CAA section 110(a)(2)(D)(i) submittal.

What action is EPA taking?

EPA is approving this revision submitted by Kansas and is revising 40 CFR 52.870 to reflect that the KDHE has adequately addressed the required elements of the CAA section 110(a)(2)(D)(i) SIP. Please note that if EPA receives adverse comments on part of this rule, and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action 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 action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action 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 approves a state rule implementing a Federal standard.

In reviewing state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations 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 Q—Kansas

■ 2. In § 52.870(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.870 Identification of plan.

*	*	*	*	*
(e)	*	*	*	

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(30) CAA 110(a)(2)(D)(i) SIP—Inter-state Transport.	Statewide	1/07/07	3/09/07 [insert FR page number where the document begins].	

[FR Doc. E7-4304 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2007-0083; FRL-8286-1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. EPA is approving a request to amend the Missouri SIP to include revisions to the St. Louis Solvent Metal Cleaning rule.

The revisions to this rule include consolidating exemptions in the applicability section, adding new exemptions, adding definitions of new and previously undefined terms, and clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems. This revision will ensure consistency between the state and the Federally-approved rules.

DATES: This direct final rule will be effective May 8, 2007, without further notice, unless EPA receives adverse comment by April 9, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-

OAR-2007-0083, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. E-mail: algie-eakin.amy@epa.gov.

3. Mail: Amy Algie-Eakin, 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 Amy Algie-Eakin, 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-2007-0083. 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>

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 through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. 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: Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@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 a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document? Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

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 CAA 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 does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is being addressed in this document?

On January 17, 2007, Missouri requested that EPA approve a revision to the SIP to include changes to Missouri rule 10 CSR 10-5.300, Control of Emissions From Solvent Metal Cleaning. This rule specifies equipment, operating procedures, and training requirements for the reduction of volatile organic compound (VOC) emissions from solvent metal cleaning operations in the St. Louis, Missouri, metropolitan area. Generally, the revisions to this rule include: (1) Consolidating exemptions in the applicability section, (2) adding new exemptions, (3) adding definitions of new and previously undefined terms, and (4) clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems.

More specifically, the revisions to the applicability section include revisions to subsection (1)(C), which describes the processes which use nonaqueous solvents to clean and remove soils from metal parts which are subject to this rule, and subsection (1)(D), which lists the solvents which are exempt from this rule. Subsection (1)(D) consolidates existing exemptions into one section and adds three new exemptions. The first new exemption is the exemption of solvent metal cleaning operations which are regulated under 40 CFR part 63, subpart T, the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. The Missouri Department of Natural Resources' Air Pollution Control Program (MDNR/APCP) states that the solvents used in this practice are required to comply with the Federal NESHAP for Halogenated Solvent Cleaning and states that in general the NESHAP for Halogenated Solvent

Cleaning work practices, solvent loss limits, equipment specifications, and solvent recordkeeping/reporting requirements exceed the requirements in the existing Missouri solvent metal cleaning rule. Based on review of Missouri's analysis, we believe it is appropriate to exempt this source category because the Federal NESHAP is at least as stringent and sources must comply with this Federal NESHAP in order to be exempt from the Missouri rule.

The second and third new exemptions added were for flush cleaning operations and hand cleaning/wiping operations. These exemptions were also added because industry conducting these activities were already regulated by Federal standard 40 CFR part 63, subpart GG, the NESHAP for Aerospace Manufacturing and Rework Facilities and by Missouri rule 10 CSR 10-5.455, Control of Emissions From Solvent Cleanup Operations. Based on the review of this analysis, we believe that revision of this rule to exempt these source categories because the Federal NESHAP and existing state rule, 10 CSR 10-5.455, are at least as stringent and sources must comply with this Federal NESHAP and existing state rule.

The MDNR/APCP also added several new definitions and evaluated the air quality impact of these new definitions. These definitions include: (2)(E) Flush cleaning, (2)(I) hand cleaning/wiping operation, (2)(M) nonaqueous solvent, and (2)(P) spray gun cleaner. These definitions were added to provide clarity to the rule, and Missouri has provided an analysis showing that this revision will not cause any increase in emissions.

The MDNR/APCP also reorganized the General Provisions section. Specifically subsection (3)(A) of the rule was reorganized into subparagraphs for cold cleaners, open-top vapor degreasers, conveyORIZED degreasers, and air-tight or airless cleaning systems. Subsection (3)(B) outlines operating procedures for the four operations mentioned above. The spray gun cleaner, subparagraph (3)(B)4., and the air-tight and airless cleaning systems, subparagraph (3)(B)5., were added to provide more clarity to the rule's application for these two operations. Subsection 3(C) was revised to add clarifying language to the operator and supervisor training portion of this rule, and subsection (4)(A), reporting and record keeping language, was revised to require the records to be kept current and made available for review on a monthly basis.

The Solvent Metal Cleaning rule is part of the St. Louis 15% Rate of

Progress (ROP) Plan, which was required as part of the 1-hour ozone moderate nonattainment area requirements. Therefore, Missouri is currently developing an attainment demonstration and reasonable further progress plan for the 8-hour ozone SIP for the area but has not completed that work. Missouri has prepared documentation which demonstrates that these rule revisions will not negatively impact air quality in the St. Louis area. The demonstration consists of (1) an explanation of the rationale for the revisions to the rule's format, and (2) an evaluation of the revisions to the applicability section, definitions section, general provisions section, the reporting and record keeping section, and test methods section. The reformatting of the rule makes this rule consistent with the general format of Missouri air rules. The rule reformatting does not change any requirements and, therefore, does not impact emissions. As explained above, the additional exemptions in the rule do not significantly change the emissions limits to which the affected sources are subject.

Have the requirements for approval of a SIP revision been met?

The submittal satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the state submittal has met the public notice requirements for SIP submission in accordance with 40 CFR 51.102 and met the substantive SIP requirements of the CAA including section 110.

What action is EPA taking?

We are approving the request to amend the Missouri SIP to include revisions to the St. Louis Solvent Metal Cleaning rule, 10 CSR 10-5.300.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial and make regulatory revisions, required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211,

"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 27, 2007.

John B. Askew,
Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for "10–5.300" to read as follows:
§ 52.1320 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * *	* * *	* * *	* * *	* * *
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * *	* * *	* * *	* * *	* * *
10–5.300	Control of Emissions from Solvent Metal Cleaning.	11/30/06	3/9/07 [insert FR page number where the document begins].	
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[FR Doc. E7–4300 Filed 3–8–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2007–0041; FRL–8284–8]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to the Missouri rule entitled "Submission of

Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and the Federally-approved rules.

DATES: This direct final rule will be effective May 8, 2007, without further notice, unless EPA receives adverse comment by April 9, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0041, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. E-mail: algoe-eakin.amy@epa.gov.
3. Mail: Amy Algae-Eakin, 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 Amy Algae-Eakin, 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–2007–0041. 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 through <http://www.regulations.gov> or e-mail

information that you consider to be CBI or otherwise protected. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. 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: Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@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 a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is the Part 70 operating permits program?

What is the Federal approval process for an operating permits program?

What is being addressed in this document?

Have the requirements for approval of a SIP revision and Part 70 revision been met?

What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

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 CAA 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 does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM₁₀; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What is the Federal approval process for an operating permits program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations 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 approved operating permits program. 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 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Programs."

What is being addressed in this document?

Missouri, in its letter of December 11, 2006, requested that EPA approve a revision to the SIP and Operating Permits Program to include revisions to rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information". This rule deals with submittal of emissions information, emission fees, and public availability of emissions data. It provides procedures for collection, recording, and submittal of emissions data and process information on state-supplied Emission Inventory Questionnaire and Emission Statement forms so that the state can calculate emissions for the purpose of state air resource planning.

By state statute and to meet EPA requirements under the Title V program, the emission fees are set annually to fund the reasonable cost of administering the program. The Missouri Department of Natural Resources (MDNR) continually evaluates the Operating Permits Program financial situation. Section (3)(D)1. established the emissions fee of \$34.50 per ton of regulated air pollutant starting for calendar year 2005 which remains the fee for calendar year 2006. This revision merely changes the text from calendar year 2005 to 2006.

Subsection (3)(D)2.E. was revised to change the due date for emission fees from the previous year to be due on June 1 instead of April 1, for all Standard Industrial Classifications.

Subsection (3)(D)2.F. was revised to change the due date for Emission Inventory Questionnaire forms from

April 1 to June 1 for all Standard Industrial Classifications.

The rule revisions do not change the stringency of the SIP or Title V program and the revisions otherwise meet the EPA requirements for both programs.

Have the requirements for approval of the SIP revision and Part 70 revision been met?

The submittal satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the state submittal has met the public notice requirements for SIP submission in accordance with 40 CFR 51.102 and met the substantive SIP requirements of the CAA including section 110 and 40 CFR 51.211, relating to submission of emissions data.

Finally, the submittal met the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70, including the requirement in 40 CFR 70.9 relating to emission fees.

What action is EPA taking?

We are approving revisions to the Missouri SIP and incorporating the revised rule 10 CSR 10–6.110, "Submission of Emissions Data, Emission Fees, and Process Information."

We are also approving sections (3)(D)1, and (3)(D)2.E., and (3)(D)2.F. of this rule as program revisions to the state's Part 70 Operating Permits Program.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP and Title V permit 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 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

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.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating

permits, Reporting and recordkeeping requirements.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.110" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * *	* * *	* * *	* * *	* * *
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * *	* * *	* * *	* * *	* * *
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	12/30/06	3/9/07 [<i>insert FR page number where the document begins</i>].	Section (3)(D), Emissions Fees, has not been approved as part of the SIP.
* * *	* * *	* * *	* * *	* * *

PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to Part 70 is amended by adding paragraph (u) under Missouri to read as follows:

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

* * * * *

Missouri

* * * * *

(u) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, "Submission of

Emission Data, Emission Fees, and Process Information" on December 11, 2006; approval of sections (3)(D)1., (3)(D)2.E., and (3)(D)2.F. effective May 8, 2007.

* * * * *

[FR Doc. E7–4176 Filed 3–8–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 121

RIN 0906AA62

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This Final Rule sets forth the Secretary's decision to include intestines within the definition of organs covered by the regulations governing the operations of the Organ Procurement and Transplantation

Network. The Secretary under the authority granted by section 301 of the National Organ Transplant Act, as amended, further effects a corresponding change to the definition of human organs covered in the statute with this Final Rule.

DATES: This Final Rule is effective March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Jim Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 12C-06, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION:

Adding Intestines to the Definition of Organs Covered by the Rules Governing the Operation of the Organ Procurement and Transplantation Network (OPTN)

Based upon a review of intestinal transplants, the Secretary believes that intestines should now be included within the definition of organs covered by the rules governing the operation of the OPTN (42 CFR part 121) (hereinafter the final rule). This Final Rule sets forth the history of intestinal transplants, the factors that have persuaded the Department of the advisability of including intestines within the ambit of the regulations governing the operation of the OPTN, and the anticipated consequences of this Rule.

The first successful intestinal transplant was performed in 1989. Intestinal transplantation may be considered for patients with irreversible intestinal failure due to surgery, trauma, or acquired or congenital disease who cannot be managed through the intravenous delivery of nutrients, also referred to as total parenteral nutrition (TPN). Although intestinal transplants have been performed for years, considerable morbidity and mortality have limited widespread clinical use. Complications are frequent and include acute and chronic rejection, lymphoproliferative disease, and serious infections such as cytomegalovirus disease. For patients who received intestinal transplants in the United States from January 2000 through June 2002, one-year graft and patient survival rates were 67 percent and 81 percent respectively for adults, and 58 percent and 65 percent respectively for pediatric recipients. Despite the shortcomings, the number of candidates for intestinal transplants and the number of intestinal transplants performed annually is increasing.

The OPTN first adopted voluntary intestinal organ allocation policies and

began to maintain a list of patients waiting for intestinal transplants in 1993. On December 31, 1993, only 43 candidates were listed on the intestinal transplant waiting list, compared to 169 candidates on this list on October 24, 2003. The number of intestinal transplants performed annually has more than tripled from 34 transplants in 1993 to 109 transplants in 2002. However, the volume of transplants per transplant center is relatively small. Ten transplant centers performed one or more intestinal transplants in 2002; only five of these centers performed ten or more transplants. Overall median waiting time was 319 days for patients added to the intestinal transplant waiting list in 2001.

According to the OPTN, intestinal organ allocation may include the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract as determined by the medical needs of individual patients (OPTN Policy 3.11). OPTN voluntary policies are available at <http://www.optn.org/policiesandbylaws/policies.asp>. In addition to allocation for isolated intestinal transplants, the OPTN addresses allocation of the liver-intestine combination and multiple organs.

The nature of the regulatory framework governing the operation of the OPTN underlies the importance of including intestines within the definition of organs covered by the regulations. Under the final rule, the OPTN must submit proposed policies for review and approval by the Secretary according to the requirements of 42 CFR 121.4. Upon consideration of public comments on proposed policies that are considered significant, the Secretary will determine whether to make such proposed policies enforceable in accordance with 42 CFR 121.10. Any transplant hospital that fails to comply with any allocation policy approved as enforceable by the Secretary under this process will be subject to the enforcement sanctions delineated in 42 CFR 121.10, including termination from the Medicare and Medicaid programs.

The Secretary is legally obliged, as part of his responsibilities in administering the Medicare and Medicaid programs, to require hospitals that transplant organs to comply with the rules and requirements of the OPTN as a condition of their participation in Medicare and Medicaid under 42 U.S.C. 1320b-8(a)(1)(B). Because intestines currently are not included within the regulation's definition of organs, the Secretary cannot make any intestinal allocation policy enforceable. The inclusion of intestines as covered organs

under this Final Rule will allow the Secretary to take appropriate enforcement actions against a transplant hospital that fails to comply with any OPTN intestinal allocation policy if such a policy is approved by the Secretary. This enforcement authority is particularly significant given that many recipients of transplanted intestines receive such organs together with other organs covered under the regulations. It is necessary to ensure that intestinal organ allocation, whether pertaining to isolated intestinal transplants or combined/multi-organ transplants, is consistent with the goal of an equitable national system for organ allocation. Enforcing the allocation for organs currently covered under the regulations, such as livers, would be difficult when intestines are transplanted together with other such organs if an intestinal allocation is not subject to the Secretary's enforcement authority.

As the field of intestinal transplantation evolves, it will become more critical that intestinal organ allocation keeps pace with advances in the field; that policy development include performance indicators to assess whether the goals of an equitable transplant system are being achieved; that the Secretary has the authority to make those policies enforceable; and that patients and physicians have timely access to accurate data that will assist them in making decisions regarding intestinal transplantation. Upon consideration of the foregoing factors, and in order to achieve the most equitable and medically effective use of donated organs, the Secretary has determined that intestines should explicitly be added to the definition of organs covered by the OPTN regulations at 42 CFR Part 121.

Public Participation

The public was invited to respond to the Notice of Proposed Rulemaking (NPRM) which was published in the **Federal Register** on November 23, 2005 (70 FR 70765-70768). The NPRM provided for a 60-day comment period. We received a total of three comments from the public. All three comments were in support of adding intestines to the definition of organs covered by the rules governing the OPTN and encouraged coordination with the Centers for Medicare and Medicaid Services. Consequently, this Final Rule is the same as the proposed rule published on November 23, 2005.

Soliciting Public Comment as to Whether Any Other Organs Should Be Covered by the Rules Governing the Operation of the OPTN

The Secretary invited public comment as to the advisability of including any other organ within the ambit of this final rule. The comments we received did not request the inclusion of any other organ under the OPTN regulations.

Including Intestines Within the Definition of Human Organs Covered by Section 301 of NOTA

The Secretary further invited public comment on including intestines within the definition of human organs covered by section 301, as amended, of the National Organ Transplant Act (NOTA) (hereinafter section 301), which prohibits the purchase or sale of human organs for human transplantation.

Originally as enacted section 301 of NOTA (Pub. L. 98–507) defined the term “human organ” as “the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin and any other human organ specified by the Secretary of Health and Human Services by regulation.” NOTA, Public Law 98–507, Title III, section 301, 98 Stat. 2346–2347 (1984). This section was subsequently amended by Congress to include fetal organs, as well as subparts of the specified organs, by Public Law 100–607, section 407.

As set forth by statute, Congress authorized the Secretary to add additional organs to the definition of “human organ” covered by section 301 through rulemaking in order to include the transplantation of additional human organs. Through this Final Rule, the Secretary adds intestines to the list of human organs covered by section 301. The Secretary adds a new section to 42 CFR Part 121 to effectuate this change.

The comments we received supported adding intestines to the definition of organs covered under section 301 of NOTA and encouraged coordination with the Centers for Medicare and Medicaid Services regarding implementation of the respective but related authorities regarding organ procurement and transplantation.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). In addition, under the Regulatory

Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are “significant” because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this Final Rule. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. Since independent and hospital-based organ procurement organizations (OPOs) are not considered small rural hospitals because OPOs generally service large geographical areas, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

The Secretary has also determined that this Final Rule does not meet the criteria for a major rule as defined by Executive Order 12866, as amended by Executive Order 13258, and would have no major effect on the economy or Federal expenditures. We have determined that the Final Rule is not a “major rule” within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this Final Rule affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this Final Rule will modify the regulations governing the OPTN and section 301 of NOTA based on legal authority.

Impact of the New Rule

This Final Rule will have the effect of including human intestines within the ambit of the regulations governing the operation of the OPTN, and will include transplanted human intestines within the changes made at section 301 of NOTA. The changes made in this Rule will authorize the Secretary to take enforcement actions against entities violating OPTN policies pertaining to the transplantation of intestines once such policies are approved as enforceable by the Secretary. In addition, individuals violating section 301 of NOTA with respect to intestinal transplants will be subject to criminal penalties.

Paperwork Reduction Act of 1995

The amendments proposed in this Rule will not impose any additional data collection requirements beyond those already imposed under the current regulations, which have been approved by the Office of Management and Budget (OMB No. 0915–0157). The currently approved data collection includes worksheets and burden for intestinal transplants.

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: March 9, 2007.

Elizabeth M. Duke,
Administrator, Health Resources and Services Administration.

Approved: November 27, 2006.

Michael O. Leavitt,
Secretary.

■ Accordingly, 42 CFR part 121 is amended as set forth below:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

■ 2. Amend § 121.1 as follows:

■ a. Amend paragraph (a) by removing the phrase “this part apply” and adding in its place the phrase “this part, with the exception of § 121.13, apply.”

■ b. Redesignate paragraph (b) as paragraph (c).

■ c. Add a new paragraph (b).

The revision reads as follows:

§ 121.1 Applicability.

* * * * *

(b) The provisions of § 121.13 apply to the prohibition set forth in section 301 of the National Organ Transplant Act, as amended.

* * * * *

§ 121.2 [Amended]

■ 3. Amend the definition of “organ” in § 121.2 by removing the word “or” and by adding the phrase “, or intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract)” after the term “pancreas.”

■ 4. Add a new § 121.13 to read as follows:

§ 121.13 Definition of Human Organ Under section 301 of the National Organ Transplant Act, as amended.

“Human organ,” as covered by section 301 of the National Organ Transplant Act, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, skin, and intestine, including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract.

[FR Doc. E7-4267 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-15-P

Proposed Rules

Federal Register

Vol. 72, No. 46

Friday, March 9, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27208; Directorate Identifier 2007-CE-010-AD]

RIN 2120-AA64

Airworthiness Directives; Vulcanair S.p.A. P68 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

The backrest recline of pilot and copilot seats requires the removal of a "quick release pin" not correctly indicated in the AFM and not ready detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 9, 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No.

FAA-2007-27208; Directorate Identifier 2007-CE-010-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the aviation authority for Italy, has issued AD N. 2004-522, Rev. 0, dated December 20, 2004 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The backrest recline of pilot and copilot seats requires the removal of a "quick release pin" not correctly indicated in the AFM and not ready detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

The MCAI requires:

Carry out the operational checks/inspection/modification:

- Kit SB 128/A-1 applicable to aircraft model P68C. Serial numbers (S/N) 429, 434 and 435 are excluded;
- Kit SB 128/A-2 applicable only to P68C aircraft with S/N 429, 434 and 435;
- Kit SB 128/B applicable to aircraft model P68 Observer 2;
- Kit SB 128/C applicable to aircraft model P68TC Observer; called for by the referenced Service Bulletin, in accordance with the procedures in there specified, within the terms set forth under "COMPLIANCE" of this AD.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Vulcanair S.p.A. has issued P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 15 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,400, or \$160 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII,

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Vulcanair S.p.A. (Type certificate No. A31EU formally held by Partenavia Costruzioni Aeronautiche S.p.A.):
Docket No. FAA-2007-27208;
Directorate Identifier 2007-CE-010-AD

Comments Due Date

- (a) We must receive comments by April 9, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to all Models P68C, P68 Observer 2, and P68TC Observer airplanes, serial numbers 412 through 424 (except 418), 429, 434, and 435, certificated in any category.

Subject

- (d) Air Transport Association of America (ATA) Code 51: Structures.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states:

The backrest recline of pilot and copilot seats requires the removal of a "quick release pin" not correctly indicated in the AFM and not readily detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

Actions and Compliance

- (f) Unless already done, do the following actions within 30 days after the effective date of this AD:

- (1) *For Model P68C airplanes, serial numbers 412 through 424 (except 418):* Install Kit SB 128/A-1, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004;
- (2) *For Model P68C airplanes, serial numbers 429, 434, and 435:* Install Kit SB 128/A-2 following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004;
- (3) *For Model P68 Observer 2 airplanes:* Install Kit SB 128/B, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004; or
- (4) *For Model P68TC Observer airplanes:* Install Kit SB 128/C, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004.

FAA AD Differences

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

Other FAA AD Provisions

- (g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Ente Nazionale per l'Aviazione Civile (ENAC), AD N. 2004-522, Rev. 0, dated December 20, 2004; and Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004, for related information.

Issued in Kansas City, Missouri, on March 2, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-4242 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21242; Directorate Identifier 2005-NE-09-AD]

RIN 21207-AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, and 1S1 Turboshaft Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD currently requires initial and repetitive position checks of the gas generator 2nd stage turbine blades on all Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD also currently requires initial and repetitive replacements of 2nd stage turbines on 1B, 1D, and 1D1 engines only. This proposed AD would require adding a 3,000 hour life limit to Arriel 1B 2nd Stage Turbine Blades. This proposed AD results from reports of failures of second stage blades. We are proposing this AD to prevent failures of the 2nd stage turbine blades, which could result in uncommanded in-flight engine shutdown, and subsequent forced autorotation landing or accident.

DATES: We must receive any comments on this proposed AD by May 8, 2007.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7175, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21242; Directorate Identifier 2005-NE-09-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Examining the AD Docket

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

Discussion

On August 8, 2006, the FAA issued AD 2006-02-08R1, Amendment 39-14721 (71 FR 46390, August 14, 2006). That AD requires initial and repetitive position checks of the gas generator 2nd stage turbine blades on all Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines, and initial and repetitive replacements of 2nd stage turbines on 1B, 1D, and 1D1 engines only. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition might exist on Turbomeca, Arriel 1B (modified per TU 148), 1D, 1D1, and 1S1 turboshaft engines. The DGAC advises that sixteen cases of release of gas generator 2nd stage turbine blades occurred in service, with full containment of debris. These events resulted in uncommanded in-flight engine shutdowns. Although terminating action is still unavailable, mandatory checks of the turbine blades and replacement of the turbine are being required in order to reduce the probability of an uncommanded in-flight engine shutdown. That AD requires initial and repetitive position checks of the gas generator 2nd stage turbine blades on all Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD also requires initial and repetitive replacements of 2nd stage turbines on 1B, 1D, and 1D1 engines only. That condition, if not corrected, could result in uncommanded in-flight engine shutdown.

Actions Since AD 2006-02-08R1 Was Issued

Since we issued that AD, the European Aviation Safety Agency (EASA) informed us that they have received reports of additional failures of the 2nd stage turbine blades. The debris from the failures was fully contained. The failures were caused by:

- Deterioration of 2nd stage nozzle guide vanes (NGV2) modified to TU197,
- Aerodynamic excitation from deteriorated NGV2,
- Excessive temperature on the fir-tree roots, and
- 2nd stage turbine blades modified to TU204.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Service Bulletins (ASBs) A292 72 0807, Update 1, dated October 26, 2006, for Arriel 1B post-TU 148; ASB A292 72 0809, dated October 4, 2005, for Arriel 1D and 1D1; and ASB A292 72 0810, for Arriel 1S1, all dated March 24, 2004. These ASBs describe procedures for initial and repetitive position checks of the 2nd stage turbine blades, and replacement of 2nd stage turbines on 1B and 1D1 engines only. The EASA classified these ASBs as mandatory and issued airworthiness directive 2007–0018, dated January 15, 2007, in order to ensure the airworthiness of these Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines in the European Union.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the EASA, which is the airworthiness authority for the European Union, kept us informed of the situation described above. We have examined the findings of the EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Initial and repetitive position checks of the 2nd stage turbine blades on Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines.
- Replacement of 2nd stage turbines on 1B and 1D1 engines only.
- Initially replacing 2nd stage turbines in Arriel 1B, 1D, and 1D1 turboshaft engines.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD revision would affect 721 engines installed on helicopters of U.S. registry. We also estimate that it would take about 2 work-hours per engine to inspect all 721 engines and 40 work-hours per engine to replace about 587 2nd stage turbines on 1B and 1D1 engines, and that the average labor rate is \$80 per work-hour. Required parts would cost about \$3,200 per engine. Based on these figures, we estimate the total cost of the proposed AD revision to U.S. operators to be \$3,905,240.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14721 (71 FR 46390, August 14, 2006) and by adding a new airworthiness directive, to read as follows:

Turbomeca: Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 8, 2007.

Affected ADs

(b) This AD supersedes AD 2006–02–08R1, Amendment 39–14721.

Applicability

(c) This AD applies to Turbomeca Arriel 1B engines fitted with 2nd stage turbine modification TU 148, and Arriel 1D, 1D1, and 1S1 engines. Arriel 1B engines are installed on, but not limited to, Eurocopter France AS–350B and AS–350A "Ecureuil" helicopters. Arriel 1D engines are installed on, but not limited to, Eurocopter France AS–350B1 "Ecureuil" helicopters. Arriel 1D1 engines are installed on, but not limited to, Eurocopter France AS–350B2 "Ecureuil" helicopters. Arriel 1S1 engines are installed on, but not limited to, Sikorsky Aircraft S–76A and S–76C helicopters.

Unsafe Condition

(d) This AD results from reports of failures of second stage blades. We are issuing this AD to prevent failures of the 2nd stage turbine blades, which could result in uncommanded in-flight engine shutdown, and subsequent forced autorotation landing or accident.

Compliance

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

Initial Relative Position Check of 2nd Stage Turbine Blades

(f) Do an initial relative position check of the 2nd stage turbine blades using the

Turbomeca mandatory alert service bulletins (ASBs) specified in the following Table 1. Do the check before reaching any of the intervals specified in Table 1 or within 50 hours time-

in-service after the effective date of this AD, whichever occurs later.

TABLE 1.—INITIAL AND REPETITIVE RELATIVE POSITION CHECK INTERVALS OF 2ND STAGE TURBINE BLADE

Turbomeca engine model	Initial relative position check interval	Repetitive interval	Mandatory alert service bulletin
Arriel 1B (modified per TU 148)	Within 1,200 hours time-since-new (TSN) or time-since-overhaul (TSO) or 3,500 cycles-since-new (CSN) or cycles-since-overhaul (CSO), whichever occurs earlier.	Within 200 hours time-in-service-since-last-relative-position-check (TSLRPC).	A292 72 0807, Update 1, dated October 26, 2006.
Arriel 1D1 and Arriel 1D	Within 1,200 hours TSN or TSO or 3,500 hours CSN or CSO, whichever occurs earlier.	Within 150 hours TSLRPC	A292 72 0809, Update No. 1, dated October 4, 2005.
Arriel 1S1	Within 1,200 hours TSN or TSO or 3,500 hours CSN or CSO, whichever occurs earlier.	Within 150 hours TSLRPC	A292 72 0810, dated March 24, 2004.

Repetitive Relative Position Check of 2nd Stage Turbine Blades

(g) Recheck the relative position of 2nd stage turbine blades at the TSLRPC intervals specified in Table 1 of this AD, using the mandatory ASBs indicated.

Credit for Previous Relative Position Checks

(h) Relative position checks of 2nd stage turbine blades done using Turbomeca Service Bulletin A292 72 0263, Update 1, 2, 3, or 4, or A292 72 0807, dated March 24, 2004, comply with the initial requirements of paragraph (f) of this AD.

Initial Replacement of 2nd Stage Turbines on Arriel 1B, 1D, and 1D1 Engines

(i) Initially replace the 2nd stage turbine with a new or overhauled 2nd stage turbine as follows:

(1) Before accumulating 1,500 hours TSN or TSO on the module for Arriel 1D and 1D1 engines.

(2) Before accumulating 2,200 hours TSN or TSO on the module or 3,000 total hours TSN on the 2nd stage turbine blades, whichever occurs first, for Arriel 1B engines.

Repetitive Replacements of 2nd Stage Turbines on Arriel 1B, 1D, and 1D1 Engines

(j) Thereafter, replace the 2nd stage turbine with a new or overhauled 2nd stage turbine within every 1,500 hours TSN or TSO on the module for Arriel 1D and 1D1 engines, and within every 2,200 hours TSN or TSO on the module or 3,000 total hours TSN on the 2nd stage turbine blades, for Arriel 1B engines.

Criteria for Overhauled 2nd Stage Turbines

(k) Do the following to overhauled 2nd stage turbines, referenced in paragraphs (i) and (j) of this AD:

(1) You must install new blades in the 2nd stage turbines of overhauled Arriel 1D and 1D1 engines.

(2) You may install either overhauled blades with fewer than 3,000 total hours TSN or new blades in the 2nd stage turbines of overhauled Arriel 1B engines.

Relative Position Check Continuing Compliance Requirements

(l) All 2nd stage turbines, including those that are new or overhauled, must continue to comply with relative position check requirements of paragraphs (f) and (j) of this AD.

Alternative Methods of Compliance

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

Related Information

(n) The EASA airworthiness directive 2007-0018, dated January 15, 2007, also addresses the subject of this AD.

(o) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: Christopher.spinney@faa.gov; telephone (781) 238-7175; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on March 5, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. E7-4244 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-27342; Directorate Identifier 2007-CE-014-AD]

RIN 2120-AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 9, 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-27342; Directorate Identifier

2007-CE-014-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No: 2007-0014, dated January 12, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

The MCAI requires:

Actions specified in this AD are intended to inspect, detect and correct any discrepancy on the PTT electrical circuit connectors and wires that could lead to a reduction of the control stick movements.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

APEX Aircraft has issued Mandatory Service Bulletin No. 050605, dated October 17, 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 the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 31 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,480, or \$80 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing \$90, for a cost of \$330 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

APEX Aircraft (Type Certificate No. A36EU formerly held by AVIONS MUDRY et CIE): Docket No. FAA-2007-27342; Directorate Identifier 2007-CE-014-AD.

Comments Due Date

- (a) We must receive comments by April 9, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Model CAP 10 B airplanes, serial numbers 001 through 282, fitted with major change 000302 (wood-carbon wings), that are certificated in any category.

Subject

- (d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

Actions and Compliance

- (f) Unless already done, do the following actions:

- (1) Within the next 50 hours time-in-service after the effective date of this AD, inspect the wire routing for the proper location and attachment of the connectors as detailed in the accomplishment instructions of APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006.

- (2) Before further flight, if a defect or discrepancy is found during the inspection in paragraph (f)(1) of this AD, modify the wire bundle and connectors routing as detailed in the accomplishment instructions of APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006.

FAA AD Differences

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

Other FAA AD Provisions

- (g) The following provisions also apply to this AD:

- (1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

- (3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No: 2007-0014, dated January 12, 2007; and APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006, for related information.

Issued in Kansas City, Missouri, on March 2, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-4243 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2007-0083; FRL-8285-9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a request to amend the Missouri State Implementation Plan (SIP) to include revisions to the St. Louis Solvent Metal Cleaning rule. The revisions to this rule include consolidating exemptions in the applicability section, adding new exemptions, adding definitions of new and previously undefined terms, and clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems. This revision will ensure consistency between the state and the Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by April 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-0083 by one of the following methods:

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

2. *E-mail:* algoe-eakin.amy@epa.gov.

3. *Mail:* Amy Algae-Eakin, 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: Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Algae-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule

without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7-4297 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2007-0141; FRL-8286-2]

Approval and Promulgation of Implementation Plans; Kansas; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a revision to the Kansas State Implementation Plan (SIP) for the purpose of approving the Kansas Department of Health and Environment's (KDHE) actions to address the "good neighbor" provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. KDHE has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS),

interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and efforts of other states to protect visibility. The requirements for public notification were also met by KDHE.

DATES: Comments on this proposed action must be received in writing by April 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-0141 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: jay.michael@epa.gov.

3. Mail: Michael Jay, 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 Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Michael Jay at (913) 551-7460, or by e-mail at jay.michael@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule that is located in the rules section of this **Federal Register**.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7-4302 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2007-0041; FRL-8284-7]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA proposes to approve a revision to the Missouri rule entitled "Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and the Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by April 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-0041 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: algoe-eakin.amy@epa.gov.

3. Mail: Amy Algae-Eakin, 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: Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7-4175 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[I.D. 020807A]

RIN 0648-AV24

Fisheries off West Coast States; Highly Migratory Species Fishery; Amendment 1 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council

(Pacific Council) has submitted Amendment 1 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for review by the Secretary of Commerce. Amendment 1, in combination with the Western Pacific Fishery Management Council's (Western Pacific Council) proposed Amendment 14, address overfishing of bigeye tuna (*Thunnus obesus*) Pacific-wide as required under the Magnuson-Stevens Fishery Management Act (Magnuson-Stevens Act). The specific actions to end overfishing would be implemented by multilateral cooperation through appropriate regional fishery management organizations (RFMOs) - the Inter-American Tropical Tuna Commission (IATTC) in the Eastern Pacific Ocean (EPO) and the Western and Central Pacific Fisheries Commission (WCPFC) in the Western and Central Pacific Ocean (WCPO). Specifically, Amendment 1 would recommend that fishing mortality on Pacific bigeye in the EPO by longline vessels be reduced immediately by 30 percent and by purse seine fishing vessels by 38 percent from 2003-2004 fishing levels, and in the WCPO by longline and purse seine vessels by 20 percent from 2001-2003 levels for each gear type. Taken together, these proposed reductions in fishing mortality would end overfishing of Pacific bigeye tuna. Amendment 1 would also reorganize the West Coast HMS FMP to create a more user-friendly document as the current FMP is combined with a lengthy Final Environmental Impact Statement (FEIS).

DATES: Comments on Amendment 1 must be received by May 8, 2007.

ADDRESSES: You may submit comments on this action identified by [I.D. 0220807A], by any of the following methods:

- E-mail: 0648-AV24.SWR@noaa.gov. Include the I.D. number in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980-4047

Copies of Amendment 1 are available by contacting Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384. Copies of Amendment 14 to the Pelagics FMP, and the Environmental Assessment (EA) for Amendment 14, which addresses

potential effects for actions proposed under both Amendments 1 and 14, may be obtained by contacting Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT:

Heidi Taylor, Sustainable Fisheries Division, NMFS, at 562-980-4039, or Christopher Dahl, Pacific Fishery Management Council, at 503-820-2280.

SUPPLEMENTARY INFORMATION: The HMS fishery in the Exclusive Economic Zone off the West Coast is managed under the HMS FMP, which was developed by the Pacific Council pursuant to the Magnuson-Stevens Act. The HMS FMP was approved by the Secretary of Commerce and implemented by regulation at 50 CFR part 660.

The Magnuson-Stevens Act requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider public comment received during the comment period in determining whether to approve, disapprove, or partially approve Amendment 1.

Amendment 1 to the HMS FMP was developed by the Pacific Council, in coordination with the development of Amendment 14 to the Western Pacific Council's Pelagics FMP. Both Amendments have been submitted to NMFS for review under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* This document announces that Amendment 1 is available for public review and comment. A similar announcement for Amendment 14 was published on February 15, 2007, in the **Federal Register**.

On December 15, 2004, NMFS notified both Councils that overfishing was occurring on bigeye tuna Pacific-wide. As required by the Magnuson-Stevens Act, the Councils were requested to take appropriate action to end overfishing. The Pacific Council, having fisheries for bigeye tuna in the EPO only, and the Western Pacific Council, having fisheries in both the EPO and the WCPO, worked to develop an international strategy that addresses overfishing Pacific-wide.

According to the guidelines for National Standard 1 of the Magnuson-Stevens Act, fishery stock status is assessed to determine if the stock is

subject to “overfishing.” Overfishing occurs when the maximum fishing mortality threshold (MFMT) is exceeded for one year or more and when the ratio of the current fishing mortality F_{current} to $F_{\text{maximum sustainable yield (MSY)}}$, or $F_{\text{current}}/F_{\text{MSY}}$, exceeds one. Stock assessments leading up to the overfishing determination for bigeye tuna in the Pacific concluded that current fishing mortality on the bigeye stock exceeded MFMT, that is, the ratio of $F_{\text{current}}/F_{\text{MSY}}$ has been exceeded for one year or more. Therefore, the Secretary of Commerce determined that overfishing is occurring on bigeye tuna throughout the Pacific.

The Pacific Council adopted Amendment 1 to the HMS FMP at its November 2006 Council meeting following a lengthy process that fully considered various drafts of an alternatives analysis. The Pacific Council also considered actions taken by the Western Pacific Council, input from Council advisory bodies, and public comment before adopting Amendment 1. Because bigeye tuna are targeted by many nations, including the United States, and taking into consideration the comparatively small proportion of total fishing mortality on the stock contributed by the United States, no Federal regulations to limit fishing effort by West Coast vessels managed under the HMS FMP have been proposed. Rather, Amendment 1 would revise the HMS FMP to include a multilateral strategy where the Pacific Council would transmit recommendations for the immediate reduction in fishing mortality of bigeye tuna in the EPO to the U.S. delegation to the IATTC. A similar international strategy has been proposed in Amendment 14 for the WCPO, and thus any combined fishery conservation and management recommendation from the Pacific and Western Pacific Councils to the relevant RFMOs, will end overfishing of bigeye tuna Pacific-wide.

Amendment 1 outlines general principals that would be adhered to when proposing management measures to the U.S. delegation to the IATTC intended to meet the goal of ending overfishing. For example, conservation and management recommendations would focus on fisheries with the greatest impacts and on regions with the highest catch rate and on spawning areas; reducing surplus capacity; restrict the use of purse seines fishing on fish aggregating devices; and support the identification of those measures that

will have a measurable impact on bigeye tuna conservation.

The Pacific Council would develop management goals, to the extent practicable, that are consistent with IATTC staff scientist recommendations. Specifically, Amendment 1 would recommend that fishing mortality on Pacific bigeye be reduced immediately: (1) in the EPO, by longline vessels by 30 percent and by purse seine fishing vessels by 38 percent from 2003–2004 fishing levels; and (2) in the WCPO, by longline and purse seine vessels by 20 percent from 2001–2003 levels for each gear type. However, as part of its strategy the Pacific Council recognizes that conservation and management goals may need to be revised to reflect changes in stock status and the best available science. These recommendations would be communicated to the relevant U.S. delegations to RFMOs and thus comprise the international strategy to end overfishing of bigeye tuna Pacific-wide.

Amendment 1 is consistent with section 406 of the Magnuson-Stevens Reauthorization Act (MSRA, Public Law 109–479), which added section 304(i) to the Magnuson-Stevens Act. This section requires the Secretary to, among other things, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end overfishing for fisheries that NMFS has determined: (a) to be overfished or approaching a condition of being overfished due to excessive international fishing pressure, and (b) for which there are no management measures to end overfishing under an international agreement to which the United States is a party. NMFS interprets “no management measures” to mean the absence of management measures that are adequate to stop overfishing for purposes of the Magnuson-Stevens Act and its implementing regulations. NMFS has made a determination that both of these conditions are present, and therefore subsection 304(i) governs the MSA mandate to end overfishing in the case of Pacific bigeye tuna.

Pacific bigeye tuna are fished in waters under U.S. jurisdiction, waters under the jurisdiction of other nations, and on the high seas by foreign fishing fleets. U.S. fisheries account for only a small percentage of the Pacific bigeye tuna harvests. Thus, fishing mortality of the bigeye stock stems predominantly from non-U.S. fleets in the region, and any unilateral management to end

overfishing by the U.S. would have a proportionally small effect in terms of reducing fishing mortality and ending overfishing.

Since 1998, the U.S. has addressed the relative impacts of U.S. fishing on Pacific bigeye tuna by implementing annual or multi-annual conservation and management resolutions under the Tuna Conventions Act (16 U.S.C. 951–961 and 971 *et seq.*). Additionally, in Amendment 1, the Pacific Council proposes to recommend to NMFS and the Secretary of State, international management actions to end overfishing in fisheries for Pacific bigeye tuna. Finally, NMFS, in collaboration with the Pacific and Western Pacific Councils and Department of State, is working to end overfishing through the RFMOs.

Existing HMS and Pelagics FMP measures for bigeye tuna have been implemented to address the relative impact of U.S. fishing vessels within the meaning of the MSRA section 304(i)(2)(A). Depending on the region, these measures include limited access programs, mandatory data collection, scientific observers, vessel size limits and gear specifications, and a vessel monitoring system.

Amendment 1 would also reorganize the original HMS FMP in a manner that calls attention to elements specific to the FMP and would move much of the lengthy background material in the original FMP/FEIS to a series of appendices. Amendment 1 thus includes new chapters and headings for the FMP. Cross references to chapters, sections, tables, and figures would be renumbered to reflect the reorganization proposed without referencing such changes in the text. The preface of Amendment 1 further explains the reorganization of the HMS FMP. The original FMP/FEIS will remain a publicly available document.

Though Amendment 1 incorporates elements of Amendment 14, it does not require NMFS to promulgate implementing regulations. NMFS seeks public comment on Amendment 1, which must be received by May 8, 2007 to be considered by NMFS in the decision whether to approve, partially approve, or disapprove the Amendment 1.

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

Dated: March 5, 2007.

James P. Burgess,

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

[FR Doc. E7–4259 Filed 3–8–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 46

Friday, March 9, 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

Agricultural Research Service

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are March 26, 2007, 8 a.m. to 5 p.m., and March 27, 2007, 8 am to 4 pm.

ADDRESSES: Room 107A, USDA Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720-3817.

SUPPLEMENTARY INFORMATION: The fifteenth meeting of the AC21 has been scheduled for March 26-27, 2007. The AC21 consists of 19 members representing the biotechnology industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, the Office of the United States Trade Representative, and the National Association of State Departments of Agriculture serve as "ex officio" members. At this meeting, new Committee members will be introduced, and the Committee plans to continue work to address the question, "In an

increasingly complex marketplace, what issues should USDA consider regarding coexistence among increasingly diverse agricultural systems?" The work at the meeting will include consideration of presentations from external speakers as well as review of a compilation of draft submissions on a series of subtopics for a paper on the subject.

Background information regarding the work of the AC21 will be available on the USDA Web site at http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT.

Members of the public should enter the building through the Jefferson Drive entrance. Requests to make oral presentations at the meeting may be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250, Telephone (202) 720-3817; Fax (202) 690-4265; E-mail Michael.schechtman@ars.usda.gov. On March 26, 2007, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Debra Lindsay at (202) 720-4074, by fax at (202) 720-3191 or by E-mail at debra.lindsay@ars.usda.gov at least five business days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: March 1, 2007.

Jeremy Stump,

Senior Advisor for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E7-4208 Filed 3-8-07; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0010]

Notice of Request for Approval of an Information Collection; National Animal Identification System; Tribal Participants in Premises Registration

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity for Tribal participants in premises registration for the National Animal Identification System.

DATES: We will consider all comments that we receive on or before May 8, 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-2007-0010 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-2007-0010, 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-2007-0010.

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: For information on an information collection for Tribal participants in premises registration for the National Animal Identification System, contact Dr. John Wiemers, National Animal Identification Staff, VS, 2100 Lake Storey Road, Galesburg, IL 61401; (309) 344-1942. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Identification System; Tribal Participants in Premises Registration.

OMB Number: 0579-XXXX.

Type of Request: Approval of a new information collection.

Abstract: As part of ongoing efforts to safeguard animal health, the U.S. Department of Agriculture initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The first component of the program, premises registration, is well underway and the second component, animal identification, is being implemented for several species. The third component, animal tracing, is currently under development with USDA's State and industry partners. Industry, through private systems, and States will manage the animal tracking databases that maintain the movement records of animals. These information systems will provide the location of a subject animal and the records of other animals that the subject animal came into contact with at each premises. Participation in any component of the program is voluntary.

Premises registration, the foundation of NAIS, is critical to rapidly detecting and evaluating the scope of animal disease outbreaks, controlling emergency program budgets, and improving emergency response efficiency. Having the ability to plot

locations within a radius of affected premises will help determine the potential magnitude of a disease event and the resources that are needed to adequately respond in an effective manner. This can be accomplished only if the affected premises and other premises in the area have been registered. All 50 States, 60 Native American Tribes, and 2 territories are currently participating in premises registration. More than 350,000 premises have been registered to date.

Several systems are available to States and Tribes for use in registering premises: The Standardized Premises Registration System provided by USDA, Compliant Premises Registration Systems developed by States or third parties and evaluated by USDA as compliant, and now a Tribal Premises Registration System provided by USDA.

USDA is pleased with the cooperative working relationships we have with Tribes participating in the development and implementation of the NAIS. Meeting the needs of Native Americans has been a priority for USDA since the inception of the NAIS, and we have sought to have Tribal representatives involved in the development of the system. Most recently, USDA partnered with Tribal representatives in the development and testing of the Tribal Premises Registration System that is now available for use.

APHIS will provide the opportunity for participating Tribes to designate, by completing a form, which premises registration system they prefer to use, and will use the form to initiate the process for Tribes to have access to their system of choice. The form will be made available by the Tribal liaison for the NAIS program and on the NAIS Web site (<http://animalid.aphis.usda.gov/nais/index.shtml>).

We are asking the Office of Management and Budget to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

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

Respondents: Tribal entities or organizations who are interested in participating in the NAIS premises registration component or who are already participating in the NAIS.

Estimated annual number of respondents: 60.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 60.

Estimated total annual burden on respondents: 60 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 5th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-4239 Filed 3-8-07; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0024]

Notice of Request for Approval of an Information Collection; Plant Protection and Quarantine; Customer Satisfaction Surveys

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection for Plant Protection and Quarantine Customer Satisfaction Surveys.

DATES: We will consider all comments that we receive on or before May 8, 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-2007-0024 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-2007-0024, 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-2007-0024.

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: For information on the Plant Protection and Quarantine customer satisfaction surveys, contact Ms. Nancy Heffernan, Management Analyst, Permits, Registrations, Imports and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-7491. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Title: Plant Protection and Quarantine; Customer Satisfaction Surveys.

OMB Number: 0579-XXXX.

Type of Request: Approval of a new information collection.

Abstract: In 2003, the Plant Health Programs (PHP) unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, obtained from the International Organization of Standardization (ISO, a

nongovernmental worldwide network of national standards institutes) certification in the ISO 9001:2000 standard for its permit services. The ISO 9001:2000 standard specifies the requirements for a quality management system. To meet the ISO 9001:2000 standard, an organization must demonstrate its ability to consistently provide a product that meets customer quality requirements and applicable regulatory requirements, while aiming to enhance customer satisfaction through effective application of the system, including processes for continual improvement of its performance.

To remain in compliance with Clause 8.2.1 (Customer Satisfaction) of the ISO 9001:2000 standard, PHP must measure the performance of its quality management system by monitoring customer perception of its service. PHP has determined that the best method for obtaining this information is through the use of performance measurement surveys. Customers will have the option of completing the surveys by telephone, e-mail, or facsimile, or through an automated voice response system. PHP will use responses derived from these surveys to develop new processes and modify existing procedures to provide customers with the optimal level of service.

We are asking OMB to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Persons who require a permit.

Estimated annual number of respondents: 500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 80 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 5th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-4240 Filed 3-8-07; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AC39

Travel Management, Proposed Forest Service Directives; Forest Service Manual 2350, 7700, and 7710 and Forest Service Handbook 7709.55

AGENCY: Forest Service, USDA.

ACTION: Proposed directives; request for comment.

SUMMARY: The Forest Service proposes to amend internal agency directives regarding travel management to make them consistent with and facilitate implementation of the agency's final travel management rule (36 CFR part 212), "Travel Management; Designated Routes and Areas for Motor Vehicle Use" (70 FR 68264, November 9, 2005) (travel management rule). The travel management rule requires each Forest Service administrative unit or Ranger District to designate those roads, trails, and areas open to motor vehicle use.

Changes to existing travel management directives are needed to provide guidance on implementation of the travel management rule, to conform terminology to the rule, to provide consistent direction on the process of designating roads, trails, and areas for motor vehicle use, and to integrate direction on roads analysis with direction on travel planning.

The proposed directives would consolidate direction for travel planning for both roads and trails in Forest Service Manual (FSM) 7710 and Forest Service Handbook (FSH) 7709.55.

Direction for trail management would continue to be found in FSM 2350. Consistent terminology and delegations of authority would be established in FSM 7700, Zero Code.

The proposed directives expand the scope of the current roads analysis process to encompass trails and areas designated for motor vehicle use, while streamlining some of the procedural requirements involved.

DATES: Comments must be received in writing by May 8, 2007.

ADDRESSES: Send written comments to Travel Management Proposed Directives, Attention: LeRoy Schmitz, c/o USDA Forest Service Northern Region, P.O. Box 7669, Missoula, MT 59807; by delivery service to 200 East Broadway, Missoula MT 59807; by e-mail to traveldir@fs.fed.us; or by facsimile to 406-329-3198.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on these proposed directives in the office of the Director of Engineering, USDA Forest Service Northern Region, 200 East Broadway, Missoula, MT 59807, on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at 406-329-3173 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Joe Gallagher, Recreation and Heritage Resources Staff, (202) 205-0931.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2005, the Forest Service published the travel management rule, governing use of motor vehicles on National Forest System (NFS) lands. The travel management rule (36 CFR part 212, subpart B) requires each administrative unit or Ranger District to designate those roads, trails, and areas open to motor vehicle use by vehicle class and, if appropriate, by time of year. The travel management rule also requires designated roads, trails, and areas to be identified on a motor vehicle use map. After roads, trails, and areas have been designated and identified on a motor vehicle use map, motor vehicle use inconsistent with those designations is prohibited under 36 CFR 261.13.

The travel management rule combined regulations governing administration of the forest transportation system and regulations governing use of motor vehicles off NFS roads into part 212, Travel Management,

covering the use of motor vehicles on NFS lands. The travel management rule implements Executive Order (E.O.) 11644 (February 8, 1972), "Use of Off-Road Vehicles on the Public Lands," as amended by E.O. 11989 (May 24, 1977).

Nationally, the Forest Service manages approximately 287,000 miles of NFS roads and 32,000 miles of NFS trails that are open to motor vehicle use. Other NFS roads and NFS trails are managed for nonmotorized uses or are not open to general public use. Motor vehicle routes in the forest transportation system range from paved roads designed for passenger cars to single-track trails used by dirt bikes. Many roads designed for high-clearance vehicles (such as logging trucks and sport utility vehicles) are also used by all-terrain vehicles (ATVs) and other off-highway vehicles (OHVs) not normally found on city streets. Almost all NFS trails serve nonmotorized users such as hikers, bicyclists, and equestrians, alone or in combination with motorized users. NFS roads often accept nonmotorized use as well.

In addition to this managed system of NFS roads and NFS trails, many National Forests contain user-created roads and trails. These routes are concentrated in areas where cross-country travel by motor vehicles has been allowed and sometimes include dense, braided networks of criss-crossing trail. There has been no comprehensive national inventory of user-created routes (and continuing proliferation of these routes has made a definitive inventory difficult), but they are estimated to number in the tens of thousands of miles.

Wilderness areas are closed to motor vehicles by statute. On some National Forests and portions of others, motor vehicle use is restricted by order to designated routes and areas. On other National Forests, motor vehicle use is not restricted to designated routes and areas.

Need for Proposed Directives

The Forest Service provides internal direction to field units through its directives system, consisting of the FSM and FSH. Directives provide guidance to field units in implementing programs established by statute and regulation. Forest Service directives establish agency policy for delegations of authority, consistent definitions of terms, clear and consistent interpretation of regulatory language, and standard processes.

The travel management rule will be implemented on administrative units and Ranger Districts, each of which will complete the designation process and

publish a motor vehicle use map identifying those NFS roads, NFS trails, and areas on NFS lands open to motor vehicle use. The Forest Service hopes to complete that task on all units of the NFS within 4 years.

One of the main objectives of the travel management rule is to provide a consistent procedural framework and consistent terminology for travel management decisions made at the local level. Current policy in the Forest Service directives system was written prior to the travel management rule and reflects previous travel management direction and terminology. For example, current directives use the terms "classified road" and "unclassified road," which were removed by the travel management rule. Until this policy is updated, inconsistent terminology may result in confusion and inconsistent application of the travel management rule. The proposed directives are also needed to provide a procedural approach to implementing the travel management rule in conformance with agency policy on land management planning, environmental analysis, roads analysis, and other requirements of law and policy.

While some of the proposed changes simply reiterate direction in the travel management rule, other proposed changes provide clarifying instructions, delegations of authority, or other guidance on implementing the travel management rule.

To ensure timely and consistent implementation of the travel management rule, the Forest Service is proposing to amend travel management directives in FSM 2350, 7700, and 7710 and FSH 7709.55. Many comments on the proposed travel management regulation requested an opportunity for public input in development of agency directives implementing the travel management rule, and these proposed directives are expected to garner substantial public interest. Pursuant to 36 CFR part 216 and to build public understanding of and participation in travel management decisions, the Forest Service is seeking comment on these proposed directives. The proposed directives are available for review on the Forest Service Web site at <http://www.fs.fed.us/recreation/programs/ohv>. Additional purely technical, nonsubstantive amendments to FSM 2354 and 7730 and FSH 2309.18 and 7709.59 (which primarily conform terminology in those directives to terminology in the travel management rule) will be issued without public notice and comment when these proposed directives are finalized.

Summary of Changes

The proposed directives would conform agency directives to the travel management rule. Many of the proposed changes to the directives simply reiterate requirements of the travel management rule or update terminology based on the travel management rule. The Forest Service is not proposing to revise the travel management rule. Reviewers may find it helpful to become familiar with the travel management rule before reviewing these proposed directives.

The proposed directives would consolidate Forest Service policy for travel management into FSM 7700. This chapter, now entitled "Transportation System," would be renamed "Travel Management" to be consistent with the new title of 36 CFR part 212. FSM 7700, Zero Code, would be amended to contain new authorities and responsibilities. FSM 7710, "Travel Planning," would be amended to provide direction on travel analysis and route and area designation. The "Travel Planning Handbook," FSH 7709.55, would be revised to integrate roads analysis into the new travel management process. Directives governing road maintenance and operations would remain in FSM 7730, "Operations and Maintenance," and FSH 7709.59, the Road System Operations Handbook.

Within FSM 2300, "Recreation Management," FSM 2350, "Trail, River, and Similar Recreation Opportunities," would be amended to consolidate travel planning direction for motor vehicle use, mirroring the consolidation of regulations formerly in 36 CFR parts 212 and 295. Directives governing trail maintenance and operations would remain in FSM 2350 and FSH 2309.18.

A key objective of the proposed directives is to integrate roads analysis, as required by 36 CFR part 212, subpart A, with the travel management process required by 36 CFR part 212, subpart B, to avoid duplicative planning processes. On January 12, 2001, the Forest Service published final regulations at 36 CFR part 212, "Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest System Roads; Final Rule" (roads rule), and "Forest Service Transportation; Final Administrative Policy; Notice" (roads policy) (66 FR 3216). The roads rule requires each administrative unit of the NFS to "identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands * * * incorporating a science-

based roads analysis at the appropriate scale" (36 CFR 212.5(b)). The new travel management rule requires each administrative unit or Ranger District of the NFS to designate those roads, trails, and areas open to motor vehicle use. The Forest Service believes that a single, integrated analysis can be used to fulfill both requirements.

The roads policy (FSM 7700 and 7710) established Publication FS-643, Roads Analysis: Informing Decisions About Managing the National Forest Transportation System (August 1999), as the science-based roads analysis to be followed when implementing the roads rule. The roads policy also established specific requirements for the use of roads analysis at various scales prior to making travel management decisions involving NFS roads. The proposed changes in the Forest Service directives would move the six-step analysis described in FS-643 to FSH 7709.55, Chapter 20, and rename it "Travel Analysis" to reflect its broader application in informing travel management decisions regarding motor vehicle use on NFS roads, on NFS trails, and in areas on NFS lands. The Forest Service also proposes to change its directives to streamline the travel analysis process and to provide the responsible official additional discretion in determining the scope and scale of travel analysis.

In addition to the section-by-section discussion that follows, the digest section of the proposed directives enumerates the proposed changes from existing directives.

Section-by-Section Analysis of Proposed Changes

Proposed Revisions to FSM 2350, "Trail, River, and Similar Recreation Opportunities"

FSM 2352, "Road Recreation Management," and FSM 2355, "Off-Road Vehicle Use Management," would be removed. To ensure consistent implementation of the travel management rule, direction for travel planning, travel management decisions, and designation of roads, trails, and areas for motor vehicle use would be moved to FSM 7710, "Travel Planning," and would be revised to be consistent with 36 CFR part 212.

FSM 2353, "National Forest System Trails," would be revised to conform with the terminology and contents of 36 CFR part 212. FSM 2353.28, "Management of Motor Vehicle Use," would be added to provide guidance for management of NFS trails designated for motor vehicle use. Other proposed technical corrections not directly

associated with the travel management rule would update FSM 2353 to conform with changes in laws, regulations, and policy that have occurred since this section was last updated. Examples include the 2005 planning rule, the Forest Service's national Infrastructure database, and changes in the Forest Service's organizational structure and accounting practices.

Proposed Revisions to FSM 7700, "Travel Management," Zero Code

FSM 7700, Zero Code, sets general direction applicable to the entire chapter, including FSM 7710 through 7740. The series title would be changed from "Transportation System" to "Travel Management." In general, the Zero Code enumerates the agency's authority to establish policy, sets out the agency's objectives and general policy for travel management, provides for delegation of authority to agency officials, and contains definitions for terms used throughout the chapter. FSM 7700 concludes by identifying the handbooks supplementing the direction in that chapter.

In FSM 7701, "Authority," the references to 36 CFR part 212 would be updated to reflect the changes effected by the travel management rule and to include references to E.O. 11644.

FSM 7702, "Objectives," would be updated to reflect the objectives of the travel management rule: to manage motor vehicle use within the capabilities of the land and within available agency resources; to provide a wide range of recreation experiences for NFS visitors; to address visitor safety; and to involve the public and coordinate with relevant governmental entities in designating roads, trails, and areas for motor vehicle use. The proposed directives would add an objective to make use of transit and intermodal transportation systems.

FSM 7703, "Policy," would be updated to reflect new regulatory requirements in 36 CFR part 212 and to provide for consistent interpretation of those requirements. In general, the proposed directives would require the responsible official to provide a transportation system consistent with the desired conditions described in the applicable land management plan and to coordinate with other transportation officials and State, local, and tribal governments when making travel management decisions.

FSM 7703.1, "Travel Management," would provide general direction for designating routes and areas. FSM 7703.1 would reiterate the regulatory requirements at 36 CFR part 212,

subpart B. In addition, FSM 7703.1 would require responsible officials to use travel analysis to consider the criteria in 36 CFR 212.55 and contribute towards identification of the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands (36 CFR 212.5(b)). Responsible officials would be advised to use restraint in designating areas for motor vehicle use. Areas are not intended to be large or numerous and should have natural resource characteristics that are suitable for cross-country motor vehicle use. No administrative unit would be required to designate areas.

FSM 7703.2, "Management Opportunities," would require travel analysis to be based on a complete inventory of NFS roads and NFS trails. A complete inventory of user-created routes would not be required. However, responsible officials would be required to work with the public to identify which user-created routes might be suitable for inclusion in the forest transportation system. FSM 7703.2 would require consideration of the full spectrum of motorized and nonmotorized recreation opportunities, so that designation results in an appropriate mix of recreational activities that minimize conflicts among uses. Responsible officials would be encouraged to consider the availability of resources for maintenance and administration before adding routes to the forest transportation system. Grants, agreements, and volunteers would be considered in this evaluation. Lastly, the requirement that travel management decisions be informed by travel analysis would be restated and clearly established as policy.

FSM 7703.22, "Motor Vehicle Use Off Designated Roads and Trails and Outside Designated Areas," would reiterate the regulatory provision that once designation is complete on an administrative unit or Ranger District and designated routes and areas are identified on a motor vehicle use map, motor vehicle use off the designated system or inconsistent with the designations will be prohibited by 36 CFR 261.13. Responsible officials would be advised to apply provisions for limited use of motor vehicles for big game retrieval or dispersed camping sparingly per 36 CFR 212.51(b).

FSM 7703.23, "Use by Over-Snow Vehicles and Non-Motorized Use," would establish that responsible officials may use the provisions in 36 CFR 212.81 and 261.14 to allow, restrict, or prohibit use by over-snow vehicles on NFS roads, on NFS trails, and in areas on NFS lands.

FSM 7703.24, "Maintaining and Reconstructing Roads," FSM 7703.25, "Decommissioning Roads," and FSM 7703.26, "Adding Roads," would not be changed.

FSM 7703.3, "Jurisdiction Over Forest Transportation Facilities," would update terminology to match definitions in 36 CFR 212.1, to expand language to encompass jurisdiction over trails as well as roads, and to recognize that multiple agencies may share jurisdiction over a single road or trail.

FSM 7703.4, "Common Transportation Interests With Local Public Road Authorities and Other Landowners," would incorporate minor wording changes to improve clarity and to correct the cross-reference to FSH 1509.11, section 23.

FSM 7703.5 would be renamed "Agreements for Road Operation and Maintenance," and would add a cross-reference to FSM 2353.16.

FSM 7704, "Responsibility," would establish delegations of authority for agency officials in travel management. Responsibilities for the Director of Recreation and Heritage Resources, Washington Office, would be added to reflect the integration in FSM 7700 of direction for motor vehicle use on NFS trails and in areas on NFS lands. Regional Foresters would have the responsibility to coordinate travel analysis and planning to promote consistency within States and between adjacent national forests. Forest Supervisors would be responsible for conducting travel analysis, making travel management decisions, monitoring motor vehicle use, and maintaining information about the forest transportation system.

FSM 7705, "Definitions," would remove definitions for "classified roads," "forest roads," "new road construction," "road improvement," "road realignment," "road reconstruction," "temporary roads," "traffic service level," "transportation facility jurisdiction," and "unclassified roads"; would add definitions for "administrative unit," "all-terrain vehicle," "area," "arterial road," "collector road," "designated road, trail, or area," "engineering analysis," "engineering judgment," "engineering report," "forest road or trail," "forest transportation atlas," "forest transportation system," "highway-legal vehicle," "jurisdiction over a forest transportation facility," "local road," "motor vehicle," "motor vehicle use map," "motorcycle," "motorized mixed use," "National Forest System trail," "non-highway-legal vehicle," "off-highway vehicle," "over-snow vehicle," "private road," "qualified engineer,"

"road construction or reconstruction," "route," "temporary road or trail," "terminal facility," "trail," "travel management atlas," and "unauthorized road or trail"; and would revise definitions for "forest transportation facility," "forest transportation system management," "public road," "road," "road decommissioning," "road maintenance," and "road subject to the Highway Safety Act."

FSM 7705, Exhibit 1, would be revised to reflect policy changes and changes in terminology and definitions.

FSM 7709 would be updated to reflect changes in the titles of FSH 7709.55 and 7709.59.

Proposed Revisions to FSM 7710, "Travel Planning"

This chapter would be renamed "Travel Planning." Existing direction for planning associated with the forest transportation system would be revised to reflect the regulatory changes in 36 CFR part 212. Directives implementing the roads policy (36 CFR part 212, subpart A) would be largely retained, but would be updated to reflect the use of travel analysis both to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands and to inform travel management decisions related to designation of roads, trails, and areas for motor vehicle use. FSM 7710 also would provide responsible officials the discretion to allow, restrict, or prohibit use of over-snow vehicles on NFS lands per 36 CFR part 212, subpart C.

The travel planning chapter would be organized into 10 sections: FSM 7710 would establish authorities, objectives, policy, responsibilities, and definitions unique to this chapter. FSM 7711 would establish policy for developing and maintaining forest transportation system records, including motor vehicle use maps. FSM 7712 would establish policy for conducting travel analysis. FSM 7713 and 7719 would be reserved for future direction. FSM 7714 would establish requirements for developing road and trail management objectives. FSM 7715 would establish policy for making travel management decisions. FSM 7716 would establish policy for designating routes and areas for motor vehicle use. FSM 7717 would set policy for monitoring motor vehicle use and revising designations. FSM 7718 would describe policy for use of over-snow vehicles.

FSM 7710.1, "Authority," and FSM 7710.2, "Objectives," largely would reiterate the authorities and objectives established in FSM 7700, Zero Code.

FSM 7710.3, "Policy," would establish policy for determining the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands. FSM 7710.3 would require appropriate travel analysis, environmental analysis, public involvement, and intergovernmental coordination to inform travel management decisions. The criteria in 36 CFR 212.55 would guide travel management decisions.

FSM 7710.04, "Responsibility," would assign the Deputy Chief for the National Forest System the responsibility for approving schedules for completing designation on each administrative unit or Ranger District. The Director of Engineering, Washington Office, would be responsible for maintaining and publishing national standards for motor vehicle use maps. Regional Foresters would develop regional schedules for designation and promote coordination within States and between units. Forest Supervisors would be responsible for coordination with Federal, State, county, and local public road authorities; developing and maintaining travel management atlases and motor vehicle use maps; issuing temporary emergency closures under 36 CFR 212.52(b)(2); approving travel management decisions that designate roads for motorized mixed use; conducting travel analysis; conducting appropriate environmental analysis and making travel management decisions; designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use; revising designations when necessary; regulating over-snow vehicle use on NFS lands when appropriate; and monitoring motor vehicle use. District Rangers would approve road and trail management objectives and other duties as delegated by the Forest Supervisor.

FSM 7710.5, "Definitions," would add definitions for "primitive area" and "travel management decision" and would remove the definition for "network analysis."

FSM 7711, "Forest Transportation System Records," would add policy for developing and maintaining a travel management atlas and making it available to the public. The travel management atlas consists of two parts: the motor vehicle use map and the forest transportation atlas. The forest transportation atlas consists of maps, inventories, and plans for forest transportation facilities and tabular and other data documenting the forest transportation system, including a road atlas. Travel management decisions

would be documented in the travel management atlas. Proposed direction would allow storage of information on unauthorized and decommissioned routes, as well as routes in the forest transportation system.

FSM 7711.3 would specify the contents of motor vehicle use maps. Motor vehicle use maps would be widely available to the public and would be reprinted annually regardless of whether there are any changes to designations.

Per 36 CFR 212.5(b), FSM 7712, "Travel Analysis," would require that the travel analysis in FSH 7709.55 incorporate a science-based roads analysis at the appropriate scale. Travel analysis would not be a decision-making process, but would be required to inform travel management decisions, including determining the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands. Travel analysis also could be used to inform decisions relating to management of over-snow vehicle use.

FSM 7712.1, "Scale and Scope of Travel Analysis," would revise direction on the application of roads analysis and remove the reference to FS-643. Units would still be required to complete a travel analysis addressing broad-scale concerns, but responsible officials would have more discretion to determine the scale and scope at which to conduct travel analysis. Travel analysis would result in a set of focused proposals for changes to the forest transportation system or to existing travel management direction. As under existing policy, travel analysis would be based on a complete and accurate inventory of the forest transportation system on an administrative unit or a Ranger District, but in contrast to existing policy, a complete inventory of user-created routes on a unit or district would no longer be required.

FSM 7712.2, "Travel Analysis and Land Management Planning," would reflect recent changes in regulations governing land management planning at 36 CFR part 219 and would establish that travel management decisions are made at the project level. While travel management decisions must be consistent with the applicable land management plan, they would not be made as part of the land management planning process.

FSM 7712.3, "Relationship of Travel Analysis to Travel Management Decisions," would establish direction on the use of travel analysis and the components of travel analysis when it is used to inform travel management decisions.

FSM 7712.4, "Travel Analysis for Administration of the Forest Transportation System," would revise direction for the use of roads analysis in determining the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands.

FSM 7714, "Road and Trail Management Objectives," would revise direction on establishment of road and trail management objectives and would add requirements for management objectives for each NFS road and NFS trail.

FSM 7715, "Travel Management Decisions," would establish objectives and direction for making travel management decisions that implement 36 CFR part 212.

Per 36 CFR 212.50(b) and the preamble to the travel management rule (70 FR 68268), FSM 7715.1, "Incorporating Previous Travel Management Decisions," would provide that past travel management decisions (including decisions to allow motor vehicle use on NFS roads, on NFS trails, and in areas on NFS lands and restrictions on motor vehicle use) represent the starting point for travel analysis and travel management decisions. As stated in 36 CFR 212.52(a), if an administrative unit or a Ranger District already has a set of travel management decisions consistent with the requirements in 36 CFR 212.51, the responsible official may, with public notice but no further analysis or decisionmaking, recognize that set of decisions as the designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use on that unit or district.

FSM 7715.2, "Scale of Decisions," would recognize the responsible official's discretion to establish the appropriate scale at which to conduct environmental analysis for travel management decisions, as long as a motor vehicle use map is published for an entire administrative unit or Ranger District.

FSM 7715.3, "Public Involvement and Coordination with Governmental Entities," would reiterate the requirements in 36 CFR 212.52, would encourage responsible officials to use the public notice and comment procedures in the environmental analysis process to fulfill those requirements, and would encourage early public involvement in the travel planning process.

FSM 7714.4, "Environmental Documentation," would recognize that the required environmental documentation depends on the scale, scope, and nature of the proposed

changes to travel management decisions and the site-specific issues involved.

FSM 7715.5, "Criteria," would restate the regulatory requirement to consider both the general and specific criteria in 36 CFR 212.55 when making travel management decisions.

FSM 7715.6, "Components of Travel Management Decisions," would establish direction for nine components of travel management decisions necessary to implement the travel management rule.

FSM 7715.61, "Restrictions," would recognize that when existing travel management direction provides for large tracts of NFS lands to be open to cross-country motor vehicle use, responsible officials must restrict motor vehicle use to designated roads, trails, and areas to meet the requirements of 36 CFR 212.51.

FSM 7715.62, "Roads and Trails," would direct responsible officials to consider jurisdiction over forest transportation facilities when designating NFS roads and NFS trails; to evaluate the consistency of proposed travel management decisions with applicable State traffic laws; and to coordinate travel management decisions with adjacent administrative units and Ranger Districts. Nothing in the travel management rule or these proposed directives in any way alters the Forest Service's jurisdiction to enforce traffic laws, to protect NFS lands underlying routes, or to regulate use, including use on valid rights-of-way.

FSM 7715.63, "Areas," would reference the direction on areas established in FSM 7703.14.

FSM 7715.64, "Big Game Retrieval and Dispersed Camping," would reiterate authority established in 36 CFR 212.51(b) on including in designation decisions the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or big game retrieval. This proposed direction includes a clarification of the circumstances under which this authority may be used. The regulation states "within a specified distance of certain designated routes." The proposed directives would provide "within a specified distance of certain forest roads and forest trails." State and county roads are not NFS roads and are not subject to designation under the rule. However, the intent of the regulation is to allow the responsible official to authorize limited use of motor vehicles for dispersed camping and game retrieval on NFS lands. It would make little sense for this authority to depend on the jurisdiction of the road or trail involved. FSM 7715.64 also

would encourage responsible officials to consider alternatives prior to designating off-route motor vehicle use for dispersed camping or big game retrieval.

FSM 7715.65, "Valid Existing Rights and Private Roads," would reiterate direction from 36 CFR 212.55(d)(1) recognizing valid existing rights.

FSM 7715.66, "Wilderness Areas and Primitive Areas," would reiterate the regulatory prohibition in 36 CFR 212.55(e) against designation of roads, trails, and areas in wilderness areas and primitive areas.

FSM 7715.67, "Motorized Mixed Use of NFS Roads," would require certain travel management decisions involving motorized mixed use to be informed by engineering analysis. Documentation of engineering analysis would be addressed in FSM 7709.55, Chapter 30.

FSM 7715.68, "User-Created Routes," would establish that user-created routes may be considered for inclusion in the forest transportation system. FSM 7715.68 would provide that once designation is complete on an administrative unit or a Ranger District, any user-created routes not added to the forest transportation system would be unauthorized and should be decommissioned.

FSM 7715.69, "Accessibility," would reiterate that under the definitions in 36 CFR 212.1 and 261.2, wheelchairs are not motor vehicles, are not subject to designations under 36 CFR 212.51, and are not subject to the prohibition on motor vehicle use in 36 CFR 261.13. Wheelchairs may be used wherever pedestrian use is allowed. Pursuant to section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 7 CFR 15e.103, FSM 7715.69 also would recognize that there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on NFS roads, NFS trails, and areas on NFS lands that are not designated for motor vehicle use.

FSM 7716, "Designations," would describe the content of motor vehicle designations.

FSM 7716.03, "Policy," would recognize that designations for motor vehicle use do not establish that use as dominant or exclusive of other uses and that designations are not decisions, but rather reflect travel management decisions supported by appropriate environmental analysis and public involvement.

FSM 7716.1, "Content of Designations," would establish that designation of an NFS road or NFS trail includes the use of all terminal facilities, trailheads, parking lots, and turnouts associated with that road or

trail, as well as parking within one vehicle length from the edge of the road surface when safe to do so. FSM 7716.1 also would establish five standard vehicle classes that may be used in designations and would recognize that designations by time of year must be written in terms of the time of year the route is open. When designations include the limited use of motor vehicles within a specified distance of designated routes solely for dispersed camping or big game retrieval, the vehicle class and time of year specified would not need to be the same as those specified for the route.

FSM 7716.2, "Exemptions," would restate the exemptions from designations enumerated in 36 CFR 212.51(a) and would explain some of them.

FSM 7716.21, "Existing Authorizations," would require responsible officials to review written authorizations prior to publishing a motor vehicle use map to ensure that they specifically provide for motor vehicle use to the extent necessary for the authorized use.

FSM 7716.22, "Use of Public Roads," would recognize that State, county, and local public road authorities regulate use of roads for which they have a legally documented right-of-way. State, county, and local public roads are not subject to designations under the travel management rule or the corresponding prohibition on motor vehicle use.

FSM 7716.3, "Areas," would establish policy for designation of areas. Like designations of roads and trails, area designations would include vehicle class and, if appropriate, time of year. FSM 7716.3 would require area boundaries to be displayed on the corresponding motor vehicle use map and to be easily located on the ground.

FSM 7716.4, "Identification of Designated Roads, Trails and Areas," would require administrative units and Ranger Districts to produce motor vehicle use maps meeting national standards. Only the motor vehicle use map is required to implement and enforce designations. However, as soon as practicable, units should post route identification signs on routes designated for motor vehicle use. Route identification markers must correspond to route identifiers shown on the corresponding motor vehicle use map. Signing would have to comply with EM 7100-15.

FSM 7716.5, "Travel Management Orders," would be organized in three parts. FSM 7716.51, "Temporary Emergency Closures," would reiterate the requirement for temporary emergency closures from 36 CFR

212.52(b)(2) and E.O. 11644 when the responsible official determines that motor vehicle use is directly causing or will directly cause considerable adverse effects on public safety, soil, vegetation, wildlife habitat, or cultural resources. These closures would remain in effect until the responsible official determines that the adverse effects have been mitigated or eliminated and measures have been implemented to prevent future recurrence. FSM 7716.52, "Existing Orders," would direct responsible officials to review existing orders and update or rescind them if they duplicate or conflict with designations. FSM 7716.53, "New Orders," would direct responsible officials to avoid issuing orders that duplicate or conflict with the prohibition on motor vehicle use in 36 CFR 261.13. However, orders will still be needed to close routes designated for motor vehicle use on a temporary, emergency basis, such as during natural disasters or to protect public safety.

FSM 7716.54, "Enforcement," would reiterate that the motor vehicle use map is the primary tool for enforcing the prohibition at 36 CFR 261.13 and would provide further direction on measuring motor vehicle length, width, and distances established in designations for dispersed camping and big game retrieval.

FSM 7717, "Monitoring and Revision of Designations," would be organized into two sections. FSM 7717.1, "Monitoring of Motor Vehicle Use," would reiterate the requirement in 36 CFR 212.57 for responsible officials to monitor the effects of motor vehicle use. FSM 7717.2, "Revision of Designations," would reiterate that designations may be revised as needed to meet changing conditions (36 CFR 212.54) and would provide that any change in the status of a designated route that will last more than 1 year should be reflected on the corresponding motor vehicle use map.

FSM 7718, "Over-Snow Vehicle Use," would reiterate that responsible officials may allow, restrict, or prohibit over-snow vehicle use under 36 CFR 212.81. FSM 7718 would provide that restrictions or prohibitions on over-snow vehicle use may be implemented through orders issued under 36 CFR part 261, subpart B, or under 36 CFR 212.81 and 261.14. If 36 CFR part 212, subpart C, is used to restrict or prohibit over-snow vehicle use, the requirements governing designations in 36 CFR 212.52 through 212.57 would apply and the responsible official would have to publish an over-snow vehicle use map, separate from the motor vehicle use

map, displaying any restrictions or prohibitions on over-snow vehicle use.

Proposed Revisions to FSH 7709.55, the Travel Planning Handbook

The Forest Service proposes to rename FSH 7709.55, the "Transportation Planning Handbook," as "the Travel Planning Handbook." Chapter 10 would be titled "Travel Planning Process," Chapter 20 would be titled "Travel Analysis," and Chapter 30 would be titled "Engineering Analysis."

Chapter 10, "Travel Planning Process," would establish a six-step process for designation of roads, trails, and areas for motor vehicle use. The six steps of the route and area designation process would be:

1. Compile existing travel management direction.
2. Assemble resource and social data.
3. Use travel analysis to identify proposals for change.
4. Conduct necessary environmental analysis and decision making.
5. Identify designated routes and areas on a motor vehicle use map.
6. Implement, monitor, and revise.

In step one, the responsible official would compile existing travel management direction to serve as the starting point for travel planning. In step two, the responsible official would gather the information needed to analyze the forest transportation system and would engage the public and other relevant governmental entities to identify local resource and social issues, recreational opportunities, and the need for change in existing travel management direction. In step three, the responsible official would conduct travel analysis, which could result in specific proposals for changes to the forest transportation system (additions or deletions to the system of NFS roads and NFS trails on the administrative unit or Ranger District) and changes in travel management direction (changes to motor vehicle use or restrictions on motor vehicle use on the unit or District). In step four, the responsible official would conduct and document appropriate environmental analysis, including consideration of alternatives, and would make travel management decisions. In step five, the responsible official would identify designated routes and areas on a motor vehicle use map. In step six, the responsible official would monitor motor vehicle use on the unit or district and revise travel management decisions as necessary.

Chapter 20, "Travel Analysis," would incorporate into Forest Service directives the six-step process for travel analysis (which is the third step in the six-step process for designating routes

and areas) and other key provisions of FS-643, Roads Analysis:

Informing Decisions About Managing the National Forest Transportation System (August 1999).

The six steps of travel analysis are:

1. Setting up the analysis.
2. Describing the situation.
3. Identifying issues.
4. Assessing benefits, problems, and risks.
5. Describing opportunities and setting priorities.
6. Reporting.

In step one, the responsible official would establish the scale, scope, and depth of travel analysis and would identify who will conduct it. In step two, the responsible official would describe current environmental and social conditions. In step three, the responsible official would identify issues relevant to travel management decisions. In step four, the responsible official would analyze the benefits, problems, and risks associated with the forest transportation system. In step five, the responsible official would use the analysis conducted in step four to identify recommendations for change and proposed actions for purposes of environmental analysis. In step six, the responsible official would document the results of travel analysis.

Chapter 30, "Engineering Analysis," would incorporate into Forest Service directives the process for exercising and documenting engineering judgment contained in EM-7700-30, "Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads." Chapter 30 would require that travel management decisions involving motorized mixed use be informed by engineering analysis conducted by a qualified engineer. The analysis would involve a technical evaluation of road conditions and traffic and an analysis of potential mitigation measures regarding motorized mixed use. Depending on the complexity of the situation, the analysis would range from documenting engineering judgment to a comprehensive engineering report that would address many factors related to motorized mixed use, including mitigation. The analysis would be presented to the responsible official for a decision.

Regulatory Certifications

Environmental Impact

The proposed directives would provide policy and procedural guidance to agency officials implementing the travel management rule. Travel management decisions implementing

these proposed directives would include appropriate site-specific environmental analysis and public involvement. The proposed directives would have no effect on the ground until designations of roads, trails, and areas are completed at the field level, with opportunity for public involvement. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's conclusion is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

The proposed directives have been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that these proposed directives are not significant for purposes of E.O. 12866. These proposed directives would not have an annual effect of \$100 million or more on the economy, nor would they adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. These proposed directives would not interfere with any action taken or planned by another agency, nor would they raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, these proposed directives are not subject to OMB review under E.O. 12866.

Regulatory Flexibility Act Analysis

These proposed directives have been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). The proposed directives would not have any effect on small entities as defined by the Regulatory Flexibility Act. The proposed directives would require identification at the field level, with public input, of a designated system of roads, trails, and areas for motor vehicle use. The proposed directives would not directly affect small businesses, small organizations, and small governmental entities. The agency has determined that these proposed directives would not have a significant economic impact on

a substantial number of small entities pursuant to the Regulatory Flexibility Act because the directives would not impose recordkeeping requirements on them; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

These proposed directives have been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that these directives would not pose the risk of a taking of private property.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered these proposed directives under the requirements of E.O. 13132 on federalism, and has determined that the proposed directives conform with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, these proposed directives would not have Tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

These proposed directives have been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect the Energy Supply. It has been determined that these proposed directives would not constitute a significant energy action as defined in the E.O.

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 agency has assessed the effects of these proposed directives on State, local, and Tribal governments and the private sector. These proposed directives would 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.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

Therefore, for the reasons set out in this notice, the Forest Service proposes to amend FSM 2350, 7700, and 7710 and FSH 7709.55. The proposed directives are available for review on the Forest Service Web site at <http://www.fs.fed.us/recreation/programs/ohv>.

Dated: February 15, 2007.

Abigail R. Kimball,

Chief, Forest Service.

[FR Doc. E7–4261 Filed 3–8–07; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* April 8, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On January 12, 2007, the Committee for Purchase From People Who Are

Blind or Severely Disabled published notice (72 FR 1490, 1491) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Hydramax Hydration System:

NSN: 8465–00–NIB–0080—Replacement Reservoir, Alpha and Mustang;

NSN: 8465–00–NIB–0139—Mustang, Black;

NSN: 8465–00–NIB–0151—Mustang, Universal Camouflage;

NSN: 8465–00–NIB–0152—Mustang, Desert Camouflage;

NSN: 8465–00–NIB–0154—Alpha, High Visibility Orange;

NSN: 8465–00–NIB–0155—Alpha, Universal Camouflage.

Coverage: B-list—for (Broad Government Requirement) as aggregated by the General Services Administration.

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, TX.

Spices, Dry, Group II:

NSN: 8950–01–E60–9152—Ground Ginger;

NSN: 8950–01–E60–9155—Cayenne Pepper;

NSN: 8950–01–E61–0099—Taco Mix Seasoning;

NSN: 8950–01–E61–0100—Taco Mix Seasoning (Group II);

NSN: 8950–01–E61–0101—Taco Mix Seasoning (Group II);

NSN: 8950–01–E61–0102—Taco Mix Seasoning (Group II);

NSN: 8950–01–E61–0103—Cayenne Pepper;

NSN: 8950–01–E61–0104—Ginger Ground;

NSN: 8950–01–E61–0105—Ginger Ground;

NSN: 8950–01–E61–0106—Cayenne Pepper;

NSN: 8950–01–E61–0107—Cayenne Pepper;

NSN: 8950–01–E61–0108—Red Pepper.

Coverage: C-List for the requirements of Defense Supply Center Philadelphia (DSCP).

NPA: Continuing Developmental Services, Inc., Fairport, NY.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Administrative Services, Calexico Border Station, Port of Entry, Calexico, CA.

NPA: ARC-Imperial Valley, El Centro, CA.

Contracting Activity: Department of Homeland Security, Customs and Border Protection, Washington, DC.

Service Type/Location: Custodial Services, Federal Building, 555 Independence, Cape Girardeau, MO.

NPA: Cape Girardeau Community Sheltered Workshop, Inc., Cape Girardeau, MO.

Contracting Activity: GSA, PBS—Region 6, Kansas City, MO.

Service Type/Location: Custodial Services, Kastenmeir U.S. Courthouse, (120 North Henry Street), Madison, WI.

NPA: Madison Area Rehabilitation Centers, Inc., Madison, WI.

Contracting Activity: GSA, Public Buildings Service, Region 5, Chicago, IL.

Service Type/Location: Custodial Services, U.S. DOI—Bureau of Land Mgmt., (Eight Recreation Areas/Campgrounds), Bessemer Bend Rec Site, Golden Eye Rec Site, Government Bridge Site, Lodgepole Campground, Muddy Mountain Educational Kiosk, Poison Spider OHV Rec Site, Rim Campground, Trappers Route #1 Rec Site, Casper, WY.

NPA: Northwest Community Action Programs of Wyoming, Inc., Casper, WY.

Contracting Activity: U.S. DOI—Bureau of Land Mgmt., Denver, CO.

Deletions

On January 12, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR1491) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Holder, Card Label:

NSN: 9905–00–045–3624—Holder, Card Label;

NSN: 9905–00–045–3626—Holder, Card Label;

NSN: 9905–00–782–3768—Holder, Card Label.

NPA: Unknown.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, TX.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E7–4255 Filed 3–8–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: April 8, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose

is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Furniture Moving Services, U.S. Department of Agriculture—Forest Service, Region 8, 1720 Peachtree Road, NW., Atlanta, GA.

NPA: Bobby Dodd Institute, Inc.

Contracting Activity: U.S. Department of Agriculture—Forest Service, Atlanta, GA.

Service Type/Location: Maintenance/Custodial/Administrative Services, U.S. Department of Agriculture—Forest Service, Caribbean National Forest, Rio Grande, PR.

NPA: The Corporate Source, Inc., New York, NY.

Contracting Activity: U.S. Department of Agriculture, Forest Service, Cleveland, TN.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial

number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Perforator, Paper, Desk;

NSN: 7520–01–431–6246—Perforator, Paper, Desk.

NSN: 7520–01–431–6252—Perforator, Paper, Desk.

NPA: Foothill Workshop for the Handicapped, Inc., Pasadena, CA.
Contracting Activity: Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E7–4256 Filed 3–8–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Clarification of Scope of Procurement List Additions; 2007 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of April 1, 2007.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535–69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified

agency(ies). The lists below track changes to A-, B-, C-designations that occurred between December 1, 2006 and March 2, 2007. If not currently available, the products listed below as being included on the A-list will be available for purchase through the GSA Global Supply system and JWOD-authorized commercial distributors on or about April 1, 2007.

DATES: The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is April 1, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259

FOR FURTHER INFORMATION CONTACT: Emily A. Covey, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail cmtefedreg@jwod.gov.

Products moved from B-list to A-list:

7510–00–NIB–0633 Skilcraft Toner Cartridge

7510–00–NIB–0641 Skilcraft Toner Cartridge

7510–00–NIB–0642 Skilcraft Toner Cartridge

7510–00–NIB–0644 Skilcraft Toner Cartridge

7530–00–NIB–0679 Folders, Classification Pressboard

7530–00–NIB–0673 Folders, Classification Pressboard

7530–01–501–2688 Pads, Message

7520–00–NIB–1461 Pen, Gel Ink, Aristocrat

7530–00–NIB–0549 Folder Classification

7530–00–NIB–0551 Folder, Classification

7530–00–NIB–0555 Folder, Classification

7530–00–NIB–0660 CD/DVD Label Kit

7530–00–NIB–0688 CD Refills

Products moved from C-list to A-list:

None

Products moved from A-list to B-list:

None

Products moved from A-list to C-list:

None

Products moved from B-list to C-list:

None

Products moved from C-list to B-list:

None

The complete A-list is available at http://www.jwod.gov/jwod/p_and_s/alist2007.htm.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–4269 Filed 3–8–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[Order No. 1503]****Approval of Request for Manufacturing Authority (Wheel Assembly), Foreign-Trade Subzone 22N, Michelin North America, Inc., Monee, Illinois**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Illinois International Port District, grantee of Foreign-Trade Zone 22, has applied for manufacturing authority under zone procedures within Subzone 22N, at the Michelin North America, Inc., tire-distribution facility located in Monee, Illinois, to conduct wheel assembly (FTZ Docket 4–2006; filed 2/2/2006);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 7008, 2/10/06); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby approves the request for manufacturing authority related to wheel assembly, as described in the application and in the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of February 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E7–4286 Filed 3–8–07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[Docket 3–2007]****Review of Sourcing Change, Foreign-Trade Subzone 43D, Perrigo Company, Allegan, Michigan (Ibuprofen Products)**

Pursuant to the regulations of the Foreign-Trade Zones (FTZ) Board (the Board), a review has been initiated (under 15 CFR Sec. 400.28(a)(3)(iii)(A)) of changes in sourcing related to certain ibuprofen products at Foreign-Trade Subzone 43D, at the manufacturing facilities of the Perrigo Company (Perrigo), in Allegan, Michigan, which

produce a range of store-brand, over-the-counter (OTC) pharmaceutical products.

In May 2003, the Board filed an application from the City of Battle Creek, Michigan, grantee of FTZ 43, requesting special-purpose subzone status with certain manufacturing authority for Perrigo. The subzone application was approved by the Board on April 13, 2004 (Board Order 1326, 69 FR 21498, 4/21/04), including the manufacture under FTZ procedures of certain OTC pharmaceutical products containing ibuprofen, aspirin and acetaminophen. Specific to ibuprofen, Perrigo produces finished ibuprofen mixture and finished ibuprofen products (HTSUS headings 3003 and 3004, duty-free) using foreign-sourced active ingredient ibuprofen (HTSUS 2916.39.15, 6.5% duty rate). On products shipped to the U.S. market, the company is able to choose the duty rate during Customs entry procedures that applies to the finished ibuprofen mixture and products (duty-free) for the otherwise dutiable foreign active ingredient (6.5% duty rate) noted above (inverted tariff), as described in the application.

Perrigo has now notified the Board of additional sourcing of foreign active ingredient ibuprofen that it may manufacture into OTC ibuprofen products under zone procedures. In its original application, Perrigo had projected approximately \$450,000 (90 percent of its total FTZ savings) in annual inverted tariff savings for its OTC ibuprofen, acetaminophen and aspirin production. Perrigo's sourcing-change submission now projects up to an additional \$1.55 million in inverted tariff savings tied to the sourcing change for its OTC ibuprofen products.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the sourcing change, including its potential to cause "significant adverse effects" (15 CFR 400.28(a)(3)(iii)(A)), and report to the Board.

Public comment is invited from interested parties. Information submitted for the record generally should be in a non-proprietary format. If there is a need to submit business proprietary information, it should be appropriately marked and summarized or ranged (in the case of numerical data) in the public submission, which should be accompanied by a single business proprietary version.

Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for the receipt

of the public comment submissions is May 10, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period through May 25, 2007.

A copy of the sourcing-change submission will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230–0002. For further information, contact Diane Finver at Diane_Finver@ita.doc.gov or (202) 482–1367.

Dated: March 5, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–4284 Filed 3–8–07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[Order No. 1504]****Expansion of Foreign-Trade Zone 49; Newark, New Jersey**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, submitted an application to the Board for authority to expand FTZ 49 in the Newark area to include additional sites at the I-Port 12 industrial park (Site 7) in Carteret, the I-Port 440 industrial park (Site 8) in Perth Amboy, the Port Reading Business Park (Site 9) in Woodbridge, and, the Port Elizabeth Business Park (Site 10) in Elizabeth, within the Newark/New York Customs and Border Protection port of entry (FTZ Docket 23–2006; filed 6/14/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 35611, 6/21/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 49 is approved, subject to the FTZ Act and

the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project and a sunset provision for Sites 7 through 10 that would terminate authority for the sites on March 31, 2014, for any of the sites that have not been activated under FTZ procedures before that date.

Signed at Washington, DC this 28th day of February 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-4287 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9-2007]

Foreign-Trade Zone 38-Spartanburg County, South Carolina, Application for Subzone, Leiner Health Products LLC (Ibuprofen Products), Fort Mill, South Carolina

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status with manufacturing authority for certain ibuprofen products at the pharmaceutical manufacturing facility of Leiner Health Products, LLC (Leiner), located in Fort Mill, South Carolina. Leiner is a manufacturer of store-brand vitamin, mineral and nutritional supplements (VMS) and over-the-counter (OTC) pharmaceutical products. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 2, 2007.

The proposed subzone (1 building of 620,000 square feet of enclosed space on 27 acres) is located at 355 Crestmont Drive, in Fort Mill, South Carolina. The Leiner plant (600 permanent employees and 100-200 seasonal employees) manufactures, packages, and warehouses both solid-dose VMS and OTC pharmaceutical products.

Initially, Leiner is proposing to manufacture ibuprofen products under zone procedures at the plant. At the outset, inverted tariff zone savings will result from the production of finished

ibuprofen mixture (HTSUS 3003.90, duty-free) and finished ibuprofen products (HTSUS 3004.90, duty-free; up to 2.5 billion pills per year) using foreign-sourced active ingredient ibuprofen (HTSUS 2916.39, 6.5% duty rate).

The application also indicates the possibility of producing bulk acetaminophen mixture (HTSUS 3003.90, duty-free) and finished acetaminophen products (HTSUS 3004.90, duty-free), which the company may produce at the plant in the future, using foreign-sourced active ingredient acetaminophen (HTSUS 2924.29, 6.5% duty rate). (New major activity for this product would require review by the FTZ Board.) Leiner also plans to admit other foreign inputs under FTZ procedures, but will make customs entry before manufacture into products at the Fort Mill facility or before distribution to other Leiner U.S. manufacturing facilities.

For Leiner's ibuprofen-related production, zone procedures would exempt the company from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to choose the duty rate during Customs entry procedures that applies to finished ibuprofen mixture and products (duty-free) for the otherwise dutiable foreign active ingredient inputs (6.5% duty rate) noted above (inverted tariff).

Leiner would also obtain duty deferral savings and be able to avoid duty on foreign inputs which become scrap/waste (approximately 5% scrap and waste rate). Additionally, Leiner may realize logistical/procedural and other benefits from subzone status. The application projects up to \$642,000 in total FTZ savings (some 65% of which are tied to the inverted tariff on ibuprofen), which it indicates would help improve the international competitiveness of Leiner's Fort Mill plant. In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Information submitted for the record generally should be in a non-proprietary format. If there is a need to submit business proprietary information, it should be appropriately marked and summarized or ranged (in the case of numerical data) in the public submission, which should be accompanied by a single business proprietary version.

Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address

below. The closing period for the receipt of the public comment submissions is May 10, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period through May 25, 2007.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 521 East Morehead Street, Suite 435, Charlotte, NC 28217; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230-0002.

For further information, contact Diane Finver at Diane_Finver@ita.doc.gov or (202) 482-1367.

Dated: March 5, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-4285 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-801, A-412-801]

Ball Bearings and Parts Thereof from Italy and the United Kingdom: Initiation of Antidumping Duty Changed-Circumstances Reviews

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

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of changed-circumstances reviews of the antidumping duty orders on ball bearings and parts thereof from Italy and the United Kingdom pursuant to section 751(b) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Kristin Case at (202) 482-3174 or Richard Rimlinger at (202) 482-4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published antidumping duty orders on ball bearings and parts thereof from Italy and the United Kingdom on May 15, 1989. See *Antidumping Duty Orders: Ball Bearings*

and Cylindrical Roller Bearings and Parts Thereof From Italy, 54 FR 20903 (May 15, 1989), and Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom, 54 FR 20910 (May 15, 1989).

On August 11, 2000, the Department revoked the antidumping duty order on ball bearings and parts thereof from Italy with respect to Somecat S.p.A. (Somecat). See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219 (August 11, 2000).¹ On July 12, 2001, the Department revoked the antidumping duty order on ball bearings and parts thereof from the United Kingdom with respect to SNFA UK. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 66 FR 36551 (July 12, 2001).

On January 9, 2007, Somecat S.p.A., a subsidiary of Societe Nouvelle de Fabrication Aeronautique S.A.S.U. (SNFA), and SKF Industries S.p.A. (SKF Italy) notified the Department of a change in ownership of SNFA.² On January 26, 2007, SNFA Bearings Ltd. (SNFA UK), a subsidiary of SNFA, and SKF UK Ltd. filed a similar notification. Specifically, Somecat, SNFA UK, SKF Italy, and SKF UK notified the Department that, on July 4, 2006, through its subsidiary SKF Holding France S.A., AB SKF purchased all outstanding shares of SNFA. Somecat and SKF Italy stated that, because Somecat and SKF Italy will continue to operate as separate and distinct businesses, Somecat is not the

successor-in-interest to SKF Italy nor is SKF Italy a successor-in-interest to the pre-acquisition Somecat. Accordingly, SKF Italy and Somecat asserted, it would be inappropriate to assign the SKF Italy cash-deposit rate to entries of subject merchandise from Somecat. SNFA UK and SKF UK stated that, because SNFA UK and SKF UK will continue to operate as separate and distinct businesses until a planned relocation of SNFA UK's manufacturing facilities occurs later in 2007, SNFA UK is not the successor-in-interest to SKF UK nor is SKF UK the successor-in-interest to the pre-acquisition SNFA UK. Accordingly, SKF UK and SNFA UK asserted, it would be inappropriate to assign the SKF UK cash-deposit rate to entries of subject merchandise from SNFA UK.

We did not receive any other comments.

Scope of the Order

The products covered by these orders are ball bearings and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

As a result of recent changes to the Harmonized Tariff Schedule, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTS item numbers: 8708.30.5090, 8708.40.7500, 8708.50.7900, 8708.50.8900, 8708.50.9150, 8708.50.9900, 8708.80.6590, 8708.94.75, 8708.95.2000, 8708.99.5500, 8708.99.68, and 8708.99.8180.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions

of the scope of these orders remain dispositive.

For a listing of scope determinations which pertain to the order on ball bearings and parts thereof, see the Scope Determination Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated March 2, 2006. The Scope Memorandum is on file in the Central Records Unit (CRU), main Commerce building, Room B-099, in the General Issues record (A-100-001) for the 2004/2005 administrative reviews of the orders on antifriction bearings.

Initiation of Changed-Circumstances Reviews

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed-circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Although SKF Italy, SKF UK, Somecat, and SNFA UK assert that conduct of changed-circumstances reviews for the Italy and United Kingdom proceedings would be premature, we disagree and determine that the information submitted demonstrates changed circumstances sufficient to warrant reviews of the antidumping duty orders on ball bearings and parts thereof from Italy and the United Kingdom. For example, SKF Italy and Somecat acknowledge a degree of overlapping production and state that, in instances where both utilize a common supplier, attempts have been made to renegotiate prices based on their combined purchasing power. Further, SKF UK's and SNFA UK's statement that a plan to relocate SNFA UK's production facilities is being developed indicates that production planning and production management decisions may have changed as a result of AB SKF's purchase of SNFA. Finally, SKF Italy, SKF UK, Somecat, and SNFA UK state that SNFA Group management now reports to SKF Group management. Accordingly, we cannot conclude, as requested by SNFA UK and SKF UK, that SNFA UK is not the successor-in-interest to SKF UK nor is SKF UK the successor-in-interest to the pre-acquisition SNFA UK. Similarly, we cannot conclude, as requested by Somecat and SKF Italy, that Somecat is not the successor-in-interest to SKF Italy nor is SKF Italy a successor-in-interest to the pre-acquisition Somecat. Therefore, in accordance with section 751(b)(1) of the Act, the Department is initiating changed-circumstances

¹ The Department had determined previously that Somecat bearings are marked "SNFA Italy" (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999), and accompanying Issues and Decision Memorandum at Comment 1 in Section 11.B).

² In response to a request by Societe Nouvelle de Fabrication Aeronautique S.A.S.U., SKF France S.A., and SKF Aerospace France S.A.S., the Department has initiated a changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from France. See *Ball Bearings and Parts Thereof From France: Initiation of an Antidumping Duty Changed-Circumstances Review*, 72 FR 9513 (March 2, 2007).

reviews of the antidumping duty orders on ball bearings and parts thereof from Italy and the United Kingdom.

Therefore, in accordance with 19 CFR 351.221(b)(2) and (4) and 19 CFR 351.221(c)(3)(i), we will issue questionnaires requesting factual information for the reviews and will publish a notice of preliminary results of the antidumping duty changed-circumstances reviews in the **Federal Register**. The notice will set forth the factual and legal conclusions upon which our preliminary results are based. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the reviews. During the course of these antidumping duty changed-circumstances reviews, we will not change the cash-deposit requirements for the subject merchandise. The cash-deposit rates will be altered, if warranted, pursuant only to the final results of these reviews.

This notice of initiation is in accordance with section 751(b)(1) of the Act and (d), and 19 CFR 351.221(b)(1).

Dated: March 5, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent To Rescind 2004/2006 New Shipper Review

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

SUMMARY: The U.S. Department of Commerce ("the Department") is currently conducting the 2004/2006 administrative review and a 2004/2006 new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China ("PRC"). The period of review ("POR") for both the administrative and new shipper reviews is July 14, 2004, through January 31, 2006. We preliminarily determine that sales have not been made below normal value ("NV") with respect to certain exporters subject to the administrative review. We also have preliminarily found that the

single sales made by Asian Seafoods (Zhanjiang) Co., Ltd. ("Asian Seafoods") and Hai Li Aquatic Co., Ltd. Zhao An, Fujian ("Hai Li"), the new shipper, were not *bona fide*. Further, we are preliminarily applying adverse facts available to Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. ("Meizhou") and Shantou Red Garden Foodstuff/Shantou Red Garden Food Processing Co. (collectively, "Red Garden"). If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-1442 or (202) 482-1386, respectively.

Background

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005).

On February 22, 2006, Hai Li, in accordance with 19 CFR 351.214(c), requested a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the PRC, which has a February anniversary month. On March 23, 2006, the Department initiated a new shipper review of Hai Li covering the period July 16, 2004, through January 31, 2006. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Initiation of New Shipper Review*, 71 FR 14681 (March 23, 2006).

On February 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended*

Investigation; Opportunity To Request Administrative Review, 71 FR 5239 (February 1, 2006).

The Department received timely requests from the Ad Hoc Shrimp Trade Action Committee and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from the PRC covering 164 companies. However, on March 1, 2006, the Ad Hoc Shrimp Trade Action Committee withdrew its request for administrative review on one company. The Department, therefore, initiated an administrative review on the remaining 163 companies. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 71 FR 17813 (April 7, 2006) ("Initiation Notice").

The *Initiation Notice* specified that responses to the Department's quantity and value ("Q&V") questionnaire were due by April 28, 2006. Additionally, the Department has a rebuttable presumption that a single dumping margin is appropriate for all exporters in a non-market economy ("NME") country. However, the Department stated that it would consider information submitted in response to the Department's separate rate certifications/applications in order to determine whether or not respondents qualify for a separate rate. The *Initiation Notice* indicated that responses to the Department's separate rate certification were due on April 28, 2006, and responses to the Department's separate rate application were due May 19, 2006.

On March 17, 2006, the Department received copies of CBP documents pertaining to the entry of certain frozen warmwater shrimp from the PRC, exported by Hai Li during the POR, from CBP. *See Memorandum to the File through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Michael Quigley, Case Analyst, AD/CVD Operations, Office 9, regarding Certain Frozen Warmwater Shrimp from the People's Republic of China: Entry Package(s) from U.S. Customs and Border Protection ("CBP")* (December 11, 2006). On March 21, 2006, the Department issued Hai Li its antidumping duty questionnaire sections A, C, and D.

On April 14, 2006, Hai Li agreed to waive the time limits of its new shipper review of certain frozen warmwater shrimp from the PRC, pursuant to 19 CFR 351.214(j)(3), and agreed to have its

review conducted concurrently with the 2004/2006 administrative review. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Reviews in Conjunction with Administrative Review*, 71 FR 26454 (May 5, 2006). On April 25, 2006, Hai Li submitted its response to section A of the Department's questionnaire. On May 11, 2006, Hai Li submitted its response to section C and D of the Department's questionnaire, and the Department issued Hai Li its supplemental section A questionnaire. Hai Li responded to the Department's supplemental section A questionnaire on June 1, 2006.

Of the 163 named firms for which the Department initiated an administrative review, and consistent with the guidelines established in the *Initiation Notice*, on April 28, 2006, 28 firms responded to the Department's Q&V questionnaire. Of these 28 firms, 16 indicated they had shipments of subject merchandise during the POR that were subject to review and 14 firms submitted their separate rate certification. Also, on May 19, 2006, three firms submitted their separate rate application. One of the three, Fuqing Minhua Trade Co., Ltd., an affiliate of Yelin, was not listed in the *Initiation Notice*; however it submitted a separate rate application. Furthermore, on May 19, 2006, the Ad Hoc Shrimp Trade Action Committee withdrew its request for an administrative review of one company: Polypro Plastics.

On May 22, 2006, the Department sent a letter to the remaining firms that did not respond to the Department's Q&V questionnaire and separate rate certification/application providing them with another opportunity to submit the requested information (*i.e.*, by June 5, 2006). *See Memorandum to the File, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, regarding Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Letters to Interested Parties Regarding Final Opportunity to Submit Quantity and Value Questionnaire Response and Separate Rate Applications/Certifications* (May 22, 2006); *see also* Letter to Whom It May Concern, from Christopher D. Riker, Program Manager, Office 9, Import Administration, regarding 2004–2006 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People's Republic of China (May 22, 2006) (“Q&V Follow-up Letter”). On May 1, 2006, and May 10, 2006, one company and 14 companies, respectively, filed a letter with the

Department indicating they had no shipments during the POR. On June 5, 2006, in response to the Department's May 22, 2006, letter, eight more companies filed letters indicating they had no shipments of subject merchandise during the POR for a total of 44 responses (including statements of no shipments) to the Department's Q&V questionnaire.¹

Respondents

Of the 163 named firms for which the Department initiated an administrative review, nine companies/corporate groupings (which consisted of sixteen individually initiated companies, some of which are affiliated, yielding nine potential respondents) had both an active request for review, an appropriately submitted Q&V questionnaire response, and shipments of subject merchandise. Thus, nine companies/corporate groupings were

¹ The following 44 companies/corporate groupings (*i.e.*, 52 individual firms) responded to the Department's Q&V questionnaire: Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., Shantou Red Garden Foodstuff/Shantou Red Garden Food Processing Co., Yelin Enterprise Co., Ltd., Hong Kong, Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Shantou Yelin Frozen Seafood Co. Ltd., Fuqing Yihua Aquatic Products Co., Ltd., Savvy Seafood Inc., Hai Li Aquatic Co., Ltd., Zhao An, Fujian, Asian Seafoods (Zhanjiang) Co., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (“Allied Pacific (Zhanjiang)”), Allied Pacific (H.K.) Co. Ltd. (“Allied Pacific HK”), Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific Food (Dalian) Co. Ltd., King Royal Investments, Ltd. (collectively “Allied Pacific”), Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhoushan Huading Seafood Co., Ltd., Dalian FTZ Sea-Rich International Trading Co., Ltd., Beihai Zhengwu Industry Co., Ltd., Shantou Long Feng Foodstuffs Co., Shantou Yuexing Enterprise Company, Shantou Ruiyuan Industry Co., Ltd., Shantou Freezing Aquatic Product Food Stuffs Co., Shantou Ocean Freezing Industry and Trade General Corporation, Shantou Jinhang Aquatic Industry Co., Ltd., Dongri Aquatic Products Freezing Plants, Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng/Shantou City Qiaofeng Group, Shantou Wanya Food Factory Co., Ltd., Shantou Shengping Oceanstar Business Co., Ltd., Pingyang Xinye Aquatic Products Co., Ltd., Taizhou Zhonghuan Industrial Co., Ltd., Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd., Zhejiang Daishan Baofa Aquatic Products Co., Ltd., Zhejiang Evernew Seafood Co., Ltd., Zhejiang Zhenlong Foodstuffs Co., Ltd., Zhoushan Cereals, Oils, and Foodstuffs Import and Export Co., Ltd., Zhoushan Diciyuan Aquatic Products, Zhoushan Haichang Food Co., Zhoushan Industrial Co., Ltd., Zhoushan Putuo Huafa Sea Products Co., Ltd., Zhoushan Xifeng Aquatic Co., Ltd., Zhoushan Zhenyang Developing Co., Ltd., Zhoushan Guotai Fisheries Co., Ltd., Yanti Wei-Cheng Food Co., Ltd., Hainan Fruit Vegetable Food Allocation Co. Ltd., Zhanjiang Bobogo Ocean Co., Ltd., Baofa Aquatic Products Co., Ltd., Guangzhou Lingshan Aquatic Products Co. Ltd., Spectrum Plastics, Ruin Huasheng Aquatic Products, and Sealord North America. Two additional companies, Fuqing Minhua Trade Co., Ltd., and Ocean Duke Corporation, responded to the Department's Q&V questionnaire as affiliates of companies named in the *Initiation Notice*.

considered in the selection of respondents for this review. On June 16, 2006, the Department selected Meizhou, Red Garden, and Yelin Enterprise Co. Hong Kong and its affiliates (collectively “Yelin”) as mandatory respondents. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, AD/CVD Operations, Import Administration, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents* (June 16, 2006).

The Department sent its antidumping questionnaire to Meizhou, Red Garden, and Yelin on June 20, 2006. In the questionnaire, the Department requested that the three firms provide a response to section A of the Department's questionnaire by July 11, 2006, and sections C and D of the questionnaire by July 27, 2006.

On July 6, 2006, the Ad Hoc Shrimp Trade Action Committee withdrew its request for an administrative review of the following 36 companies: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng); Chengai Nichi Lan Foods Co., Ltd.; Citic Heavy Machinery; Dalian Ftz Sea-Rich International Trading Co., Ltd.; Dongri Aquatic Products Freezing Plants; Fuqing Dongwei Aquatic Products Industry Co. Ltd.; Gallant Ocean (Liangjiang) Co. Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd.; Jinfu Trading Co., Ltd.; Kaifeng Ocean Sky Industry Co., Ltd.; Leizhou Zhulian Frozen Food Co., Ltd.; Pingyang Xinye Aquatic Products Co. Ltd.; Savvy Seafood Inc.; Shanghai Taoen International Trading Co., Ltd.; Shantou Freezing Aquatic Product Food Stuff Co.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.); Shantou Ruiyuan Industry Co., Ltd.; Shantou Shengping Oceanstar Business Co. Ltd.; Shantou Wanya Food Factory Co. Ltd.; Shantou Yuexing Enterprise Company; Xuwen Hailang Breeding Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhangjiang Bobogo Ocean Co., Ltd.; Zhangjiang Newpro Food Co., Ltd.; Zhanjiang Go-Harvest Aquatic Products Co., Ltd.; Zhanjiang Runhai Foods Co., Ltd.; Zhanjiang Universal Seafood Corp; Zhejiang Cereals, Oils, & Foodstuffs Import & Export Co., Ltd.; Zhoushan Cereals, Oils, and Foodstuffs Import and

Export Co., Ltd.; Zhoushan Diciyuan Aquatic Products; Zhoushan Lizhou Fishery Co., Ltd.; and Zhoushan Xifeng Aquatic Co., Ltd.

In turn, on July 31, 2006, the Department issued a notice of partial rescission for the 36 above-referenced companies, as well as Polypro Plastics, for whom the Department initiated, in part, the first administrative review of certain frozen warmwater shrimp from the PRC. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Partial Rescission of the First Administrative Review*, 71 FR 43107 (July 31, 2006) (“*Rescission Notice*”).

On July 10, 2006, Meizhou submitted its response to section A of the Department's questionnaire. On July 11, 2006, Asian Seafoods submitted a voluntary response to section A of the Department's questionnaire.

On July 12, 2006, Zhanjiang Regal Integrated Marine Resources Co., Ltd. (“Zhanjiang Regal”) submitted a letter indicating it had only one POR shipment of subject merchandise which was already subject to a new shipper review. *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 70362 (December 4, 2006) (“*Zhanjiang Regal New Shipper Final Results*”).

On July 17, 2006, counsel for Red Garden filed a letter, in lieu of its section A response, stating that it had decided not to answer the questionnaires in this administrative review. *See Letter to the U.S. Department of Commerce, from Red Garden, regarding Frozen Warmwater Shrimp from the People's Republic of China* (July 17, 2006) (“*Red Garden Withdrawal*”). Because Red Garden indicated that it did not intend to respond to the Department's questionnaires in this administrative review, we determined to individually review Asian Seafoods in its stead, pursuant to section 782(a) of the Tariff Act of 1930, as amended (“the Act”). *See Memorandum to James C. Doyle, Director, Office 9, AD/CVD Operations, Office 9, through Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, Office 9, from Erin C. Begnal, Senior Case Analyst, AD/CVD Operations, Office 9, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Additional Mandatory Respondent* (July 26, 2006).

On July 18, 2006, Yelin submitted its response to section A of the Department's questionnaire. On July 25, 2006, Zhanjiang Regal submitted a letter

requesting the administrative review of the company's sales be rescinded as they were already subject to an ongoing new shipper review. On July 25, 2006, Hai Li responded to the Department's July 6, 2006, second supplemental questionnaire. On July 27, 2006, Asian Seafoods submitted its response to sections C and D of the Department's questionnaire.

On August 3, 2006, and September 5, 2006, the Department invited parties to submit comments on the selection of a surrogate country and to submit publicly available information for purposes of calculating normal value. *See Letter to “All Interested Parties” from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, regarding 2004/2006 Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China (“PRC”)* (August 3, 2006); *see also Letter to “All Interested Parties” from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, regarding Antidumping Duty New Shipper and Administrative Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China (7/16/04–1/31/06)* (September 5, 2006) (collectively, “*PAI/Surrogate Country Letters*”).

On August 10, 2006, Meizhou submitted its response to sections C and D of the Department's questionnaire. On August 11, 2006, the Department issued a supplemental section A questionnaire to Asian Seafoods and Yelin. On August 14, 2006, Yelin submitted its response to sections C and D of the Department's questionnaire.

On August 16, 2006, the Department issued a memorandum which indicated that data from CBP corroborated the statements of certain companies which reported making no shipments of subject merchandise during the POR. *See Memorandum to the File, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, regarding 2004/2006 Administrative review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Intent to Rescind Administrative Review, in Part* (August 16, 2006) (“*Intent to Rescind Memo*”). Therefore, pursuant to 19 CFR 351.213(d)(3), the Department indicated that it intended to rescind this administrative review with respect to: Baofa Aquatic Products Co., Ltd.; Guangzhou Lingshan Aquatic Products; Ruian Huasheng Aquatic Products; Sealord North America; Shantou City Qiaofeng Group; Shantou Ocean Freezing Industry and Trade General Corporation; Spectrum Plastics; Taizhou Zhonghuan Industrial Co., Ltd.;

Zhejiang Daishan Baofa Aquatic Products Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Zhenlong Foodstuffs Co., Ltd.; Zhoushan Guotai Aquatic Products Co., Ltd. (AKA Zhoushan Guotai Fisheries Co., Ltd.); Zhoushan Haichang Food Co.; Zhoushan Industrial Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd. Yantai Xinlai Trade also submitted a letter of no shipments, on July 13, 2006, to the Department. As we found no information to contradict this statement, we intend to rescind the administrative review with respect to Yantai Xinlai Trade as well.

The Department also indicated that it was unable to directly serve certain companies with the *Q&V Follow-up Letter*. *Id.* The Department contacted petitioners in order to ascertain accurate addresses, but petitioners were unable to provide additional contact information. *See, Letter to the Department of Commerce, from the Ad Hoc Shrimp Trade Action Committee, regarding Certain Frozen Warmwater Shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam: Request for Administrative Reviews* (March 21, 2006). Therefore, the Department informed parties that it intended to rescind the review with respect to these companies, in accordance with our practice. *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26457 (May 5, 2006) (“*Rebar from Turkey*”). These companies were: Allied Pacific Food; Allied Pacific Aquatic Products (Zhongshan) Co., Ltd.; Dhin Foong Trdg; Dongri Aquatic Products Freezing Plants Shengping; Dongshan Xinhefa Food; Evergreen Aquatic Product Science and Technology; Formosa Plastics; Fuchang Trdg; Fuqing City Dongyi Trdg; Fuqing Dongyi Trading; Fuqing Fuchang Trading; Fuqing Longwei Aquatic Foodstuff; Fuqing Xuhu Aquatic Food Trdg; Gaomi Shenyuan Foodstuff; Guangxi Lian Chi Home Appliance Co; I T Logistics; Juxian Zhonglu Foodstuffs; Logistics Harbour Dock; Longwei Aquatic Foodstuff; Master International Logistics; Nichi Lan Food Co. Ltd. Chen Hai; P&T International Trading; Perfection Logistics Service; Phoenix Seafood; Putuo Fahua Aquatic Products Co., Ltd.; Qingdao Dayang Jian Foodstuffs; Qinhuangdao Jiangxin Aquatic Food; Seatrade International; Second Aquatic Food; Second Aquatic Foodstuffs Fty; Shandong Chengshun

Farm Produce Trd; Shandong Sanfod Group; Shantou Junyuan Pingyuan Foreign Trading; South Bay Intl; Taizhou Lingyang Aquatic Products Co., Ltd.; Tianhe Hardware & Rigging; Xiamen Sungiven Imports & Exports; Yantai Guangyuan Foods Co; Yantai Xuehai Foodstuffs; Yelin Frozen Seafood Co.; Zhanjiang CNF Sea Products Engineering Ltd; Zhanjiang Shunda Aquatic Products; Zhejiang Zhongda; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhoushan Guangzhou Aquatic Products Co., Ltd.; Zhoushan International Trade Co., Ltd.; Zhoushan Provisions & Oil Food Export and Import Co., Ltd.; Zhoushan Xi'an Aquatic Products Co., Ltd.; and ZJ CNF Sea Products Engineering Ltd. The Department was also unable to directly serve the following companies with the *Q&V Follow-up Letter*, which were not included in the *Intent to Rescind Memo*: Fuqing Chaohui Aquatic Food Co. Ltd., Fuqing Chaohui Aquatic Food Trdg., Hainan Jiadexin Aquatic Products Co., Ltd., Meizhou Aquatic Products,² Round the Ocean Logistics, Shantou Sez Xuhua Fastness Freeze Aquatic Factory, Zhanjiang Fuchang Aquatic Products, and Zhanjiang Jebshin Seafood Limited. Despite further research, the Department was unable to ascertain viable address information for these companies. Therefore, the Department also intends to rescind the review with respect to these companies.

On August 16, 2006, Shantou City Qiaofeng Group submitted a letter indicating that it is the same company as Chaoyang Qiaofeng Group Co., Ltd., a company for which the Department rescinded the administrative review. *See Rescission Notice*.

On August 17, 2006, the Department issued a supplemental section A questionnaire to Meizhou.

On August 25, 2006, the Department extended the deadline for the preliminary results of review by 120 days, until February 28, 2007. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First*

² On August 18, 2006, the Department was informed by Meizhou that it was doing business as Meizhou Aquatic Products, Meizhou Aquatic, and Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., and that the companies were one-and-the-same. *See Letter to the Department*, from Meizhou, regarding *Certain Frozen Warmwater Shrimp from the Peoples Republic of China (PRC)* (August 18, 2006). However, because Meizhou withdrew from the administrative review, Meizhou did not substantiate that these companies were the same entity. Therefore, the Department considers these three companies to be independent entities.

Administrative Reviews and New Shipper Reviews, 71 FR 50387 (August 25, 2006).

On September 1, 2006, Yelin and Asian Seafoods responded to the Department's supplemental section A questionnaires. On September 6, 2006, Meizhou submitted its response to the Department's supplemental section A questionnaire.

On September 14, 2006, the Ad Hoc Shrimp Trade Action Committee submitted criteria for invoking the multinational corporation ("MNC") provision for Yelin, and on September 26, 2006, Yelin submitted a response.

On October 6, 2006, the Department issued a supplemental section C and D questionnaire response to Meizhou, and on October 12, 2006, the Department issued a supplemental questionnaire to Yelin. On October 26, 2006, the Department issued its second supplemental questionnaire to Asian Seafoods. On October 27, 2006, the Ad Hoc Shrimp Trade Action Committee responded to Yelin's September 26, 2006, MNC submission.

On November 1, 2006, the Department rejected Meizhou's October 27, 2006, questionnaire response pursuant to 19 CFR 351.304(b). The Department, however, provided Meizhou with an opportunity to correct the filing and to submit the requested information. On November 9, 2006, Yelin submitted its response to the Department's October 12, 2006, questionnaire. On November 6, 2006, Meizhou withdrew from the administrative review. *See Letter to the U.S. Department of Commerce*, from Meizhou, regarding *Certain Frozen Warmwater Shrimp from the People's Republic of China: Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., Shantou* (November 6, 2006) ("*Meizhou Withdrawal*"). On November 24, 2006, Asian Seafoods submitted its response to the Department's second supplemental questionnaire. On November 27, 2006, Hai Li submitted its response to the Department's third supplemental questionnaire dated November 3, 2006.

On November 30, 2006, Asian Seafoods, Allied Pacific, and Hai Li submitted publicly available information for use in the calculation of normal value in the administrative and new shipper reviews. Also, Yelin, on November 30, 2006, and the Ad Hoc Shrimp Trade Action Committee, on December 1, 2006, December 21, 2006, and January 19, 2007, submitted publicly available information for use in the calculation of normal value in the administrative review.

On December 1, 2006, and December 6, 2006, the Department issued its

verification outlines to Asian Seafoods and Hai Li, respectively. The Department conducted verification of the responses of Asian Seafoods from December 8 through 10, 2006, and Hai Li from December 13 through 15, 2006. On December 8, 2006, Asian Seafoods submitted its minor corrections presented at the commencement of verification.

On December 13, 2006, the Department requested documentation supporting Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.'s ("Evergreen") and Zhoushan Huading Seafood Co., Ltd.'s ("Huading") April 28, 2006, separate rate certifications. On December 29, 2006, Evergreen submitted its separate rate supporting documentation.

On January 8, 2007, the Department issued a verification outline to Yelin, Fuqing Yihua Aquatic Products Co., Ltd. ("Fuqing Yihua"), and Ocean Duke Corporation ("Ocean Duke"), affiliates of Yelin. The Department conducted verification of Yelin's responses from January 15 through 16, 2007, at Fuqing Yihua, from January 22 through 23, 2007, at Yelin, and from January 25 through 26, 2007, at Ocean Duke. On January 11, 2007, the Department issued a verification outline to Huading, and began verification of its separate rate responses on January 18, 2007. *See Memorandum to the File*, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Trade Compliance Analysts, AD/CVD Operations, Office 9, regarding *Verification of the Sales and Factors Response of Zhoushan Huading Seafood Co., Ltd. in the Antidumping Duty Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China* (February 28, 2007). However, on January 18, 2007, Huading withdrew from verification and the administrative review.

On January 23, 2007, the Department published a correction to the scope of the order in which it clarified that the scope does not cover warmwater shrimp in non-frozen form. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007). On February 13, 2006, the Department issued a separate rate supplemental questionnaire to Evergreen. On February 20, 2007, Evergreen submitted its response to the Department's separate rate supplemental questionnaire.

On February 28, 2007, the Department released the verification reports for Asian Seafoods, Hai Li, Zhoushan Huading and Yelin and its affiliates

Fuqing Yihua Aquatic Food Co., Ltd. and Ocean Duke Corporation. See Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Scot T. Fullerton and Prentiss Lee Smith, Trade Compliance Analysts, AD/CVD Operations, Office 9, regarding *Verification of the Sales and Factors Response of Asian Seafoods (Zhanjiang) Co., Ltd. in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China* (February 28, 2007) ("Asian Seafoods Verification Report"); Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Scot T. Fullerton and Prentiss Lee Smith, Trade Compliance Analysts, AD/CVD Operations, Office 9, regarding *Verification of the Sales and Factors Response of Hai Li Aquatic Co., Ltd. in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp From the People's Republic of China* (February 28, 2007) ("Hai Li Verification Report"); Memorandum to the File, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, and Erin C. Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding *Verification of the Separate Rate Certification of Zhoushan Huading Seafood Co., Ltd. in the 2004/2006 Antidumping Duty Order of Certain Frozen Warmwater Shrimp from the People's Republic of China* (February 28, 2007) ("Huading Verification Report"); see also Memorandum to the File, from Christopher D. Riker, Program Manager, Office 9, and Erin Begnal, Senior International Trade Compliance Analyst, Office 9, regarding *Verification of the Factors of Production Responses of Fuqing Yihua Aquatic Products Co., Ltd., in the Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China* (February 28, 2007); Memorandum to the File, from Christopher D. Riker, Program Manager, Office 9, and Erin Begnal, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9 regarding

Verification of the Sales Response of Ocean Duke Corporation in the Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (February 28, 2007) (collectively, "Yelin Group Verification Reports").

Surrogate Country and Factors

As previously stated, on August 3, 2006, and September 5, 2006, the Department provided parties an opportunity to submit publicly available information ("PAI") on surrogate countries and values for consideration in these preliminary results. As previously indicated, the Department received comments on November 30, 2006, December 1, 2006, December 21, 2006, and January 19, 2007.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce

are included in the scope of this investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Verification

On July 17, 2006, the Ad Hoc Shrimp Trade Action Committee requested that the Department conduct verification of the data submitted by all of the firms for which the Department initiated an administrative review, as well as Hai Li. However, due to the Department's

³ Tails in this context means the tail fan, which includes the telson and the uropods.

resource constraints in conducting these reviews, we only selected Asian Seafoods, Hai Li, Yelin, and Huading for verification, pursuant to section 782(i)(2) of the Act and 19 CFR 351.307.

For the administrative and new shipper review respondents that we did verify, we used standard verification procedures, including on site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. For a further discussion, see the Asian Seafoods Verification Report, the Hai Li Verification Report, the Yelin Group Verification Reports, and the Huading Verification Report.

Preliminary Partial Rescission of 2004/2006 Administrative Review

Several companies indicated they did not export certain frozen warmwater shrimp to the United States during the POR. In order to corroborate these submissions, we reviewed PRC certain frozen warmwater shrimp shipment data maintained by CBP, and found no discrepancies with the statements made by these firms.

Therefore, for the reasons mentioned above, we are preliminarily rescinding the administrative review with respect to: Baofa Aquatic Products Co., Ltd.; Guangzhou Lingshan Aquatic Products; Ruian Huasheng Aquatic Products; Sealord North America; Shantou Ocean Freezing Industry and Trade General Corporation; Spectrum Plastics; Taizhou Zhonghuan Industrial Co., Ltd.; Yantai Xinlai Trade; Zhejiang Daishan Baofa Aquatic Products Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Zhenlong Foodstuffs Co., Ltd.; Zhoushan Guotai Aquatic Products Co., Ltd. (AKA Zhoushan Guotai Fisheries Co., Ltd.); Zhoushan Haichang Food Co.; Zhoushan Industrial Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd. because each reported having made no shipments of subject merchandise during the POR, and the Department found no information to indicate otherwise.

The Department is also preliminarily rescinding the administrative review with respect to: Allied Pacific Food; Allied Pacific Aquatic Products (Zhongshan) Co., Ltd.;⁴ Dhin Foong Trdg; Dongri Aquatic Products Freezing Plants Shengping; Dongshan Xinhefa Food; Evergreen Aquatic Product Science and Technology; Formosa

Plastics; Fuchang Trdg; Fuqing City Dongyi Trdg; Fuqing Chaohui Aquatic Food Co. Ltd.; Fuqing Chaohui Aquatic Food Trdg; Fuqing Dongyi Trading; Fuqing Fuchang Trading; Fuqing Longwei Aquatic Foodstuff; Fuqing Xuhu Aquatic Food Trdg; Gaomi Shenyuan Foodstuff; Guangxi Lian Chi Home Appliance Co; Hainan Jiadexin Aquatic Products Co., Ltd.; I T Logistics; Juxian Zhonglu Foodstuffs; Logistics Harbour Dock; Longwei Aquatic Foodstuff; Master International Logistics; Meizhou Aquatic Products; Nichi Lan Food Co. Ltd. Chen Hai; P&T International Trading; Perfection Logistics Service; Phoenix Seafood; Putuo Fahua Aquatic Products Co., Ltd.; Qingdao Dayang Jian Foodstuffs; Qinhuangdao Jiangxin Aquatic Food; Round the Ocean Logistics; Seatrade International; Second Aquatic Food; Second Aquatic Foodstuffs Fty; Shandong Chengshun Farm Produce Trd; Shandong Sanfod Group; Shantou Junyuan Pingyuan Foreign Trading; Shantou Sez Xuhua Fastness Freeze Aquatic Factory; South Bay Intl; Taizhou Lingyang Aquatic Products Co., Ltd.; Tianhe Hardware & Rigging; Xiamen Sungiven Imports & Exports; Yantai Guangyuan Foods Co; Yantai Xuehai Foodstuffs; Yelin Frozen Seafood Co.; Zhanjiang CNF Sea Products Engineering Ltd; Zhanjiang Fuchang Aquatic Products; Zhanjiang Jebshin Seafood Limited; Zhanjiang Shunda Aquatic Products; Zhejiang Zhongda; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhoushan Guangzhou Aquatic Products Co., Ltd.; Zhoushan International Trade Co., Ltd.; Zhoushan Provisions & Oil Food Export and Import Co., Ltd.; Zhoushan Xi'an Aquatic Products Co., Ltd.; and ZJ CNF Sea Products Engineering Ltd. because the Department was unable to directly serve these companies with the *Q&V Follow-up Letter*. Therefore, the Department is rescinding the review with respect to these companies, in accordance with our practice. *See Rebar from Turkey*.

Additionally, consistent with section 351.214(j) of the Department's regulations, the Department is rescinding the administrative review of Zhanjiang Regal because the Department has already reviewed all of the company's sales which were made during the POR in the context of a new shipper review. *See Zhanjiang Regal New Shipper Final Results*. Furthermore, the Department is rescinding the administrative review of Shantou City Qiaofeng Group as this is the same company, but with a different name, as a company for which the

administrative review has already been rescinded (*i.e.*, Chaoyang Qiaofeng Group Co., Ltd.). *See Memorandum to the File*, through Christopher D. Riker, Program Manager, AD/CVD Enforcement, Office 9, from Michael Quigley, Case Analyst, AD/CVD Enforcement, Office 9, regarding *2004/2006 Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Shantou City Qiaofeng Group* (August 16, 2006).

Bona Fide Sale Analysis—Hai Li & Asian Seafoods

For the reasons stated below, we preliminarily find that Hai Li's reported U.S. sale during the POR does not appear to be a *bona fide sale*, based on the totality of the facts on the record. *See, e.g., Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004). Specifically, we find that: (1) The difference in the sales price of Hai Li's single POR sale as compared to the average unit value of suspended entries derived from CBP data; (2) the involvement of unaffiliated parties in Hai Li's single POR sale; (3) irregularities relating to packing materials, and finally, (4) other indicia of a non-*bona fide* transaction, all demonstrate that the single sale under review was not *bona fide*. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin.

Additionally, for the reasons stated below, we preliminarily find that Asian Seafood's reported U.S. sale during the POR does not appear to be a *bona fide sale*, based on the totality of the facts on the record. *See, e.g., Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004). Specifically, we find that: (1) The difference in the sales price of Asian Seafoods' single POR sale as compared to the prices of its subsequent sales and the average unit value of suspended entries derived from CBP data; (2) irregularities relating to its customer correspondence; (3) atypical terms for the POR sale, and finally; (4) other indicia of a non-*bona fide* transaction, all demonstrate that the single sale under review was not *bona fide*. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin.

For the reasons mentioned above, the Department preliminarily finds that Hai Li's and Asian Seafood's single U.S. sales during the POR were not *bona fide*

⁴ Allied Pacific Group indicated this company is no longer operational, and also made no shipments of subject merchandise during the POR.

commercial transactions and is preliminarily rescinding the new shipper review of Hai Li, and the administrative review of Asian Seafoods. For a more detailed analysis, see Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from P. Lee Smith, Case Analyst, AD/CVD Operations, Office 9, and Scot Fullerton, Case Analyst, AD/CVD Operations, Office 9 and regarding *Bona Fides Analysis and Intent to Rescind New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China for Hai Li Aquatic Co., Ltd. Zhao An, Fujian* (February 28, 2007), and Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Scot Fullerton, Case Analyst, AD/CVD Operations, Office 9, regarding *Bona Fides Analysis and Intent to Rescind New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China for Asian Seafoods* (February 28, 2007).

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. See, e.g., *Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006). Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006); and *Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073, 65074 (November 7, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level

of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development. See *PAI/Surrogate Country Letters*. In addition, based on publicly available information placed on the record (e.g., production data), India and Indonesia are significant producers of the subject merchandise. See Memorandum to The File, through James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, and Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Michael J. Quigley, Case Analyst, AD/CVD Operations, Office 9, from Michael J. Quigley, Case Analyst, AD/CVD Operations, Office 9, regarding *Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of a Surrogate Country* (February 28, 2007). Accordingly, we have selected India as the primary surrogate country, and Indonesia as a secondary surrogate where applicable, for purposes of valuing the factors of production because they meet the Department's criteria for surrogate-country selection. See *Id.*

Facts Available

For the reasons outlined below, we have applied total adverse facts available to: Ammon International; Aquatic Foodstuffs FTY; Dafu Foods Industry; Dalian Shanhai Seafood; Dalian Shan Li Food; Fuchang Aquatic Products; Gallant Ocean International; Gallant Seafoods; Go Harvest Aquatic Products; Guolian Aquatic Products; Hainan Jiadexin Foodstuff; Jinhang Aquatic Industry; Laiyang Hengrun Foodstuff; Laiyang Luhua Foodstuffs; Longsheng Aquatic Product; Luk Ka Paper Industry; Marnex; Meizhou Aquatic; Meizhou; North Supreme Seafood (Zhejiang) Co., Ltd.; Ocean Freezing Industry & Trade General; Power Dekor Group Co., Ltd.; Red Garden; Red Garden Food, Red Garden Foodstuff, Rongcheng Tongda Aquatic Food; Shanghai Linghai Fisheries Economic and Trading Co.; Shantou Longshen Aquatic Product; Silvertie Holding; The Second Aquatic food; Weifang Taihua Food; Weifang Yongqiang Food Ind; Wenling Xingdi Aquatic Products; Zhejiang Xintianjiu Sea Products Co., Ltd.; Zhejiang Xinyang Import & Export; Zhenjaing Evergreen Aquatic Products Science and Technology Co., Ltd.; Zhoushan

Jingzhou Aquatic Products Co., Ltd.; and Huading.

In the *Initiation Notice*, the Department established the deadline for Q&V questionnaire responses (i.e., April 28, 2006). However, the Department did not receive responses from: Ammon International; Aquatic Foodstuffs FTY; Dafu Foods Industry; Dalian Shanhai Seafood; Dalian Shan Li Food; Fuchang Aquatic Products; Gallant Ocean International; Gallant Seafoods; Go Harvest Aquatic Products; Guolian Aquatic Products; Hainan Jiadexin Foodstuff; Jinhang Aquatic Industry; Laiyang Hengrun Foodstuff; Laiyang Luhua Foodstuffs; Longshen Aquatic Product; Luk Ka Paper Industry; Marnex; Meizhou Aquatic; North Supreme Seafood (Zhejiang) Co., Ltd.; Ocean Freezing Industry & Trade General; Power Dekor Group Co., Ltd.; Red Garden Food; Red Garden Foodstuff; Rongcheng Tongda Aquatic Food; Shanghai Linghai Fisheries Economic and Trading Co.; Shantou Longshen Aquatic Product; Silvertie Holding; The Second Aquatic Food; Weifang Taihua Food; Weifang Yongqiang Food Ind; Wenling Xingdi Aquatic Products; Zhejiang Xintianjiu Sea Products Co., Ltd.; Zhejiang Xinyang Import & Export; Zhenjaing Evergreen Aquatic Products Science and Technology Co., Ltd.; and Zhoushan Jingzhou Aquatic Products Co., Ltd. The Department sent a *Q&V Follow-up Letter* to each of the above-referenced firms. See *Q&V Follow-up Letter*, see also *Intent to Rescind Memo*. Although each of the above-referenced companies received the letter, which included the Q&V questionnaire, they did not reply to the Department.⁵

By not responding to the Department's Q&V questionnaire, the above-referenced companies failed to provide critical information to be used for the Department's respondent selection process. Pursuant to sections 776(a) and (b) of the Act, the Department may apply adverse facts available if it finds a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. By failing to respond to the Department's Q&V questionnaire, the above-referenced companies have failed to act to the best of their ability in this segment of the proceeding.

In addition, because the above-referenced companies did not submit a separate rate application or certification, the Department was unable to determine whether or not they qualified for a

⁵ Laiyang Luhua Foodstuffs refused to accept the *Q&V Follow-up Letter*. See *Id.*

separate rate. Therefore, they are not eligible to receive a separate rate and will be part of the PRC-wide entity, subject to the PRC-wide rate. Pursuant to section 776(b) of the Act, we have applied total adverse facts available with respect to the PRC-wide entity, including, among others, the above-referenced companies.

For the reasons outlined below, we have applied total adverse facts available to Red Garden, Meizhou, and Huading. Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

On July 17, 2006, Red Garden submitted a letter to the Department indicating it would not comply with the Department's requests for information. *See Red Garden Withdrawal*. Additionally, on November 6, 2006, Meizhou submitted a letter indicating it would no longer cooperate with the Department in the administrative review. *See Meizhou Withdrawal*. On January 18, 2007, Huading also withdrew from the administrative review. *See Letter to the U.S. Department of Commerce, from Huading, regarding Certain Frozen Warmwater Shrimp from the People's Republic of China: Zhoushan Huading Seafood Co., Ltd.* (November 6, 2006).

As noted above, Red Garden, Meizhou, and Huading submitted letters to the Department withdrawing their participation from the administrative review, in lieu of responding to a request for information. By not responding to the Department's request for information, Red Garden, Meizhou, and Huading failed to provide critical information to be used for the Department's margin calculation, significantly impeded the review, and provided unverifiable information. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, regarding Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Application of Adverse Facts Available to Shantou Red Garden Foodstuff/Shantou Red Garden Food Processing Co., (February 28, 2007) and*

Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, regarding Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Application of Adverse Facts Available to Meizhou Aquatic Products Quick-Frozen Industry Co. Ltd. Shantou, (February 28, 2007) for further discussion on the application of adverse facts available to Red Garden and Meizhou; see also Memorandum to the File, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, regarding Certain Frozen Warmwater Shrimp from the People's Republic of China: Zhoushan Huading Seafood Co., Ltd. Analysis for the Preliminary Results of the Administrative Review (February 28, 2007) ("Huading Analysis Memorandum"). Therefore, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, the Department must apply facts available.

By failing to respond to the Department's requests for information and by not allowing the Department to conduct verification, Red Garden, Meizhou, and Huading, respectively, have not proven they are free of government control and are therefore not eligible to receive a separate rate. In the *Initiation Notice*, the Department stated that if one of the companies on which we initiated a review does not qualify for a separate rate, all other exporters of frozen warmwater shrimp from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC-wide entity of which the named exporter is a part. *See Initiation Notice* at n.1. For these preliminary results, Red Garden, Meizhou, and Huading will be part of the PRC-wide entity, subject to the PRC-wide rate.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. 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 ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994).*

As explained above, the PRC-wide entity (including Red Garden, Meizhou, and Huading) would either not permit

the Department to verify information placed on the record or informed the Department that it would not participate further in this review and did not respond to the Department's requests for information. Therefore, the PRC-wide entity did not cooperate to the best of its ability. Because the PRC-wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, to use adverse facts available ("AFA") as the basis for these preliminary results of review for the PRC-wide entity.

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581, 61584 (November 12, 1999)), as adverse facts available, we have assigned to exports of the subject merchandise by the above referenced companies a rate of 112.81 percent, which is the rate established for the PRC-wide entity in the LTFV investigation.

However, as discussed in the Huading Analysis Memorandum, because Huading terminated verification and we found reimbursement of antidumping duties, it is appropriate to assign Zhoushan Huading a rate inclusive of the PRC-wide entity rate and the reimbursement adjustment. *See Huading Analysis Memorandum*. This is consistent with the Department's past practice. *See, e.g., 19 CFR 351.402, see also, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006).

Therefore, in accordance with our regulations and past practice, in this unique situation in which the Department found evidence of reimbursement at verification, the cash deposit rate assigned to Huading for these preliminary results is double that of the PRC-wide entity, or 225.62 percent. *See Huading Analysis Memorandum*.

Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The AFA

rate in the current review (*i.e.*, the PRC-wide rate of 112.81 percent) represents the highest rate from the petition in the LTFV investigation. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005).

For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in the LTFV investigation. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004). No information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. The information used in calculating this margin was based on sales and production data submitted by the petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, there were no previous reviews of this antidumping duty order. As there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

As the 112.81 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 112.81 percent, which is the current

PRC-wide rate, is in accord with the requirement of section 776(c) that secondary information be corroborated to the extent practicable (*i.e.*, that it have probative value). We have assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Of the 163 companies initiated upon, 16 companies filed separate rate certifications or applications. Allied Pacific Group (*i.e.*, Allied Pacific Food (Dalian) Co., Ltd. and its affiliates, Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (H.K.) Co., Ltd., and King Royal Investments Ltd.), Red Garden, Yelin and its affiliates (*i.e.*, Yangjiang City Yelin Hoytat Quick Frozen Seafood Co., Ltd., Shantou Yelin Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Minhua Trade Co. Ltd.,⁶ Asian Seafoods, Savvy Seafood Inc., Evergreen, Huading, Meizhou, and Hai Li each filed a separate rate certification or application. Because Petitioners withdrew its request for review of Savvy Seafoods Inc. (See Rescission Notice), and we rescinded the review, its separate rate status remains unchanged from the investigation.

Six of the companies listed above (*i.e.*, Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific Food (Dalian) Co., Ltd.; King Royal Investments Ltd.; Yangjiang City Yelin Hoytat Quick Frozen Seafood Co., Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Fuqing Yihua Aquatic Food Co., Ltd. had no shipments or exports of subject merchandise to the United States during this POR and are therefore not eligible for a separate rate in this proceeding.

As referenced above, Red Garden, Meizhou, and Huading failed to establish that they qualify for a separate rate. See Memorandum to Stephen J. Claey's, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, regarding *Certain Frozen Warmwater Shrimp from the People's Republic of*

China: Preliminary Application of Adverse Facts Available to Red Garden, (February 28, 2007), Memorandum to Stephen J. Claey's, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, regarding *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Application of Adverse Facts Available to Meizhou Aquatic Products Quick-Frozen Industry Co. Ltd.* Shantou, (February 28, 2007), and *Huading Analysis Memorandum*.

Further, as discussed above, because we are preliminarily rescinding the administrative review for Asian Seafoods, and the new shipper review for Hai Li, because their sales are not *bona fide*, they are ineligible for a separate rate.

Finally, although Fuqing Minhua Trade Co. Ltd. submitted a separate rate application, the company was not listed in the Department's notice of initiation of the administrative review. See *Initiation Notice*. As no review was requested of this entity, and the firm did not export subject merchandise to the United States, it is therefore not entitled to a separate rate. See Letter to the Department, from Yelin Enterprise Co., Ltd. Hong Kong, and its affiliates, regarding *Yelin Group: Response to Section A–D Supplemental: First Administrative Review of Certain Frozen and Canned Warmwater Shrimp from China* (November 9, 2006).

The remaining respondents (*i.e.*, Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen) are either entities wholly foreign owned and/or limited liability companies in the PRC. Thus, for these four respondents, a separate rates analysis is necessary to determine whether the export activities of each above-mentioned respondent is independent from government control. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996) ("*Bicycles*"). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"); See also *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), where the Department adapted and amplified the separate rates

⁶ Although Fuqing Minhua Trade Co. Ltd. submitted a separate rate application, the company was not listed in the Department's notice of initiation of the administrative review. See *Initiation Notice*. As no review was requested of this entity, and the firm is therefore not subject to the review, it is not entitled to a separate rate.

test set out in *Sparklers*. Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities.

1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See id.*

Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen have each placed on the administrative record documents to demonstrate an absence of *de jure* control (e.g., the 1994 "Foreign Trade Law of the People's Republic of China," and the 1999 "Company Law of the People's Republic of China").

As in prior cases, we have analyzed the laws presented to us and have found them to establish sufficiently an absence of *de jure* control over joint ventures between the PRC and foreign companies, and limited liability companies in the PRC. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*"); *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen.

2. De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide; see also Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide; see also Furfuryl Alcohol*.

Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen have each asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

Consequently, we have preliminarily determined that Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen have each met the criteria for the application of separate rates based on the documentation each of these respondents has submitted on the record of these reviews. *See Memorandum to James C. Doyle, Director, AD/CVD Enforcement, Office 9, through Christopher D. Riker, Program Manager, AD/CVD Enforcement, Office 9, from Michael Quigley, Case Analyst, AD/CVD Enforcement, Office 9, regarding 2004/2006 Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Separate Rates Analysis for Respondents (Including Exporters Not Being Individually Reviewed)* (February 28, 2007).

Separate Rate Calculation

Based on timely requests from individual exporters and petitioners, the Department originally initiated this review with respect to 163 companies. During the course of the review, however, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review

request was made. As stated previously, the Department selected three exporters, Yelin, Red Garden (which ultimately withdrew and was replaced by Asian Seafoods), and Meizhou (which also later withdrew) as mandatory respondents in this review. Three additional companies (Allied Pacific HK, Allied Pacific (Zhanjiang) and Evergreen) submitted timely information as requested by the Department and remain subject to review as cooperative separate rate respondents.

Yelin participated fully in this review and is receiving a preliminary antidumping duty rate of zero. As noted above, however, the mandatory respondents either withdrew from the administrative review (*i.e.*, Meizhou and Red Garden) or made a non *bona fide* transaction (*i.e.*, Asian Seafoods). As a result, these three entities are not entitled to a separate rate in this review and we are either rescinding the review of the company (*i.e.*, Asian Seafoods) or the company is being considered to be part of the PRC-wide entity (*i.e.*, Meizhou and Red Garden). As part of the PRC-wide entity, Meizhou and Red Garden are receiving a preliminary antidumping duty rate of 112.81 percent.

The Department must also assign a rate to the remaining three cooperative separate rate respondents not selected for individual examination. We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on adverse facts available. In the instant review, however, the rates for the mandatory respondents include only a single zero rate and a rate for the PRC-wide entity based on total AFA.

While the statute does not specifically address this particular set of circumstances, section 735(c)(5)(B) of the Act does specify the methodology to be followed when a similar fact pattern arises in the context of the all-others rate established in an investigation. While not entirely analogous to the determination of a rate to be applied to responsive separate rate respondents in the context of a NME review, we find it to be instructive in these circumstances.

Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 (facts available section), “the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated.”

The Statement of Administrative Action (“SAA”) states that in using any reasonable method to calculate the all-others rate, “the expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.” See SAA accompanying the Uruguay Round Agreements Act, H.Doc. 316, Vol. 1., 103rd Cong (1994) (SAA) at 203. However, the SAA also provides that: {I} this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable means.” *Id.*

In this case, because of the nature of the shrimp industry, the Department preliminarily concludes that it cannot accurately determine a margin based on information provided by the separate rate entities. Furthermore, we preliminarily find that we cannot employ such alternative methods as weight-averaging AFA, *de minimis* and zero rates or partial use of the information on the record. Specifically, while the separate rates entities have given us total volume and value information with respect to subject merchandise, we note that shrimp prices vary dramatically, principally due to count-size. Thus margins calculated on the basis of average prices without regard to count size and other factors do not reflect a meaningful, accurate comparison. Because the Department does not have comparable information with respect to the count sizes sold by the separate entities, we find we must look to other reasonable means to determine an appropriate margin for the separate rate entities subject to this review. In the case of Allied Pacific HK and Allied Pacific (Zhanjiang), we received voluntary questionnaire responses, but we have not examined these submissions because of the Department’s resource

constraints and its decision to review only three exporters.

The Department has therefore preliminarily determined to apply the margin calculated for cooperative separate rate respondents in the immediately preceding segment of this proceeding, *i.e.*, the margin of 53.68 percent assigned to such companies in the LTFV investigation. We believe this methodology constitutes a reasonable method by which to calculate such rate. The rate of 53.68 percent calculated in the LTFV was based on the Department’s thorough examination of several cooperative companies accounting for a majority of exports during the period of investigation. We believe, therefore, that this rate is reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. Therefore, we find it a reasonable means by which to determine a rate for non-examined cooperative separate entities and have employed this methodology for purposes of these preliminary results.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Yelin to the United States were made at prices below normal value (“NV”), we compared each company’s constructed export prices (“CEPs”) to NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice, below.

Constructed Export Price

For Yelin, we used CEP methodology in accordance with section 772(b) of the Act for sales in which the subject merchandise was first sold in the United States before or after the date of importation by a seller affiliated with the producer or exporter to an unaffiliated purchaser in the United States. We made the following company-specific adjustments:

A. Yelin

We calculated CEP based on packed U.S. prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, international ocean freight, in accordance with section 772(c) of the Act, as well as imputed inventory carrying costs, commissions, credit expenses, indirect selling expenses, and profit, in accordance with section 772(d) of the Act. For additional discussion on these, and other specifics pertaining to Yelin’s margin calculation, see

Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding *Certain Frozen Warmwater Shrimp From the People’s Republic of China—Analysis Memorandum for the Preliminary Results of Administrative Review of Yelin Enterprise Co., Hong Kong* (February 28, 2007). Because some foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. See “Surrogate Country” section above for further discussion of our surrogate-country selection.

To value foreign brokerage and handling expenses, we used publicly summarized or “ranged” expense data submitted during the past year by Indian companies in connection with other antidumping duty administrative reviews conducted by the Department.⁷

In determining the most appropriate surrogate values to use in a given case, the Department’s stated practice is to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data. The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the subject merchandise: there is no information of that type on the record of this review.

We used a simple average of two companies’ brokerage expense data in order to achieve a more representative value than a single source would provide. Both sources are of equal quality and are contemporaneous with the POR. See *Bicycles*, 61 FR at 19039 (on using a simple, as opposed to a weighted, average in the calculation of financial ratios).

⁷ We used data from the public version of the February 28, 2005, section C response of Essar Steel Limited in the antidumping duty administrative review of certain hot-rolled carbon steel flat products from India, which covers the period December 1, 2003, through November 30, 2004. We also used information from Agro Dutch Industries Ltd., taken from the administrative review of preserved mushrooms from India, for which the POR was February 1, 2004 through January 31, 2005. See *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006); see also *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. See section 773(c)(3) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (“*Chlorinated Isocyanurates*”). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. For a detailed explanation of the methodology used to calculate surrogate values, see Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Michael Quigley, Case Analyst, AD/CVD Operations, Office 9, regarding *Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Factor Values* (February 28, 2007) (“*Factor Valuation Memo*”).

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the respondents for the POR. We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire

responses, where applicable, for purposes of selecting surrogate values.

To calculate NV, we multiplied the reported per unit factor quantities by publicly available Indian surrogate values (except where noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Due to the extensive number of surrogate values in this administrative review, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, see *Factor Valuation Memo*.

Except where discussed below, we valued raw material inputs using July 2004–January 2006 weighted-average Indian import values derived from the *World Trade Atlas* online (“WTA”) (see also *Factor Valuation Memo*). The Indian import statistics we obtained from the WTA were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees. Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the applicable average exchange rate for India for the POR. The average exchange rate was based on exchange rate data from the Department's Web site. See <http://ia.ita.doc.gov/exchange/index.html>. Where we could not obtain PAI contemporaneous with the POR with which to value factors, we adjusted the surrogate values for inflation using Indian wholesale price indices (“WPIs”) as published in the International Monetary Fund's *International Financial Statistics*. See *Factor Valuation Memo*.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded prices from NME countries and those that we have reason to believe or suspect may be subsidized (i.e., Indonesia, South Korea, and Thailand). We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to believe or suspect all exports to all markets from these countries are subsidized. See, e.g.,

Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic of China, 58 FR 48833 (September 20, 1993), and accompanying Issues and Decision Memorandum at Comment 1.

Finally, we excluded imports that were labeled as originating from an “unspecified” country from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

We valued these factors of production based on Indian WTA data: shrimp feed; antiseptic; anti virus; nutriment; sodium; and salt. Additionally, we valued these packing factors of production based on Indian WTA data: cardboard boxes; plastic bags; and adhesive tape. See *Factor Valuation Memo*, at Exhibit 5.

To value raw shrimp, we used Indonesian data from an October 2006 report on shrimp farming in South and South-East Asia from the Network of Aquaculture Centres in Asia-Pacific (<http://library.enaca.org/shrimp/publications/NACASStudy/pdf>). We extrapolated three additional count size groups based on the average percentage change between the five groups of data given in the study. See *Id.* at Exhibit 2.

To value shrimp larvae, we used the audited 2004–2005 financial statements of Sharat Industries Limited, an Indian shrimp producer. Trade Pacific, PLLC placed this data on the record of this review. See *Id.* at Exhibit 3.

To value by-products, we used a public price quote from an Indonesian company that has been used in the investigation of this proceeding. See Memorandum to Barbara E. Tillman from Christian Hughes and Adina Teodorescu through Maureen Flannery, regarding *Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China*, *Administrative Review* 9/1/00–8/31/01 and *New Shipper Reviews* 9/1/00–8/31/01 and 9/1/00–10/15/01 (August 5, 2002). See *Id.* at Exhibit 4.

We valued electricity using the 2000 total average price per kilowatt hour for “Electricity for Industry” as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter, 2003*. We adjusted this rate for inflation. See *Id.* at Exhibit 6.

We valued heavy oil using the 2005 first quarter “Heavy Fuel Oil for Industry” price as reported in the International Energy Agency's publication, *Key World Energy Statistics 2005*. See *Id.* at Exhibit 7.

To value water, the Department used the industrial water rates within the

Maharashtra Province of India from June 2003. To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation to the POR. *See Id.* at Exhibit 8.

To value diesel fuel, we used the 2005 first quarter "Automotive Diesel Oil" price as reported in the International Energy Agency's publication, *Key World Energy Statistics 2005*. *See Id.* at Exhibit 9.

The Department revised its calculation of expected wages of selected NME countries. *See* <http://ia.ita.doc.gov/wages/index.html>. The Department's revised calculation of expected NME wages, consistent with its normal methodology and with section 351.408(c)(3) of the

Department's regulations, is based on the most current data available as of January 2007. The Department's expected NME wage rate for the PRC is USD \$0.83 per hour. We used this wage rate in valuing labor.

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates from the following Web site: <http://www.infreight.com>. *See Id.* at Exhibit 11.

For the domestic ground transport of shrimp, we used an Indian refrigerated truck freight rate based on price quotations provided by Petitioners in the investigation of certain frozen warmwater shrimp from the PRC from CTC Freight Carriers of Delhi, India. *See* Petitioners' May 21, 2004 surrogate value submission at Attachment 6.

Since the rate was not contemporaneous with the POR, we adjusted the rate for inflation. *See Id.* at Exhibit 12.

To value factory overhead and selling, general and administrative ("SG&A") expenses, and profit, we used data from the 2004–2005 financial reports of Falcon Marine Exports Limited and Nakkanti Sea Foods Limited. These Indian companies are shrimp producers based on data contained in each Indian company's financial reports. We averaged the ratios for the two companies. *See Id.* at Exhibit 10.

Preliminary Results of Reviews

We preliminarily determine that the following margins exist during the period July 16, 2004, through January 31, 2006:

CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC INDIVIDUALLY REVIEWED EXPORTERS

Yelin Enterprise Co., Hong Kong	0.00
Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd	53.68
Allied Pacific (H.K.) Co., Ltd	53.68
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd	53.68
Zhoushan Huading Seafood Co., Ltd	225.62

PRC-Wide Rate

PRC-Wide Rate ⁸	112.81
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We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the

argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific assessment rates for certain frozen warmwater shrimp from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping

duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 112.81 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the

⁸ PRC-Wide Rate includes, among others, Red Garden and Meizhou.

PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 07-1132 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from India with respect to 70 companies.¹ The respondents which the Department selected for individual review are Devi Marine Food Exports Private Limited (DMF), Kader Investment and Trading Company Private Limited, Premier Marine Products, Kader Exports Private Limited (KEPL), Universal Cold Storage Private Limited (UCS), and Liberty Frozen Foods Private Limited (collectively, "the Liberty Group"), Falcon Marine Exports Limited (Falcon), and Hindustan Lever Limited (HLL).

¹ This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review (POR) is August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by Falcon, HLL, and the Liberty Group have been made below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-4593, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain warmwater shrimp from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*). Subsequently, on February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from India for the period August 4, 2004, through January 31, 2006. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (Feb. 1, 2006). Between February 23 and 28, 2006, the Department received timely requests under 19 CFR 351.213(b)(2) to conduct

an administrative review of the sales of certain frozen warmwater shrimp from the following producers/exporters of subject merchandise: Amalgam Foods & Beverages Limited, Ananda Aqua Exports Private Limited, Asvini Exports, Asvini Fisheries Limited, Avanti Feeds Limited, Devi Fisheries Limited, Devi Seafoods Limited, Falcon, Five Star Marine Exports Private Limited, GVR Exports Pvt. Ltd., HLL, Jaya Lakshmi Sea Foods Pvt. Ltd., Jayalakshmi Sea Foods Private Limited, K.R.M. Marine Exports, the Liberty Group, Magnum Estate Private Limited, Nekkanti Sea Foods Limited, Sagar Grandhi Exports Pvt. Ltd., Sai Marine Exports Pvt. Ltd., Sandhya Marines Limited, Satya Seafoods Private Limited, Selvam Exports Private Limited, Star Agro Marine Exports Private Limited, Suvarna Rekha Exports Private Limited, Veejay Impex, Vinner Marine, and Wellcome Fisheries Limited. Also on February 28, 2006, the petitioner² submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1).

On April 7, 2006, the Department published a notice of initiation of administrative review for 347 companies and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (Apr. 7, 2006) (*Notice of Initiation*).

During the period April 24 through June 12, 2006, we received responses to the Department's Q&V questionnaire from 59 companies. We were unable to locate 29 companies, and we did not receive responses to this questionnaire from the remaining companies.³ For further discussion, see the "Application of Facts Available" section of this notice.

One of the companies that responded to our Q&V questionnaire, Coastal

² The petitioner is the Ad Hoc Shrimp Trade Action Committee.

³ As discussed below, for certain of these companies, the petitioner subsequently withdrew its request for review.

Trawlers Ltd. (Coastal Trawlers), notified us that it had changed its name during the POR, and is now doing business under the name Coastal Corporation Ltd. (Coastal Corp.). As a result, we solicited information on this change from Coastal Corp., which the company supplied in June 2006. After analyzing this information, we preliminarily find that Coastal Corp. is the successor-in-interest to Coastal Trawlers. For further discussion, see the "Successor-in-Interest" section of this notice, below.

Based upon our consideration of the responses received to the Q&V questionnaire and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on July 11, 2006, we selected the three largest producers/exporters of certain frozen warmwater shrimp from India during the POR (i.e., Falcon, HLL, and the Liberty Group) as the mandatory respondents in this proceeding. See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents," dated July 11, 2006. On this same date, we issued the antidumping questionnaire to Falcon, HLL, and the Liberty Group.

On July 21, 2006, we published a notice rescinding the administrative review with respect to 268 companies for which the requests for an administrative review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41419 (July 21, 2006) (*Notice of Rescission*). See also the Memorandum to the file from Elizabeth Eastwood entitled, "Intent to Rescind in Part the Antidumping Duty Administrative Review on Frozen Warmwater Shrimp from India," dated June 22, 2006.

On August 8, 2006, we received responses to section A of the questionnaire from Falcon, HLL, and the Liberty Group.

On August 11, 2006, the petitioner submitted comments regarding third country market selection and the possible existence of a "particular market situation" with respect to both Falcon and HLL.

On August 25, 2006, the Department postponed the preliminary results in

this review until no later than February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews*, 71 FR 50387 (Aug. 25, 2006).

We issued supplemental section A questionnaires to HLL, Falcon, and the Liberty Group on August 31, 2006.

We received responses to sections B and C of the questionnaire from Falcon and HLL on September 6, 2006, and from the Liberty Group on September 7, 2006. Also on September 7, 2006, HLL submitted a response to section D of the questionnaire.

On September 14, 2006, we published a notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from India; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 54268 (Sept. 14, 2006).

The petitioner requested that the Department initiate a sales-below-cost investigation of the Liberty Group on September 20, 2006, and of HLL on September 21, 2006.

Also on September 21, 2006, we issued a supplemental questionnaire covering sections A through C to the Liberty Group and we received a response to the supplemental section A questionnaire from HLL.

We received responses to the supplemental section A questionnaires from Falcon on September 22, 2006, and from the Liberty Group on September 25, 2006. Also on September 25, 2006, we issued a supplemental questionnaire covering sections B and C to Falcon.

On September 27, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Falcon, and the petitioner submitted comments on the selection of the appropriate third country comparison markets for Falcon and HLL.

On October 4, 2006, we initiated a sales-below-cost investigation of the Liberty Group. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioners' Allegation of Sales Below the Cost of Production for the Liberty Group Frozen Foods," dated October 4, 2006 (Sales-Below-Cost-Memo for the Liberty Group).

On October 5, 2006, we determined that Japan constitutes the appropriate third country comparison market for both Falcon and the Liberty Group, and that France constitutes the appropriate

third country comparison market for HLL. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Selection of the Appropriate Third Country Markets," dated October 5, 2006 (Selection of Third Country Markets Memo). See also the "Home Market Viability and Selection of Comparison Markets" section of this notice, below, for further discussion. Accordingly, on October 5, 2006, we requested that Falcon and HLL resubmit their responses to section B of the Department's questionnaire to report sales to Japan and France, respectively. Additionally, on October 5, 2006, we issued a supplemental section C questionnaire to HLL.

On October 17, 2006, Falcon submitted its supplemental questionnaire response covering sections A through C. On October 20, 2006, Falcon submitted a revised section B questionnaire response reporting sales to Japan. Also on October 20, 2006, Liberty submitted its supplemental questionnaire response covering sections A through C. On October 25, 2006, HLL submitted both a revised section B questionnaire response reporting sales to France and a response to the supplemental section C questionnaire.

On November 3, 2006, we determined that the Department's finding in the less-than-fair-value (LTFV) investigation, that HLL made comparison market sales below the cost of production and that such sales were disregarded, provides sufficient grounds to automatically initiate a sales-below-cost investigation for HLL in this segment of the proceeding. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "2004-2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Cost Allegation for Hindustan Lever Limited," dated November 3, 2006 (Sales-Below-Cost Memo for HLL).

On November 7, 2006, the Liberty Group submitted a response to section D of the questionnaire. Also on November 7, 2006, we issued a supplemental section D questionnaire to HLL.

On November 13, 2006, we initiated a sales-below-cost investigation for Falcon. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioners' Allegation of Sales Below the Cost of Production for Falcon Marine Exports Limited," dated

November 13, 2006 (Sales-Below-Cost-Memo for Falcon).

On November 29, 2006, we issued a supplemental section D questionnaire to the Liberty Group.

On December 5, 2006, we received HLL's response to the supplemental section D questionnaire.

On December 12 and 20, 2006, respectively, Falcon and the Liberty Group responded to section D of the questionnaire. On December 22, 26, and 28, 2006, respectively, we issued supplemental section D questionnaires to Falcon, the Liberty Group, and HLL. We received responses to these questionnaires from Falcon and the Liberty Group on January 11, 2007, and from HLL on January 22, 2007.

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

We issued an additional section D supplemental questionnaire to HLL on February 2, 2007, and to the Liberty Group on February 8, 2007. We received responses to these questionnaires on February 9 and 15, 2007, respectively.

Sales and cost verifications were conducted at Falcon and the Liberty Group in January and February 2007. The sales verification reports for Falcon and the Liberty Group were issued in February 2007.

On February 8, 2007, we issued an additional supplemental questionnaire to the Liberty Group regarding its relationship with Liberty Oil Mills Limited (LOML).

On February 12, 2007, Falcon submitted a revised cost database which incorporated certain minor corrections to its data discovered at verification.

On February 15, 2007, we received the Liberty Group's response to the February 8, 2007, supplemental questionnaire.

On February 23 and 26, 2007, respectively, the Liberty Group and Falcon submitted revised sales databases which incorporated certain minor corrections to these companies' data discovered at verification.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off,

shell-on or peeled, tail-on or tail-off,⁴ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the

entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Successor-in-Interest

As noted above, in April 2006, Coastal Trawlers informed the Department that it is now doing business under the name Coastal Corp. As a result, on June 1, 2006, we requested that Coastal Corp. address the following four factors with respect to this change in name in order to determine whether Coastal Corp. is the successor-in-interest to Coastal Trawlers: management, production facilities for the subject merchandise, supplier relationships, and customer base.

On June 15, 2006, Coastal Corp. responded to the Department's request. In this submission, Coastal Corp. stated that, in February 2005, Coastal Trawlers changed its name to Coastal Corp., and that the name change had no effect on the core activity of the company. According to Coastal Corp., there were no changes to Coastal Trawlers' management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Specifically, Coastal Corp. maintains that the only change in production was that the company ceased its deep sea fishing/trawler activities.

Based on our analysis of Coastal Corp.'s June 15, 2006, submission, we preliminarily find that Coastal Trawlers' organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged.

⁴ "Tails" in this context means the tail fan, which includes the telson and the uropods.

Further, we preliminarily find that Coastal Corp. operates as the same business entity as Coastal Trawlers with respect to the production and sale of shrimp. Thus, we preliminarily find that Coastal Corp. is the successor-in-interest to Coastal Trawlers, and, as a consequence, its exports of shrimp are subject to this proceeding. We note that we intend to solicit further supporting documentation from Coastal Corp. regarding its assertions, and we will make a final finding regarding this successor-in-interest determination no later than the date of the final results. For further discussion, see the Memorandum to James Maeder, Office Director, from Nichole Zink, Analyst, entitled, "Successor-In-Interest Determination for Coastal Trawlers Ltd. and Coastal Corporation Ltd. in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

Partial Rescission of Review

Eight of the companies that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. However, based on information obtained from CBP, it appeared that these eight companies did, in fact, have shipments or entries of subject merchandise entered into the United States during the POR. See the Memorandum to The File from Jill Pollack entitled, "2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Entry Documents from U.S. Customs and Border Protection (CBP)," dated July 28, 2006. Based on the CBP information, we requested that each of these eight companies explain the entries in question. In response to the Department's solicitation, only four of the eight companies, Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd., demonstrated that the entries at issue were not reportable transactions because they were either: 1) a non-paid sample; or 2) reported by another company in its Q&V response. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd. 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).

Three of the remaining four exporter/producers, Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products (collectively, "the Baby Marine Group"), failed to respond to the Department's request for additional information. The remaining company, LOML, is an affiliate of the Liberty Group. Therefore, we are not rescinding the administrative review with respect to these companies. For further information, see the "Application of Facts Available" and "Collapsing the Liberty Group and LOML" sections of this notice.

Collapsing the Liberty Group and LOML

The Liberty Group has an affiliate, LOML, which exported some of the shrimp produced by the Liberty Group during the POR. In its August 9, 2006, section A response, as well as its February 15, 2007, response and at verification, the Liberty Group provided information regarding the relationship between these entities during the POR. After an analysis of this information, we preliminarily determine that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse these entities for purposes of this review because: 1) certain of the directors of LOML are also directors of Liberty Group companies, and the family which owns the Liberty Group owns a majority of the shares in LOML; 2) LOML exported shrimp produced by the Liberty Group to the United States during the POR; and 3) the operations of LOML and the Liberty Group are intertwined. Thus, there is significant potential for manipulation of price if LOML does not receive the same antidumping duty rate as the Liberty Group. For further discussion, see the Memorandum from Elizabeth Eastwood, Senior Analyst, Office 2, to James Maeder, Director, Office 2, entitled, "Whether to Collapse Liberty Oil Mills Limited with the Liberty Group in the 2004–2006 Administrative Review on Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

Application of Facts Available

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.

As discussed in the "Background" section above, in April 2006, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Of the 347 companies initially subject to review, 213 companies did not respond to the Department's initial requests for information. Subsequently, in May 2006, the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, after rescinding this administrative review for 268 companies in July 2006, there were still several companies which failed to respond to the Department's second request for Q&V data.⁵ On February 6, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each of these companies. See the Memorandum to the File from Elizabeth Eastwood entitled, "Placing Delivery Information on the Record of the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India," dated February 6, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is warranted.

Furthermore, three additional companies, all within the Baby Marine Group, claimed that they made no shipments of subject merchandise to the United States during the POR. However, because we were unable to confirm the accuracy of the Baby Marine Group's claim with CBP, we requested further information/clarification from these exporters. However, the Baby Marine Group failed to provide the requested information. Finally, an additional exporter, Kadakkannu Frozen Foods, failed to properly file its Q&V response with the Department because it did not

⁵ These companies are: Amison Foods Ltd., Amison Seafoods Ltd., Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods.

submit a company official certification for its Q&V information. Although the Department afforded this exporter an opportunity to correct the procedural deficiencies in its response, it failed to do so. By failing to respond to the Department's requests, these companies withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available for the Baby Marine Group and Kadalkanny Frozen Foods is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *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) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. 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); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Amison Foods Ltd., Amison Seafoods Ltd., the Baby Marine Group, Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Kadalkanny Frozen Foods, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is

warranted in selecting from the facts otherwise available with respect to these companies. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as 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., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 82.3 percent, which is the lowest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation). *See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam* 69 FR 3876, 3880 (Jan. 27, 2004) (*LTFV Notice of Initiation*). 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).

Information from the petition constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d); *see also SAA* at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the margins in the petition, we compared them to the transaction-specific rates calculated for each respondent in this review. We note that we are unable to corroborate the

highest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation) using the data of other respondents, as it is significantly higher than the highest non-aberrational transaction-specific rate calculated for any respondent in this review. However, we find that the lowest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation), 82.30 percent, is reliable and relevant because it is similar to several individual transaction margins calculated for the mandatory respondents. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). Therefore, we have determined that the 82.3 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin is similar to the range of transactions-specific margins for the mandatory respondents, we have preliminarily determined that the 82.3 percent margin, as alleged in the petition and adjusted at the initiation of the LTFV investigation, is appropriate as AFA. We are assigning this rate to Amison Foods Ltd., Amison Seafoods Ltd., the Baby Marine Group, Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Kadalkanny Frozen Foods, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods. For company-specific information used to corroborate this

rate, see the Memorandum to the File from Elizabeth Eastwood, Senior Analyst, Office 2, AD/CVD Operations, entitled "Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by Falcon, HLL, and the Liberty Group to the United States were made at less than NV, we compared EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Falcon, HLL, and the Liberty Group covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of non-broken shrimp to sales of non-broken shrimp made in Japan (for Falcon and the Liberty Group) and France (for HLL) within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no non-broken sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Falcon, HLL, and the Liberty Group in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

Export Price

For all U.S. sales made by Falcon, HLL, and the Liberty Group, we used EP methodology, in accordance with

section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

A. Falcon

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for cold storage expenses, inland freight expenses, wharfage charges, loading expenses, inspection fees, other miscellaneous shipment charges, foreign brokerage and handling expenses, international freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

B. HLL

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for inland freight expenses, port dues, terminal handling charges, other shipment expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

C. The Liberty Group

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for cold storage charges, inland freight expenses, other shipment and movement expenses, foreign brokerage and handling expenses, shipment related expenses, international freight expenses, terminal handling charges, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis

for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that aggregate volume of home market sales of the foreign like product for Falcon, HLL, and the Liberty Group was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, with respect to Falcon and the Liberty Group, we used sales to Japan, and, with respect to HLL, we used sales to France as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404 because, among other things, sales of foreign like product in these third country markets were the most similar to the subject merchandise. See the Selection of Third Country Markets Memo for further discussion.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron*

⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Falcon

Falcon reported that it made EP sales in the U.S. market to trading companies and distributors. Because Falcon reported no difference in the selling activities it performed for these two customer categories, we find that there is only one channel of distribution for Falcon's EP sales. We examined the selling activities performed for this channel and found that Falcon performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and, 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made

through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made sales to trading companies. We examined the selling activities performed for third country sales, and found that Falcon performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

2. HLL

HLL reported that it made EP sales in the U.S. market to distributors. We examined the selling activities performed for this channel and found that HLL performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) production scheduling; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) quality assurance related activities; 7) arranging for a refrigerated container; and 8) payment receipt. Accordingly, based on the core selling functions noted above, we find that HLL performed sales and marketing and freight and delivery services for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, HLL reported that it also made sales only to distributors. We examined the selling activities performed for third country sales and found that HLL performed the following selling functions: 1) customer contact; 2) price

negotiation; 3) order processing; 4) production scheduling; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) quality assurance related activities; 7) arranging for a refrigerated container; and 8) payment receipt. Accordingly, based on the core selling functions, we find that HLL performed sales and marketing and freight and delivery services for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for HLL.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

3. The Liberty Group

The Liberty Group reported that it made EP sales in the U.S. market to trading companies. We examined the selling activities performed for this channel and found that the Liberty Group performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling functions noted above, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, the Liberty Group reported that it made sales to trading companies. We examined the selling activities performed for third country sales, and found that the Liberty Group performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling

functions, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for the Liberty Group.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Falcon and the Liberty Group's sales of frozen warmwater shrimp in the third country comparison markets were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Falcon's and the Liberty Group's sales were made at prices below their respective COPs. See the Sales-Below-Cost Memo for the Liberty Group and the Sales-Below-Cost Memo for Falcon.

Regarding HLL, we found that HLL had made sales below the COP in the LTFV investigation, the most recently completed segment of this proceeding as of the date the questionnaire was issued in this review, and such sales were disregarded. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47116–17 (Aug. 4, 2004) (*LTFV Preliminary Determination*); unchanged in the *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (Dec. 23, 2004) (*LTFV Final Determination*). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that HLL made sales in the third country market at prices below the cost of producing the merchandise in the current review period.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except for the following instances:

a. Falcon

1. Falcon did not provide the Department with cost data for a small number of products sold in the comparison market during the window periods. Thus, as neutral facts available, we assigned these products the cost of the most similar product reported in the cost database.
2. Falcon adjusted its standard cost of raw shrimp purchased for each count size to the actual cost of raw shrimp by applying a variance (*i.e.*, the difference between the total standard costs and total actual costs). In calculating the variance, Falcon multiplied its standard raw material cost for each count size by the corresponding production quantity, including glaze, and compared the resulting total sum to the raw material costs in its financial records. We recalculated the variance using production quantities that were glaze-exclusive and applied the resulting adjusted variance to the standard cost of raw shrimp purchased for each count size.
3. We revised Falcon's raw shrimp cost by reallocating the costs from Falcon's shrimp farms only to those species and count sizes that could have been raised on the farms.
4. We revised the costs for packaging, labor, variable overhead, and fixed overhead (FOH) to base them on production quantities that were glaze-exclusive. We also revised FOH to allocate depreciation expenses to block frozen, individually quick frozen, and cooked products.
5. We revised the reported G&A expense ratio by reclassifying certain expenses from the cost of goods sold to G&A expenses.
6. We revised the net financial expense ratio by excluding the

deduction for the profit on the sale of securities, and only including a deduction for interest income from short-term sources.

For further discussion of these adjustments, see the Memorandum from Michael P. Harrison, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results - Falcon Marine Exports," dated February 28, 2007.

b. HLL

1. HLL did not provide the Department with cost data for a small number of products sold in the comparison market during the window periods. Thus, as neutral facts available, we assigned these products the cost of the most similar product reported in the cost database.
2. We adjusted HLL's reported raw shrimp consumption cost to account for an understatement.
3. We revised HLL's reported G&A expense ratio to include in the numerator certain items related to research and development, supply support and chain management, and restructuring costs. Moreover, we included the surplus of fixed assets sold and miscellaneous income as offsets to the G&A expenses. In addition, we excluded from the cost of sales, used as the denominator in calculating the G&A expense ratio, excise duties and packing material costs, and included the 2005 fiscal year increase in finished goods inventory.
4. We revised the net financial expenses to include pension costs and similar obligations.

For further discussion of these adjustments, see the Memorandum from Sheikh Hannan, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results - Hindustan Lever Limited," dated February 28, 2007.

c. The Liberty Group

1. We revised the cost data reported for all Liberty Group companies to account for minor corrections found during the cost verification.
2. We revised DMF's shrimp direct material costs to exclude certain by-product revenues.
3. We revised DMF's inner packing costs to exclude the revenue related to the sale of outer packing materials.

4. We revised KEPL's variable overhead costs to exclude premiums paid on duty export passbook benefits.
5. We revised the application of the G&A expense ratio from a single weighted-average rate applied to all Liberty Group companies to applying each Liberty Group entity's specific G&A expense ratio to its specific cost of manufacture. We continued to allocate certain G&A expenses to all Liberty Group companies. We revised each Liberty Group company's costs of sales, used as the denominator in calculating the G&A expense ratio, to include the change in finished goods inventory. We reclassified certain expenses for DMF from production to G&A. Finally, we included certain expenses related to the loss on a sale of a fixed asset in the calculation of PMP's G&A expenses.
6. The Liberty Group does not prepare consolidated financial statements in the normal course of business. Therefore, we revised the application of the financial expense ratio by applying each Liberty Group company's specific financial expense ratio to its specific cost of manufacture. We also revised each Liberty Group company's costs of sales, used as the denominator in calculating the financial expense ratio, to include the change in finished goods inventory. Finally, we included certain bank charges in each entity's financial expenses.

For further discussion of these adjustments, see the Memorandum from Mark Todd, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Liberty," dated February 28, 2007.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as

discussed below under the "Price-to-Price Comparisons" section.

3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Falcon's, HLL's, and the Liberty Group's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable third country sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

E. Calculation of Normal Value Based on Comparison Market Prices

1. Falcon

We based NV for Falcon on delivered prices to unaffiliated customers in the third country market. We made deductions from the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate,

from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, clearing and forwarding agency charges, cold storage charges, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, credit expenses, bank fees, export inspection agency (EIA) expenses, export credit guarantee corporation premiums, and outside inspection/lab expenses. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. HLL

We based NV for HLL on cost and freight, delivered, and free on board prices to unaffiliated customers in the third country market. We made adjustments, where appropriate, to the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate, from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, shipment-related expenses, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, credit expenses, bank fees, EIA inspection fees, and outside inspection/lab expenses. Specifically, where

commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

3. The Liberty Group

We based NV for the Liberty Group on delivered prices to unaffiliated customers in the third country market. We made deductions from the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate, from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, clearing and forwarding agency charges, shipment-related expenses, cold storage charges, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, credit expenses, bank fees, EIA inspection fees, and outside inspection/lab expenses. Specifically, where commissions were granted in the U.S. market but not in the comparison

market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

We also deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in

accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.

Currency Conversion

We made currency conversions into U.S. dollars for HLL and the Liberty Group in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Regarding Falcon, this respondent reported that it purchased forward exchange contracts which were used to convert the currency in which certain sales transactions were made into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency. See *LTFV Preliminary Determination*, 69 FR at 47118 and *LTFV Final Determination*, and accompanying Issues and Decision Memorandum at Comment 6. Therefore, for Falcon we used the reported forward exchange rates, where applicable, and the Federal Reserve rates for those sales without reported forward exchange contracts, for all currency conversions.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period August 4, 2004, through January 31, 2006, as follows:

Manufacturer/Exporter	Percent Margin
Falcon Marine Exports Limited	11.09
Hindustan Lever Limited	24.52
The Liberty Group (Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Premier Marine Products, Kader Exports Private Limited, Universal Cold Storage Private Limited, Liberty Frozen Foods Private Limited) and Liberty Oil Mills Limited	4.03

Review-Specific Average Rate
Applicable to the Following
Companies:⁷

Manufacturer/Exporter	Percent Margin
Allanasons Ltd.	10.54
Amalgam Foods & Beverages Limited	10.54

⁷ This rate is based on the weighted average of the margins calculation for those companies selected

for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Amulya Seafoods	10.54
Ayshwarya Seafood Private Limited	10.54
Baby Marine International	10.54
Baraka Overseas Traders	10.54
Bhatsons Aquatic Products	10.54
Calcutta Seafoods	10.54
Castlerock Fisheries Ltd.	10.54
Coastal Corporation Ltd.	10.54
Coastal Trawlers Ltd.	10.54
Cochin Frozen Food Exports Pvt. Ltd.	10.54
Coreline Exports	10.54
Gajula Exim P Ltd.	10.54
Haripriya Marine Food Exports	10.54
IFB Agro Industries Ltd. (Aquatic & Marine Products Div.)	10.54
ITC Ltd.	10.54
K R M Marine Exports Ltd.	10.54
Kalyanee Marine	10.54
Kings Marine Products	10.54
Konark Aquatics & Exports Pvt. Ltd.	10.54
MSC Marine Exporters	10.54
Magnum Estate Private Limited	10.54
Magnum Exports	10.54
Magnum Seafoods Pvt. Ltd.	10.54
Mangala Marine Exim India Pvt. Ltd.	10.54
Mangala Sea Products	10.54
N.G.R Aqua International	10.54
Navayuga Exports Ltd.	10.54
Nila Seafoods Pvt. Ltd.	10.54
Penver Products (P) Ltd.	10.54
Raa Systems Pvt. Ltd.	10.54
Raju Exports	10.54
Ram's Assorted Cold Storage Ltd.	10.54
Saanthi Seafoods Ltd.	10.54
Seagold Overseas Pvt. Ltd.	10.54
Sri Chandrakantha Marine Exports, Ltd.	10.54
Sri Sakthi Marine Products P Ltd.	10.54
Sun-Bio Techonology Limited	10.54
Suvarna Rekha Exports Private Limited	10.54
Survarna Rekha Marines P Ltd.	10.54
Uniroyal Marine Exports Ltd.	10.54
Veejay Impex	10.54
Victoria Marine & Agro Exports Ltd.	10.54

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Amison Foods Ltd.	82.30
Amison Seafoods Ltd.	82.30
Baby Marine (Eastern) Exports	82.30
Baby Marine Exports	82.30
Baby Marine Products	82.30
Cherukattu Industries (Marine Div)	82.30
Global Sea Foods & Hotels Ltd	82.30
HA & R Enterprises	82.30
InterSea ExportsCorporation	82.30
Kadalkanny Frozen Foods	82.30
Lotus Sea Farms	82.30
National Steel	82.30
National Steel & Agro Ind	82.30
Nsil Exports	82.30
Premier Marine Foods	82.30
R F. Exports	82.30
Vaibhav Sea Foods	82.30

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in

connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR

351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the

date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and, 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Falcon, HLL, and the Liberty Group, because these companies reported the entered value for some of their U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. For Falcon, HLL, and the Liberty Group's U.S. sales reported without entered values, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). 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 that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent

period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the "All Others" rate made effective by the LTFV investigation. See *Shrimp Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-4277 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand with respect to 27 companies.¹ The respondents which the Department selected for individual review are Good

¹ This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

Luck Product Co., Ltd. (Good Luck Product), Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Company Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively "Pakfood"), and Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The review covers the period August 4, 2004, through January 31, 2006.

We preliminarily determine that sales were made by Good Luck Product, Pakfood, and Thai I-Mei below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: Effective Date: March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0656 or (202) 482-0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*). On February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from

Thailand for the period August 4, 2004, through January 31, 2006. See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (Feb. 1, 2006). On February 28, 2006, the petitioner² submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the period of review (POR), pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received requests to conduct an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the following producers/exporters of subject merchandise during the POR in accordance with 19 CFR 351.213(b)(2): Kitchens of the Ocean (Thailand), Ltd., Pakfood, Thai I-Mei, Thai Union Frozen Products and Thai Union Seafood (collectively, "Thai Union"), and Union Frozen Products (UFP).

On April 7, 2006, the Department published a notice of initiation of administrative review for 145 companies and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (Apr. 7, 2006) (*Notice of Initiation*).

During the period April 24, 2006, through July 10, 2006, we received responses to the Department's Q&V questionnaire from 106 companies.³ We were unable to locate six companies, and we did not receive responses to this questionnaire from the remaining companies.⁴ For further discussion, see

the "Application of Facts Available" section of this notice.

Based upon our consideration of the responses to the Q&V questionnaire received and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on July 11, 2006, we selected the three largest producers/exporters of certain frozen warmwater shrimp from Thailand during the POR, Good Luck Product, Pakfood, and Thai I-Mei, as the mandatory respondents in this proceeding. See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents," dated July 11, 2006. On this same date, we issued the antidumping duty questionnaire to Good Luck Product, Pakfood, and Thai I-Mei.

On July 20, 2006, we published a notice rescinding the administrative review with respect to 112 companies for which the requests for an administrative review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41200 (July 20, 2006) (*Partial Rescission Notice*). See also, the Memorandum to the File from Brianne Riker entitled "Intent to Rescind in Part the Antidumping Duty Administrative Review on Frozen Warmwater Shrimp from Thailand," dated June 22, 2006.

On August 3, 2006, we published a notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from Thailand; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 44017 (Aug. 3, 2006).

We received responses to section A of the questionnaire from Pakfood on August 8, 2006, and from Good Luck Product and Thai I-Mei on August 16, 2006.

On August 25, 2006, the Department postponed the preliminary results in this review until no later than February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New*

² The petitioner is the Ad Hoc Shrimp Trade Action Committee.

³ We note that we initiated a review on six of these companies (i.e., Haitai Seafood Co., Ltd., Kingfisher Holdings Limited, Klang Co., Ltd., Inter-Oceanic Resources Co., Ltd., Narong Seafood Co., Ltd., Sea Bonanza Foods Co., Ltd.) as if they were two different entities based on the two different addresses on the record for each company. However, we have determined, based on the responses submitted by these companies, that each comprises a single entity with two different addresses.

⁴ As discussed below, for some of these companies, the petitioner subsequently withdrew its request for review.

Shipper Reviews, 71 FR 50387 (Aug. 25, 2006).

On August 29, 2006, the petitioner submitted comments regarding home market viability with respect to Good Luck Product and Pakfood.

We received responses to sections B and C of the questionnaire from Pakfood and Good Luck Product on September 1 and 5, 2006, respectively. In addition, we received a response to sections C and D of the questionnaire from Thai I-Mei on September 5, 2006.

On September 8 and 13, 2006, Pakfood and Good Luck Product, respectively, responded to the petitioner's comments regarding home market viability. For further discussion, see "Home Market Viability and Selection of Comparison Markets" section of this notice.

On September 14, 2006, we published an additional notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from Thailand; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 54268 (Sept. 14, 2006).

We received comments from the petitioner on September 15, 2006, regarding the application of the multinational corporation (MNC) provision in section 773(d) of the Act with respect to Thai I-Mei.

On September 19, 2006, we issued a supplemental sales questionnaire to Pakfood.

On September 20, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Pakfood.

On September 21, 2006, we issued a supplemental sales questionnaire to Thai I-Mei.

On September 26, 2006, Thai I-Mei submitted a response to the petitioner's comments regarding the application of the MNC provision in section 773(d) of the Act with respect to Thai I-Mei.

On September 27, 2006, we issued a supplemental sales questionnaire to Good Luck Product.

We initiated a sales-below-cost investigation for Pakfood on October 3, 2006. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioner's Allegation of Sales Below the Cost of Production for Pakfood Company Limited" (Pakfood Cost Allegation).

We received Pakfood's supplemental response on October 17, 2006. Also on October 17, 2006, we issued a supplemental cost questionnaire to Thai I-Mei.

We received supplemental sales responses from Thai I-Mei and Good Luck Product on October 23 and 26, 2006, respectively.

On October 27, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Good Luck Product. This investigation for Good Luck Product was initiated on October 30, 2006. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations from The Team entitled, "Petitioner's Allegation of Sales Below the Cost of Production for Good Luck Product Co., Ltd." (Good Luck Product Cost Allegation).

Pakfood submitted a response to section D of the questionnaire on November 2, 2006.

On November 14, 2006, we issued a second sales supplemental questionnaire to Good Luck Product.

We received a response to the supplemental cost questionnaire from Thai I-Mei on November 15, 2006.

On November 16, 2006, we issued a supplemental cost questionnaire to Pakfood.

We received a second supplemental sales response, as well as a response to section D of the questionnaire from Good Luck Product on November 22 and 30, 2006, respectively.

On December 7, 2006, we issued a second sales supplemental questionnaire to Thai I-Mei. Also, on December 8, 2006, we issued a supplemental cost questionnaire to Good Luck Product.

We received a supplemental cost response from Pakfood on December 14, 2006.

On December 21, 2006, we issued a supplemental cost questionnaire to Thai I-Mei.

Sales verifications were conducted at Good Luck Product and Pakfood in December 2006. Sales verification reports were issued in January and February 2007 for Pakfood and Good Luck Product, respectively.

On January 4, 2007, we received Good Luck Product's supplemental cost response, as well as Thai I-Mei's second supplemental sales response. In addition, we received a supplemental cost response from Thai I-Mei on January 10, 2006.

On January 11, 2007, we issued a third supplemental sales questionnaire to Thai I-Mei.

On January 19, 2007, based on the information on the record, we found that the MNC provision does not apply to Thai I-Mei. For further discussion, see the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from The Team entitled, "Application of the

Multinational Corporation Provision," dated January 19, 2007.

We received Thai I-Mei's third supplemental sales response on January 23, 2007. Also on this date, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

On January 24 and February 14, 2007, respectively, Pakfood and Good Luck Product submitted revised sales databases which incorporated certain minor corrections to these companies' data discovered at verification.

We conducted cost verifications at Good Luck Product and Pakfood in January and February 2007.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

⁵ "Tails" in this context means the tail fan, which includes the telson and the uropods.

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Partial Rescission of Review

Eight of the companies that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. However, based on information obtained from CBP, it appeared that these companies did, in fact, have shipments or entries

of subject merchandise that entered into the United States during the POR. See the Memorandum to the File from Brianne Riker, Analyst, Office 2, AD/CVD Operations, entitled, "2004–2006 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Entry Documents from U.S. Customs and Border Protection," dated July 31, 2006. From September 2006 to February 2007, we contacted seven of the eight companies in question and/or the exporters listed on the CBP entry documentation and requested that they provide information regarding the entries in question. We did not request information from one of the eight companies, Bangkok Dehydrated Marine Product Co., Ltd. (Bangkok Dehydrated Marine Product), because, based on CBP information, we found that the merchandise (*i.e.*, dried shrimp) was not subject to the scope of the order.

Based on either responses to the Department's solicitation or the CBP information, we have preliminarily determined that entries at issue by four of the eight exporters/producers, Bangkok Dehydrated Marine Product, Siam Ocean,⁶ Tep Kinsho,⁷ and Thai Agri,⁸ were not reportable transactions because they were either: (1) Non-subject merchandise (*i.e.*, dried shrimp); (2) a non-paid sample; or, (3) reported by another company in its Q&V questionnaire. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily 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).

One of the remaining exporters/producers, Siam Intersea Co., Ltd., provided additional information to the Department indicating that it did, in fact, have a reportable transaction during the POR. Therefore, we are not rescinding the administrative review with respect to this company and are preliminarily assigning to it a weighted-average margin calculated for the companies selected for individual review because, based on its response: (1) The discrepancy between the Q&V questionnaire response and the CBP

data appeared to be an inadvertent oversight; (2) the quantity of the exports in question was so small that it would not have impacted our selection of respondents; and, (3) the company has been responsive to our requests for information.

In addition, of the remaining two exporters/producers, NR Instant Produce⁹ and Surapon Nichirei Foods Co., Ltd. (Surapon) stated that they did not report the entries in question because they claimed that the entries were of non-subject merchandise. Because these goods were entered into the United States as subject merchandise and there is insufficient evidence on the record to conclude otherwise, we preliminarily determine that the merchandise in question is included within the scope of the order. As a result, we are preliminarily assigning NR Instant Produce and Surapon the weighted-average margin calculated for the companies selected for individual review because these companies have been responsive to our requests for information. We may request additional information on the products in question. If we ultimately determine the merchandise is not subject to the order, we will rescind the administrative review with respect to NR Instant Produce and Surapon.

Finally, the remaining exporter/producer, Thai World,¹⁰ failed to respond to the Department's request for additional information and, thus, we find that it failed to act to the best of its ability. Therefore, we are not rescinding the administrative review with respect to Thai World. For further information, see the "Application of Facts Available" section of this notice.

Application of Facts Available

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.

As discussed in the "Background" section, above, in April 2006, the

⁶ We note that the response from this company indicated that its name is Siam Ocean Frozen Foods Co., Ltd.

⁷ We note that the response from this company indicated that its name is Tep Kinsho Foods Co., Ltd.

⁸ We note that the response from this company indicated that its name is Thai Agri Foods Co., Ltd.

⁹ We note that the response from this company indicated that its name is NR Instant Produce Co., Ltd. (NR Instant Produce).

¹⁰ We note that the response from this company indicated that its name is Thai World Imports and Exports Co., Ltd. (Thai World).

Department requested that all companies subject to the review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Of the 145 companies subject to review, 32 companies did not respond to the Department's initial requests for information. Subsequently in May 2006, the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, six of these companies also failed to respond to the Department's second questionnaire.¹¹ On January 31, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each company. See the Memorandum to the File from Brianne Riker, Analyst, Office 2, AD/CVD Operations, entitled, "Placing Delivery Information on the Record of the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated January 31, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate.

Furthermore, one company, Thai World, claimed that it made no shipments of subject merchandise to the United States during the POR. Because we were unable to confirm the accuracy of Thai World's claim with CBP, we requested further information/clarification from it. However, Thai World failed to provide the requested information/clarification. By doing so, Thai World withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department also preliminarily finds that the use of total facts available with respect to Thai World is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is

adverse to the interests of that party in selecting from the facts otherwise available. See also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *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) (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198–99. 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); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Anglo-Siam Seafoods, Fortune Frozen Foods, Gallant Ocean, Li-Thai, Queen Marine Food, Smile Heart Foods, and Thai World 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 requests for information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. See *Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as 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., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily

assigned a rate of 57.64 percent, which is the highest rate alleged in the petition, as adjusted at the initiation of the less-than-fair-value (LTFV) investigation. See *Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3881 (Jan. 27, 2004). 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).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the petition margin, we compared it to the transaction-specific rates calculated for each respondent in this review. We find that it is reliable and relevant because the petition rate fell within the range of individual transaction margins calculated for the mandatory respondents. See *Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). Therefore, we have determined that the 57.64 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was

¹¹ These companies are: Anglo-Siam Seafoods Co., Ltd. (Anglo-Siam Seafoods), Fortune Frozen Foods (Thailand) Co., Ltd. (Fortune Frozen Foods), Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean), Li-Thai Frozen Foods Co., Ltd. (Li-Thai), Queen Marine Food Co., Ltd. (Queen Marine Foods), and Smile Heart Foods.

based on a company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin falls within the range of transaction-specific margins for the mandatory respondents, we have preliminarily determined that the 57.64 percent margin, as alleged in the petition and adjusted at the initiation of the LTFV investigation, is appropriate as AFA. We are assigning this rate to Anglo-Siam Seafoods, Fortune Frozen Foods, Gallant Ocean, Li-Thai, Queen Marine Food, Smile Heart Foods, and Thai World. For company-specific information used to corroborate this rate, see the Memorandum to the File from Brianne Riker, Analyst, Office 2, AD/CVD Operations, entitled "Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2007.

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp from Thailand to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Constructed Export Price/Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, for Good Luck Product and Pakfood, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Regarding Thai I-Mei, we have determined that this company did not have a viable home or third country market during the POR. Therefore, as the basis for NV, we used constructed value (CV) when making comparisons to CEP for Thai I-Mei in accordance with section 773(a)(4) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Good Luck Product and Pakfood covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes

of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the home market for Good Luck Product and Pakfood within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of shrimp to sales of shrimp of the most similar foreign like product made in the ordinary course of trade. For Good Luck Product and Pakfood, where there were no sales of identical or similar merchandise, and for all Thai I-Mei sales, we made product comparisons using CV.

With respect to sales comparisons involving broken shrimp, we compared Pakfood's sales of broken shrimp in the home market to its sales of comparable quality shrimp to the United States.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Good Luck Product and Pakfood in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

Constructed Export Price/Export Price

For all U.S. sales made by Good Luck Product and Pakfood we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

For U.S. sales made by Thai I-Mei, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of Thai I-Mei by its subsidiary, Ocean Duke Corporation, in the United States to unaffiliated purchasers.

A. Good Luck Product

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for foreign inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), foreign warehousing expenses, foreign brokerage and handling expenses, survey fees, and ocean freight expenses,

where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Pakfood

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments and discounts. We made deductions from the starting price for foreign inland freight expenses, foreign warehousing expenses, gate charges, survey fees, foreign brokerage and handling expenses, ocean freight expenses, U.S. brokerage expenses, and U.S. customs duties, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Regarding warehousing expenses, Pakfood reported that certain of these services were provided by an affiliated party. At verification, we tested the warehousing expenses charged by the affiliated party to determine whether the prices charged were at "arm's length." Where we found that the prices were not at arm's length, we adjusted them to be equivalent to the market price. For further discussion, see the Memorandum to the File from Irina Itkin and Brianne Riker entitled, "Verification of the Sales Response of Pakfood Public Company Limited in the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand" ("Pakfood Verification Report"), dated January 19, 2007.

C. Thai I-Mei

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was 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, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For Thai I-Mei's direct shipments, we used the earlier of shipment date from Thailand to the customer or the U.S. affiliate's invoice date as the date of sale, in accordance with our practice. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling, U.S. customs duties, U.S. inland insurance, U.S. inland freight expenses, and U.S. warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we calculated an amount for profit to arrive at CEP. In accordance with section 772(f)(2)(C)(iii) of the Act, we based the CEP profit rate on Thai I-Mei's financial statements because Thai I-Mei made sales during the POR solely to the United States. For further discussion, see the Memorandum to the File from Alice Gibbons, Senior Analyst, Office 2, AD/CVD Operations, entitled, "Calculations Performed for Thai I-Mei Frozen Foods Co., Ltd. for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2007.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Good Luck Product and Pakfood had viable home markets during the POR. Consequently, we based NV on home market sales for these respondents.

However, the petitioner has argued throughout this review that a large portion of Pakfood's home market is not legitimate (therefore, making its home market not viable) because there is no significant market for frozen shrimp in Thailand. In response, Pakfood has

argued that its reported home market sales are legitimate because they: (1) Were exclusively of foreign like product; (2) were for consumption in Thailand; and, (3) do not constitute a particular market situation. At verification we thoroughly examined this issue and confirmed Pakfood's assertions regarding its home market sales. For further discussion, see the "Pakfood Verification Report."

Further, we determined that Thai I-Mei's aggregate volumes of home and third country market sales of the foreign like product were insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used CV as the basis for calculating NV for Thai I-Mei, in accordance with section 773(a)(4) of the Act.

B. Affiliated-Party Transactions and Arm's-Length Test

During the POR, Good Luck Product and Pakfood sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation). Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. See 19 CFR 351.102(b).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not

sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),¹² we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

¹² Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

1. Good Luck Product

Good Luck Product reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, spot sales). We examined the selling activities performed for this channel and found that Good Luck Product performed the following selling functions: sales forecasting, order input/processing, providing direct sales personnel, providing commission payments, claim services (*i.e.*, billing adjustments), freight and delivery services, and packing. These selling activities can be generally grouped into four core selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and, (4) warranty and technical support. Accordingly, based on the core selling functions, we find that Good Luck Product performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Good Luck Product made sales through the following channels of distribution: (1) Spot sales; (2) sales to a Thai retailer; and, (3) sales through retail arrangements. Good Luck Product stated that its home market sales were made at the same LOT, regardless of distribution channel. We examined the selling activities performed for spot sales and found that Good Luck Product performed the following selling functions: order input/processing, providing direct sales personnel, providing commission payment, claim services (*i.e.*, return service), and freight and delivery services. Regarding sales both to the Thai retailer and through retail arrangements, we find that Good Luck Product performed the following sales activities: sales forecasting, sales promotion/advertising/trade fairs, packing, providing retail displays/inventory maintenance, order input/processing, providing direct sales personnel, providing rebates, claim services (*i.e.*, return service), and freight and delivery services. Accordingly, based on the core selling functions, we find that Good Luck Product performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services in the home market. Although Good Luck Product performed additional sales and marketing functions for its sales both to

the Thai retailer and through retail arrangements that it did not perform for its spot sales, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT in the home market. Therefore, we preliminarily determine that there is one LOT in the home market because Good Luck Product performed essentially the same selling functions for all home market sales.

Finally, we compared the EP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determined that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

2. Pakfood

Pakfood reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: sales forecasting/market research, order processing, providing direct sales personnel, providing commission payments, sales promotion/trade shows/advertising, customer contact, price negotiation, invoice issuance, payment receipt, delivery services, and packing. Accordingly, based on the core selling functions, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood made sales to distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, regardless of customer category. We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: sales forecasting/market research, sales promotion/trade shows/advertising, customer contact, price negotiation, order processing, invoice issuance, delivery services, providing direct sales personnel, payment receipt, and packing. Accordingly, based on the core selling functions, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for all

customers in the home market. Because all sales in the home market are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers are virtually identical. Therefore, we determined that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

3. Thai I-Mei

With respect to Thai I-Mei, this exporter had no viable home or third country market during the POR. Therefore, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (Jan. 16, 1998), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(2) of this section on the basis of sales of the foreign like product by the producer or exporter. Because we based the selling expenses and profit for Thai I-Mei on the weighted-average selling expenses incurred and profits earned by the other respondents in the administrative review, we are able to determine the LOT of the sales from which we derived selling expenses and profit for CV.

Thai I-Mei reported that it made sales through six channels of distribution in the United States; however, it stated that the selling activities it performed did not vary by channel of distribution. Thai I-Mei reported performing the following selling functions for sales to its U.S. affiliate: order input/processing, providing direct sales personnel, warranty service, freight and delivery services, and packing. Accordingly, based on the core selling functions, we find that Thai I-Mei performed sales and marketing, freight and delivery services, and warranty services for sales to its U.S. affiliate. Because Thai I-Mei's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

As noted above, we find that Good Luck Product and Pakfood performed the following core selling functions: sales and marketing, freight and

delivery services, inventory maintenance and warehousing, and warranty services. Further, although Good Luck Product and Pakfood performed certain sales and marketing functions (e.g., sales forecasting/market research, sales promotion/advertising/trade fairs, and retail displays) and inventory maintenance and warehousing functions that Thai I-Mei did not perform, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT. Thus, we determine that the NV LOT for Thai I-Mei is the same as the LOT of Thai I-Mei's CEP sales. Because Good Luck Product and Pakfood only made sales at one LOT in their home markets, and there is no additional information on the record that would allow for an LOT adjustment, we determine that no LOT adjustment is warranted for Thai I-Mei.

Regarding the CEP-offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for Thai I-Mei.

D. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Good Luck Product's and Pakfood's sales of frozen warmwater shrimp in the home market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Good Luck Product's and Pakfood's sales were made at prices below their respective COPs. See the Good Luck Product Cost Allegation and the Pakfood Cost Allegation.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section below for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recent supplemental section D questionnaire response for the COP calculation, except for the following

instances where the information was not appropriately quantified or valued:

a. Good Luck Product

1. We adjusted Good Luck Product's reported G&A expenses to exclude an offset claimed for trade fair income because the cost of the products sold was already deducted from the reported costs.

2. We adjusted the cost of sales denominator used to calculate the G&A and financial expense ratios to deduct certain shrimp purchases that were erroneously double-booked by Good Luck Product and removed from the reported costs.

3. Good Luck Product did not remove packing costs from the denominator used to calculate the G&A and financial expense ratios. Therefore, we applied these rates to the reported cost of manufacturing, including packing expenses.

Our revisions to Good Luck Product's COP data are discussed in the Memorandum from Christopher Zimpo, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Good Luck Product Co., Ltd.," dated February 28, 2007.

b. Pakfood

1. We adjusted the G&A expense ratios for Pakfood and its affiliates Asia Pacific (Thailand) Company Limited and Takzin Samut Company Limited to include a portion of the affiliate Okeanos Company Limited's administrative expenses.

2. We adjusted Pakfood's G&A expense ratio to: (1) Exclude the offset for the gain on the sale of marketable securities; and, (2) include the G&A expenses and cost of sales of an affiliated producer in the numerator and denominator. In addition, we excluded an offset to Pakfood's G&A expenses for rental income received from an affiliated producer.

3. Because Pakfood had net financial income, we did not include an amount for financial expense for COP. This is in accordance with the Department's practice of determining that, when a company earns enough financial income that it recovers all of its financial expense, that company did not have a resulting cost for financing during that period. See *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26460 (May 5, 2006); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From*

Canada, 70 FR 73437 (Dec. 12, 2005), and accompanying Issues and Decision Memorandum at Comments 9 and 25.

Our revisions to Pakfood's COP data are discussed in the Memorandum from Ernest Gziryan, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost and Constructed Value Calculation Memorandum for the Preliminary Results—Pakfood Public Company Limited," dated February 28, 2007.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses, and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" section.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than COP, we determined that such sales have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Good Luck Product's and Pakfood's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in

accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See* "Calculation of Normal Value Based on Constructed Value" section below.

E. Calculation of Normal Value Based on Comparison Market Prices

1. Good Luck Product

We based NV for Good Luck Product on delivered prices to unaffiliated customers in the home market or prices to affiliated customers in the home market that were determined to be at arm's length. We made adjustments, where appropriate, to the starting price for discounts and rebates. We made deductions, where appropriate, from the starting price for inland freight expenses and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and bank charges.

Regarding credit expenses, Good Luck Product reported that it had not received full payment for certain home market and U.S. sales. Consequently, for the unpaid portion of these sales, we used a payment date of February 28, 2007 (*i.e.*, the date of the preliminary results), and recalculated imputed credit expenses accordingly.

We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or, (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. Pakfood

We based NV for Pakfood on ex-factory or delivered prices to unaffiliated customers in the home market or prices to affiliated customers in the home market that were determined to be at arm's length. We made deductions, where appropriate, from the starting price for inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

Regarding warehousing expenses, Pakfood reported that certain of these services were provided by an affiliated party. At verification, we tested the warehousing expenses charged by the affiliated party to determine whether the prices charged were at "arm's length." Where we found that the prices were not at arm's length, we adjusted them to be equivalent to the market price. For further discussion, see the "Pakfood Verification Report."

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and bank charges. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or, (2) the amount of indirect selling expenses incurred in the comparison market.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for Pakfood and Good Luck Product for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV. For Thai I-Mei, in accordance with section 773(a)(4) of the Act, we based NV on CV

because there was no viable home or third country market.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For Good Luck Product and Pakfood, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above, and we based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act. For comparisons to Good Luck Product's and Pakfood's EP, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

For Thai I-Mei, in accordance with section 773(e) of the Act, we calculated CV based on the sum of Thai I-Mei's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. The Department relied on COP data submitted by Thai I-Mei in its most recent supplemental section D questionnaire response for the COP calculation, except for the calculation of the company's G&A and financial expense ratios. For these ratios, we adjusted the reported data to include inventory changes in the denominator. Our revisions to Thai I-Mei's COP data are discussed in the Memorandum from Oh Ji Young, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Thai I-Mei Frozen Foods Co., Ltd.," dated February 28, 2007.

Because Thai I-Mei does not have a viable comparison market, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Thai I-Mei does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Therefore, we calculated Thai I-Mei's CV profit and selling expenses based on alternative (ii) of this section, in accordance with section 773(e)(2)(B)(ii) of the Act. As a result,

we calculated Thai I-Mei's CV profit and selling expenses as a weighted-average of the profit and selling expenses incurred by the two other respondents in this administrative review.

Specifically, we calculated the weighted-average profit and selling expenses incurred on home market sales by Good Luck Product and Pakfood.

For comparisons to Thai I-Mei's CEP, we deducted from CV direct selling expenses incurred on Good Luck Product's and Pakfood's home market sales, in accordance with section 773(a)(7)(ii)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 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 the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period August 4, 2004, through January 31, 2006, as follows:

Manufacturer/exporter	Percent margin
Good Luck Product Co., Ltd	10.75
Pakfood Public Company Limited/ Okeanos Company Limited/ Takzin Samut Company Limited	4.29
Thai I-Mei Frozen Foods Co., Ltd	2.34

Review-Specific Average Rate
Applicable to the Following
Companies:¹³

Manufacturer/exporter	Percent margin
Crystal Frozen Foods Co., Ltd	4.24
Far East Cold Storage Co., Ltd	4.24
Inter-Oceanic Resources Co., Ltd	4.24
Kitchens of the Oceans (Thailand), Ltd	4.24
Lee Heng Seafood Co., Ltd	4.24
Narong Seafood Co., Ltd	4.24
NR Instant Produce Co., Ltd	4.24
Pacific Queen Co., Ltd	4.24
Piti Seafood Co., Ltd	4.24
S&D Marine Products Co., Ltd	4.24
Siam Intersea Co., Ltd	4.24
Siamchai International Food Co., Ltd	4.24
SMP Food Product Co., Ltd	4.24
Surapon Nichirei Foods Co., Ltd ..	4.24
Suratthani Marine Products Co., Ltd	4.24

AFA Rate Applicable to the Following
Companies:

¹³ This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/exporter	Percent margin
Anglo-Siam Seafoods Co., Ltd	57.64
Fortune Frozen Foods (Thailand) Co., Ltd	57.64
Gallant Ocean (Thailand) Co., Ltd	57.64
Li-Thai Frozen Foods Co., Ltd	57.64
Queen Marine Food Co., Ltd	57.64
Smile Heart Foods	57.64
Thai World Imports and Exports Co., Ltd	57.64

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For certain sales made by Pakfood and all of Thai I-Mei's sales, we note that these companies reported the entered value for the U.S. sales in question. We

will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For all of Good Luck Product's and certain of Pakfood's sales, we note that these companies did not report the entered value for the U.S. sales in question. We will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). 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 that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate if there is no rate for the

intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the "All Others" rate made effective by the LTFV investigation. *See Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-4278 Filed 3-8-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-838]

Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to 11 companies.¹ The respondents which the Department selected for individual review are Aquatica Maricultura do Brasil Ltda ("Aquatica") and Comercio de Pescado Aracatiense Ltda. ("Compescal"). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review ("POR") covers August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by Aquatica and Compescal have been made below normal value ("NV"). In addition, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information based on the preliminary results for the respondents selected for individual review. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available ("AFA").

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)

¹ This figure does not include those companies for which the Department is preliminarily rescinding the administrative review. *See* "Partial Rescission of Review" section for further discussion.

482-4929 or (202) 482-4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain warmwater shrimp from Brazil. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) ("Shrimp Order"). On February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Brazil for the period August 4, 2004, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, the petitioner² submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received a timely request under 19 CFR 351.213(b)(2) to conduct an administrative review of the sales of certain frozen warmwater shrimp from the following affiliated producers/exporters of subject merchandise: CIDA Central De Industrializacao E Distribuicao De Alimentos Ltda. and Produmar Cia Exportadora de Produtos Do Mar (collectively "CIDA").

On April 7, 2006, the Department published a notice of initiation of administrative review for 50 companies and requested that each provide data on the quantity and value of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (April 7, 2006) ("Notice of Initiation").

During the period April 28 through June 19, 2006, we received responses to the Department's quantity and value questionnaire from 19 companies. We

² The petitioner is the Ad Hoc Shrimp Trade Action Committee.

did not receive responses to this questionnaire from the remaining companies.

Subsequently, the Department received withdrawal requests with respect to many of the companies. However, based upon our consideration of the responses to the quantity and value questionnaire and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review request remained. As a result, on July 11, 2006, we selected the two largest remaining producers/exporters by export volume of certain frozen warmwater shrimp from Brazil during the POR, Aquatica and Compescal, as the mandatory respondents in this review. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil: Selection of Respondents," dated July 11, 2006.* On this same date, we issued the antidumping questionnaire to Aquatica and Compescal.

On July 20, 2006, we published a notice rescinding the administrative review with respect to 34 companies for which the requests for an administrative review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). *See Certain Frozen Warmwater Shrimp from Brazil; Partial Rescission of Antidumping Duty Administrative Review; 71 FR 41199 (July 20, 2006).*

We received responses to section A of the questionnaire from Aquatica and Compescal on August 15, 2006.

On August 25, 2006, the Department postponed the preliminary results in this review until no later than February 28, 2007. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews, 71 FR 50387 (August 25, 2006).*

On August 31, 2006, the petitioner submitted comments regarding third country market selection with respect to Aquatica and the possible existence of a "particular market situation" with respect to Compescal.

We received responses to sections B and C of the questionnaire from Compescal and Aquatica on September 7 and 8, 2006, respectively.

We issued supplemental questionnaires to Aquatica and Compescal on September 28, 2006, and received responses on October 20, 2006.

On November 1, 2006, the petitioner submitted additional comments on the appropriate comparison markets to be used for Aquatica and Compescal.

On September 20, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Aquatica. On November 6, 2006, we initiated this investigation. *See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Petitioners' Allegation of Sales Below the Cost of Production for Aquatica Maricultura do Brasil Ltda.," dated November 6, 2006.*

Also on November 6, 2006, we determined that France constitutes the appropriate comparison market with respect to Aquatica. *See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Brazil - Selection of the Appropriate Third Country Market for Aquatica," dated November 6, 2006.*

On November 9, 2006, we found that a particular market situation does not exist which would render Compescal's home market inappropriate for purposes of determining NV in this review. *See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, entitled "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil: Home Market as Appropriate Comparison Market for Comercio de Pescado Aracatiense Ltda.," dated November 9, 2006.*

On November 17, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Compescal. This investigation was initiated on November 28, 2006. *See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Petitioners' Allegation of Sales Below the Cost of Production for Comercio de Pescado Aracatiense Ltda.," dated November 28, 2006.*

Aquatica and Compescal submitted responses to section D of the questionnaire on December 6 and 28, 2006, respectively. We issued a section D supplemental questionnaire to Aquatica on December 21, 2006, and to Compescal on January 10, 2007. On January 11 and 30, 2007, we received responses to these supplemental questionnaires from Aquatica and Compescal, respectively. We issued a second section D supplemental

questionnaire to Aquatica on January 18, 2007, and received a response on February 1, 2007.

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders, 72 FR 2857 (January 23, 2007).*

Verifications were conducted in January and February 2007. Sales verification reports were issued on February 23, 2007. Cost verification reports will be issued following the preliminary results.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off,³ shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Partial Rescission of Review

On July 20, 2006, we published a notice rescinding the administrative review with respect to 34 companies for which the petitioner and CIDA timely withdrew their requests for an administrative review, and because no other interested party requested a review for these companies, in accordance with 19 CFR 351.213(d)(1). *See Certain Frozen Warmwater Shrimp from Brazil; Partial Rescission of*

Antidumping Duty Administrative Review; 71 FR 41199 (July 20, 2006).

Artico was inadvertently omitted from the list of companies for which the administrative review was rescinded in July 2006. Artico has the same address as Ortico, which was included in our earlier rescission notice. Accordingly, we consider Artico and Ortico to be the same company.

In addition, as a result of additional research, we confirmed that Marine Maricultura do Nordeste SA, Marine Maricultura do Nordeste and Marine Maricultura Nordeste SA are, in fact, the same company, and that the correct company name is Marine Maricultura do Nordeste SA, which is no longer in business. We rescinded the administrative review with respect to Marine Maricultura do Nordeste in July 2006, as a result of the petitioner’s timely withdrawal of the request for review of this company.

For these reasons, we are also preliminarily rescinding this review with respect to Artico, Marine Maricultura do Nordeste SA and Marine Maricultura Nordeste SA.

Aquatica’s Affiliated Parties

Aquatica has three affiliates involved in the production and sale of the subject merchandise, two of which exported shrimp to the United States during the POR. The third affiliate, Aquafeed, which produces feed for larva and shrimp and also sold some frozen shrimp produced by Aquatica to France during the POR, together with Aquatica, submitted a consolidated questionnaire response to the Department.⁴ In its August 15 and October 20, 2006, questionnaire responses, Aquatica provided information regarding the relationship between Aquatica and its two affiliated producers/exporters of subject merchandise at issue during the POR. After an analysis of this information, as well as information obtained as a result of additional research, we preliminarily determine that, in accordance with 19 CFR 351.401(f), it is not appropriate to collapse these affiliated entities for purposes of this review because: 1) there is no common ownership among the companies; 2) no managerial employees or board members of one firm are associated with any of the other firms; 3) there is no sharing of sales information, involvement in pricing and production decisions, sharing of

facilities or employees, or significant transactions between and among the affiliated producers. Thus, there is no potential for manipulation of price or production if Aquatica and its affiliates do not receive the same antidumping duty rate. For further discussion, see the Memorandum from Kate Johnson and Rebecca Trainor, Senior Analysts, Office 2, to James Maeder, Director, Office 2, entitled, “Whether to Collapse Aquatica Maricultura do Brasil Ltda. with Its Affiliated Producers/Exporters in the 2004–2006 Administrative Review on Certain Frozen Warmwater Shrimp from Brazil,” dated February 28, 2007.

Application of Facts Available

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.

As discussed in the “Background” section, above, in April 2006, the Department requested that all companies subject to review respond to the Department’s quantity and value questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Of the 11 companies subject to review,⁵ two companies did not respond to the Department’s requests for information: SM Pescados Industria Comercio E Exportacao Ltda. and Valenca da Bahia Maricultura. Subsequently in May 2006, the Department issued letters to these companies affording them a second opportunity to submit a response to the Department’s quantity and value questionnaire. However, these companies also failed to respond to the Department’s questionnaire after the Department provided a second opportunity. By failing to respond to the Department’s quantity and value questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these

⁴ Based on information submitted in Aquatica’s questionnaire responses, as well as information obtained at verification, we have accepted Aquatica’s claim that its operations are intertwined with those of Aquafeed such that they essentially function as one company.

⁵ This figure does not include those companies for which the Department rescinded this administrative review in July 2006, as well as the companies for which we are preliminarily rescinding this administrative review, as discussed above.

companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *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 (August 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) (“SAA”), reprinted in 1994 U.S.C.A.N. 4040, 4198–99. 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); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (“*Nippon*”). We preliminarily find that SM Pescados Industria Comercio E Exportacao Ltda. and Valenca da Bahia Maricultura SA 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 requests for information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. See *Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as 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., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 349 percent, which is the highest rate alleged in the petition. See *Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3881 (January 27, 2004). 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).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the petition margin, we compared it to the transaction-specific rates calculated for each respondent in this review. We find that it is reliable and relevant because the petition rate fell within the range of individual transaction margins calculated for the mandatory respondents. See *Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). Therefore, we have determined that the 349 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the

margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). In the instant case, we examined whether any information on the record would discredit the selected rate as reasonable facts available and were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin falls within the range of transaction-specific margins for the mandatory respondents, we have preliminarily determined that the 349 percent margin, as alleged in the petition, is appropriate as AFA. We are assigning this rate to SM Pescados Industria Comercio E Exportacao Ltda. and Valenca da Bahia Maricultura SA. For company-specific information used to corroborate this rate, see the Memorandum to the File from Kate Johnson and Rebecca Trainor, Senior International Trade Compliance Analysts, Office 2, AD/CVD Operations, entitled “Corroboration of Data Contained in the Petition for Assigning Facts Available Rates in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil,” dated February 28, 2007.

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by Aquatica and Compescal to the United States were made at less than NV, we compared EP to the NV, as described in the “Export Price” and “Normal Value” sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section below.

With respect to Compescal, we excluded certain home market sales from our analysis which we verified were either cancelled or outside the ordinary course of trade. See Memorandum to The File, from Kate Johnson and Rebecca Trainor entitled “Calculation Memorandum for the Preliminary Results for Comercio de Pescado Aracatiense Ltda. (Compescal),” (“*Compescal Calculation*”).

Memorandum”) dated February 28, 2007, for further discussion.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Aquatica and Compescal covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales to sales made in the home market for Compescal and France for Aquatica within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Aquatica and Compescal in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

With respect to sales comparisons involving broken shrimp, we compared Compescal’s sales of broken shrimp in the home market to its sales of comparable quality shrimp to the United States. As Aquatica did not make any sales of broken shrimp in its comparison market, we compared Aquatica’s U.S. sales of broken shrimp to constructed value (“CV”).

Export Price

For all U.S. sales made by Aquatica and Compescal, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (“CEP”) methodology was not otherwise warranted based on the facts of record.

A. Aquatica

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight, insurance, foreign brokerage, port handling and warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. Aquatica reported port handling expenses as

direct selling expenses. We reclassified these expenses as movement expenses in accordance with our normal practice.

Based on our sales verification findings, we made revisions to the insurance expense reported for certain U.S. sales. See Memorandum to The File, from Kate Johnson and Rebecca Trainor entitled “Aquatica Maricultura do Brasil Ltda., Preliminary Results Notes and Margin Calculation,” dated February 28, 2007, (“*Aquatica Calculation Memorandum*”) for further discussion.

B. Compescal

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight, insurance, and port expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Because Compescal’s aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that its home market was viable. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act. See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled “Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil: Home Market as Appropriate Comparison Market for Comercio de Pescado Aracatiense Ltda.,” dated November 9, 2006.

Furthermore, we determined that Aquatica’s aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, with respect to Aquatica, we used sales to France, Aquatica’s largest third country market, as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled

“Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Brazil - Selection of the Appropriate Third Country Market for Aquatica,” dated November 6, 2006.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (“LOT”) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997) (“*Plate from South Africa*”). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment

⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (“SG&A”) expenses, and profit for CV, where possible.

was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Aquatica

Aquatica reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, directly to U.S. customers/distributors). We examined the selling activities performed for this channel and found that Aquatica performed the following selling functions: sales forecasting and strategic and economic planning, advertising and marketing, sales promotion, packing, inventory maintenance, order input/processing, guarantees, and invoicing. These selling activities can be generally grouped into three core selling function categories for analysis: 1) sales and marketing; 2) inventory maintenance and warehousing; and, 3) warranty and technical support. Accordingly, based on the core selling functions, we find that Aquatica performed sales and marketing, inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

When NV is based on CV, as in this case, the NV LOT is that of the sales from which we derive SG&A expenses and profit. (*See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998)). As discussed below, we based the CV selling expenses and profit on the weighted-average selling expenses incurred and profits earned by two respondents in the LTFV investigation. We are unable to determine that the LOT of the sales from which we derived selling expenses and profit for CV is different from the EP LOT. Further, because NV is based on CV, there is only one NV LOT, and there is insufficient information on the record that would enable us to determine that an LOT adjustment is warranted. Therefore, we have no basis upon which to make an LOT adjustment to NV.

2. Compescal

Compescal reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel, and found that Compescal performed the following selling functions: sales forecasting and strategic/economic planning, packing, verbal guarantees, freight and delivery to port, and invoicing. These selling activities can be generally grouped into three core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; and, 3) warranty and technical support. Accordingly, based on the core selling functions, we find that Compescal performed sales and marketing, freight and delivery services, and warranty and technical support for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Compescal made sales to final consumers (restaurants and individuals). Compescal stated that its home market sales were made through four channels of distribution: 1) ex-factory; 2) delivery to the Fortaleza business unit; 3) delivery to the Fortaleza business unit and then to the customer; and 4) delivery to the Fortaleza business unit and then to the airport. We examined the selling activities performed for these channels, and found that Compescal performed the following selling functions: packing, verbal guarantees, freight and delivery (excluding ex-factory sales), and invoicing. These selling activities can be generally grouped into three core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; and, 3) warranty and technical support. Accordingly, based on the core selling functions, we find that Compescal performed sales and marketing and warranty and technical support for all home market sales, and freight and delivery services for certain home market sales. We do not find that the fact that freight and delivery services are not provided for one channel of distribution is sufficient to distinguish it as a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers are virtually identical. Therefore, we determined that sales to the U.S. and

home markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Aquatica's and Compescal's sales of frozen warmwater shrimp in the third country and home market, respectively, were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Aquatica's and Compescal's sales were made at prices below their respective COPs. *See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Petitioners' Allegation of Sales Below the Cost of Production for Aquatica Maricultura do Brasil Ltda."* dated November 6, 2006; and *Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Petitioners' Allegation of Sales Below the Cost of Production for Comercio de Pescado Aracatiense Ltda."* dated November 28, 2006.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' cost of production ("COP") based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for general and administrative ("G&A") expenses and interest expenses. *See "Test of Comparison Market Sales Prices"* section below for treatment of home market/third country selling expenses.

The Department relied on the COP data submitted by each respondent in its most recent supplemental section D questionnaire response for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

a. Aquatica

1. We disallowed Aquatica's claimed adjustment to its reported costs for flood and virus losses because Aquatica did not provide sufficient evidence of flood losses and because we determined that the virus was not non-recurring, unforeseen or otherwise extraordinary.
2. We adjusted the cost of larva that was purchased from Aquatica's affiliate to reflect the market value of larva in accordance with section 773(f)(2) of the Act.

Our revisions to Aquatica's COP data are discussed in the Memorandum from James Balog, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Aquatica Maricultura do Brasil Ltda.," dated February 28, 2007.

b. Compescal

1. We disallowed Compescal's offset to the POR larva laboratory and farm costs for losses in productivity experienced as a result of a viral infection because we determined that the virus was not non-recurring, unforeseen, or otherwise extraordinary.
2. We revised the reported total fixed overhead costs to exclude only the 2004 and 2005 construction-in-progress costs that were actually incurred and capitalized during the POR.
3. We increased Compescal's cost of raw shrimp obtained from an affiliated supplier to reflect the market value of this input in accordance with section 773(f)(2) of the Act.
4. We revised Compescal's reported G&A expense rate calculation to include the "revaluation of depreciation expenses" that the company recorded as an administrative expense in their records. In addition, we adjusted the cost of goods sold denominator of the calculation to reflect the same basis as the total cost of manufacturing to which the rate is applied.
5. We adjusted the cost of goods sold denominator of the financial expense rate calculation to reflect the same basis as the total cost of manufacturing to which the rate is applied.

Our revisions to Compescal's COP data are discussed in the Memorandum from Heidi Schriefer, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Comercio de Pescado Aracatiense Ltda.," dated February 28, 2007.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market or third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the

COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were inclusive of interest revenue and exclusive of any applicable movement charges, discounts, and direct and indirect selling expenses and packing expenses, revised where appropriate. With respect to Aquatica, we reclassified certain expenses (*i.e.*, port handling and brokerage expenses) as movement expenses because Aquatica had incorrectly reported them as direct selling expenses. Based on our sales verification findings for Aquatica, we made minor revisions to port handling fees reported for certain third country sales and to the calculation of indirect selling expenses for all third country sales. *See Aquatica Calculation Memorandum.*

3. Results of the COP Test

In determining whether to disregard home market or third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market or third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Compescal's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

We found that, for all products, Aquatica's third country sales were at prices less than the COP, and in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded all third country sales and used CV as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

With respect to Compescal, for those U.S. sales of subject merchandise for which there were no useable home market sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. *See "Calculation of Normal Value Based on Constructed Value" section below.*

D. Calculation of Normal Value Based on Comparison Market Prices

Compescal

We based NV for Compescal on delivered, FOB port, FOB airport, or ex-factory prices to unaffiliated customers in the home market. We made adjustments, where appropriate, to the starting price for interest revenue. We made deductions, where appropriate, from the starting price for foreign inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. We recalculated foreign inland freight and warehousing expenses for all comparison market sales consistent with verification findings. *See Compescal Calculation Memorandum.*

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstance-of-sale ("COS") for imputed credit expenses, courier fees and documentation fees. We recalculated courier fees for all U.S. sales based on verification findings. We recalculated home market credit expenses using a publicly available average Brazilian short-term lending rate relevant to the POR, in accordance with the Import Administration Policy Bulletin No. 98.2 (February 23, 1998), because Compescal had no home market borrowings during the POR. *See Compescal Calculation Memorandum.*

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison—market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison—market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication, G&A, and interest based on the methodology described in the “Cost of Production Analysis” section, above.

For Aquatica, because all of its comparison—market sales failed the COP test and, therefore, were outside the ordinary course of trade, we cannot determine selling expenses or profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Aquatica did not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Further, we cannot calculate profit based on alternative (ii) of this section without violating our responsibility to protect respondent’s administrative protective order (APO) information because Compescal is the only other respondent with viable home market sales (19 CFR 351.405(b) requires that a profit ratio under this

alternative be based solely on home market sales). If we were to use Compescal’s profit ratio exclusively under this alternative, Aquatica would be able to determine Compescal’s proprietary profit rate. Therefore, we based Aquatica’s CV profit and selling expenses on the third alternative, any other reasonable method, in accordance with section 773(e)(2)(B)(iii) of the Act. As a reasonable method, we calculated Aquatica’s CV profit and selling expenses based on the weighted—average selling expense and profit rates derived from the comparison—market data of the respondents in the previous segment of this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), and Memorandum from James Balog, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Aquatica Maricultura do Brasil Ltda.,” dated February 28, 2007. Pursuant to alternative (iii), we have the option of using any other reasonable method, as long as the result is not greater than the amount realized by exporters or producers “in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,” the “profit cap”. In the instant case, the profit cap cannot be calculated using the available data because using Compescal’s home market data, the only information we have to allow us to calculate the amount normally realized by other exporters or producers in connection with the sale, for consumption in the home market, of

merchandise in the same general category, would violate our responsibility to protect the respondent’s APO information. Therefore, as facts available, we are applying option (iii), without quantifying a profit cap.

For Compescal, we based SG&A and profit on the actual amounts incurred and realized by Compescal in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for each respondent for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP for Compescal, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, CV. For comparisons to EP for Aquatica, we made COS adjustments by deducting direct selling expenses derived based on the methodology discussed above, and adding U.S. direct selling expenses to, CV.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 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 the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period August 4, 2004, through January 31, 2006, as follows:

Manufacturer/Exporter	Percent Margin
Aquatica Maricultura do Brasil Ltda./ Aquafeed do Brasil Ltda.	55.05
Comercio de Pescado Aracatiense Ltda.	23.11

Review—Specific Average Rate Applicable to the Following Companies:⁷

Manufacturer/Exporter	Percent Margin
Amazonas Industrias Alimenticias	48.13
Bramex Brasil Mercantil S.A.	48.13
Guy Vautrin Importacao & Exportacao	48.13
ITA Fish	48.13
JK Pesca Ltda.	48.13
Lusomar Maricultura Ltda.	48.13

⁷ This rate is based on the weighted average of the margins calculated for those companies selected for

individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Santa Lavinia Comercio E Exportacao Ltda.	48.13

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
SM Pescados Industria Comercio E Exportacao Ltda.	349.00
Valenca da Bahia Maricultura SA	349.00

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Interested parties may submit cases briefs not later than 30 days after the date of issuance of the last verification report in this case. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of issuance of the last verification report in this case. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Aquatica and Compescal, because they did not report the entered value of their U.S. sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value. For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). 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 that the merchandise they

sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.05 percent, the "All Others" rate made effective by the LTFV investigation. *See Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2007.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E7-4279 Filed 3-8-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review and a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), both covering the period of review ("POR") of July 16, 2004, through January 1, 2006. As discussed below, we preliminarily determine that certain respondents in these reviews (covering one new shipper review and sixteen companies subject to the administrative review)¹ have not made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* March 9, 2007.

FOR FURTHER INFORMATION CONTACT: Nicole Bankhead (respondent Grobest), and Matthew Renkey (respondent Fish One), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-9068 and (202) 482-2312, respectively.

SUPPLEMENTARY INFORMATION:

General Background

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on frozen warmwater shrimp from Vietnam. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("VN Shrimp Order"). On January 31, 2006, we received a request for a new shipper review from Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest"). On February 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Vietnam for the period July 16, 2004, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 5239 (February 1, 2006).

On February 28, 2006, we received requests to conduct administrative reviews of 83 companies from the Petitioner² in addition to requests by certain Vietnamese companies. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 71 FR 17813 (April 7, 2006) ("Administrative Review Initiation"). On March 17, 2006, the Department also initiated a new shipper review with respect to Grobest.³ On March 31, 2006, the Department initiated an administrative review of eighty-four⁴

² The Ad Hoc Shrimp Trade Action Committee is the Petitioner.

³ *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of New Shipper Review*, 71 FR 14834 (March 24, 2006) ("New Shipper Initiation").

⁴ AAAS Logistics, Agrimex, Amanda Foods (Vietnam) Ltd., American Container Line, Angiang Agricultural Technology Service Company, An Giang Fisheries Import and Export Joint Stock Company (Agifish), Aquatic Products Trading Company*, Bac Lieu Fisheries Company Limited*, Bentre Frozen Aquaprodukt Exports, Bentre Aquaprodukt Imports & Exports, Cai Doi Vam Seafood Import-Export Company (Cadovimex)*, Camau Frozen Seafood Processing Import Export Corporation (Camimex)*, Cam Ranh Seafoods Processing Enterprise Company (Camranh Seafoods)*, Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)*, Can Tho Agricultural Products, Can Tho Agricultural and Animal Products Import Export Company (Cataco)*, Can Tho Seafood Exports, Cautre Enterprises,

producers/exporters of subject merchandise from Vietnam. *See Administrative Review Initiation*. On May 31, 2006, the Department aligned Grobest's new shipper review with that of Fish One based on a request from Grobest.⁵

On July 27, 2006, in accordance with section 351.213(d)(1) of the Department's regulations, we rescinded the administrative review with respect to sixty-eight companies. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of the First Administrative Review*, 71 FR 42628 (July 27, 2006) ("Rescission Notice"). Therefore, these

Coastal Fishery Development, Coastal Fisheries Development Corporation (Cofidec)*, C P Vietnam Livestock Co. Ltd., C P Livestock, Cuu Long Seaproducts Limited (Cuulong Seapro)*, Danang Seaproducts Import Export Corporation (Seaprodex Danang)*, Dong Phuc Huynh Frozen Seafoods Pty, General Imports & Exports, Grobest & I Mei Industry Vietnam, Hacota Hai Viet, Hai Thuan Export Seaproducts Processing Co. Ltd., Hanoi Sea Products Import Export Corporation*, Hoa Nam Marine Agricultural, Hatrang Frozen Seaproduct Pty, Investment Commerce Fisheries Corporation (Incomfish)*, Kien Giang Sea Products Import—Export Company (Kisimex)*, Kim Anh Co. Ltd., Khanh Loi Trading, Lamson Import-Export Foodstuffs Corporation, Minh Hai Export Frozen Seafood Processing Joint Stock Company, Minh Hai Export Frozen Seafoods Processing Joint Stock Company (Minh Hai Jostoco)*, Minh Hai Joint Stock Seafoods Processing Company (Seaprodex Minh Hai)*, Minh Hai Sea Products Import Export Company (Seaprimex Co)*, Minh Phat Seafood*, Minh Phu Seafood Corporation*, Minh Qui Seafood*, Ngoc Sinh Seafoods*, Nha Trang Company Limited, Nha Trang Fisheries Joint Stock Company (Nhtrang Fisco)*, Nha Trang Fisheries Co. Ltd., Nha Trang Seaproduct Company (Nhtrang Seafoods)*, Pataya Food Industry (Vietnam) Ltd., Phu Cuong Seafood Processing and Import Export Company Ltd., Phuong Nam Co. Ltd., Phuong Nam Seafood Co. Ltd., Saigon Orchide, Sao Ta Foods Joint Stock Compay (Fimex VN)*, Seafood Processing Imports Exports Vietnam, Seaprodex, Sea Product, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Soc Trang Aquatic Products and General Import Export Company (Stampimex)*, Soc Trang Aquatic Products and General Import Export Company (Stampimex)*, Sonacos, Special Aquatic Products Joing Stock Company (Seaspmex), Tacvan Frozen Seafoods Processing Export Company, Thami Shipping & Airfreight, Thanh Long, Thanh Long, Thien Ma Seafood, Tho Quang Seafood Processing & Export Company, Thuan Phuoc Seafoods and Trading Corporation*, Tourism Material and Equipment Company (Matourimex Hochiminh City Branch), Truc An Company, UTXI Aquatic Products Processing Company*, Viet Foods Co. Ltd., Viet Hai Seafoods Company Ltd. (Vietnam Fish One)*, Vietnam Northern Viking Technologie Co. Ltd., Viet Nhan Company*, Vilfood Co, Vinh Loi Import Export Company (Vimexco)*, Vita, V N Seafoods. (* these companies received a separate rate in the prior segment (the less-than-fair value investigation) of this proceeding.

⁵ *See Letter from Grobest Re: Certain Frozen Warmwater Shrimp from Vietnam: Grobest's Request for Alignment of New Shipper and Administrative Reviews*, dated May 15, 2006.

¹ Further, we preliminarily determine to use total adverse facts available to determine the rate for eleven of the sixteen administrative review companies and the Vietnam-wide entity.

reviews cover 17⁶ producers/exporters of the subject merchandise and the Vietnam-wide entity.

On August 21, 2006, the Department extended the preliminary results for the instant reviews until February 28, 2007. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews*, 71 FR 50387 (August 25, 2006).

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁷ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue

shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Respondent Selection

On April 3, 2006, the Department sent letters to the Vietnam Association of Seafood Exporters and Producers ("VASEP") and the Ministry of Fisheries

in Vietnam requesting assistance with distributing the Department's questionnaire. On April 25, 2006, the Department sent a letter to all interested parties clarifying an aspect of the separate rates application. Between April 27 and May 19, 2006, the Department received Quantity and Value questionnaire ("Q&V") responses and separate rate certifications from COFIDEC, Seaprodex Hanoi, CATACO, FAQUIMEX, HAVICO, Kim Anh, Fish One, Phuong Nam Co., Ltd. and subsidiary Western Seafood Processing and Exporting Factory, Fimex, Grobest, CAM RANH, Bac Lieu, Thuan Phuoc Seafoods and Trading Corporation, Ngoc Sinh, STAPIMEX, UTXI, Amanda, Minh Phu, Nha Trang Fisco, Viet Foods, VIMEXCO, Seaprimexco, Kisimex, Cafatex, Seaprodex Minh Hai, CP Vietnam, Incomfish, Minh Hai Jostco, Phu Cuong, Camimex, Cuu Long Sea Pro, Nha Trang Seafoods, Seaprodex Danang, and CADOVIMEX.

On May 22, 2006, the Department resent its Q&V questionnaire and separate rate application via e-mail and overnight express delivery to all companies that did not respond to the Department's original Q&V questionnaire and separate rate application. *See Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issuance of the Second Round of Quantity and Value Questionnaires and Separate Rate Applications/Certifications*. On May 25, 2006, the Department corrected a mistake to its May 22, 2006, Q&V follow-up letters addressed to VASEP and the Ministry of Fisheries. *See Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Quantity and Value Response for Tho Quang Seafood Processing & Export Company*. On May 26, 2006, the Department reissued its Q&V questionnaire and separate rate application to two additional companies.

Between June 2 and July 11, 2006, the Petitioner withdrew its request for antidumping administrative reviews for certain companies and certain companies also withdrew their requests for an administrative review. *See Rescission Notice*. On June 6, 2006, the Petitioner filed a letter requesting that the Department select mandatory respondents through a sampling methodology. On June 7, 2006, Pataya

⁶ This includes sixteen companies subject to the administrative review and one new shipper; the administrative review for Grobest was rescinded.

⁷ "Tails" in this context means the tail fan, which includes the telson and the uropods.

Food Industries (Vietnam) Limited filed a letter stating that it had no shipments during the POR. On June 14, 2006, the Department placed on the record a Q&V response from Vilfood Co. Ltd. and Khanh Loi Production & Trading Co., Ltd. *See Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: No Shipment Responses from Vilfood Co. Ltd. and Khanh Loi Production & Trading Co., Ltd.* On June 15, 2006, the Department met with the Petitioner to discuss the shrimp administrative reviews. *See Memorandum to the file, from Chris Riker, Program Manager, Office 9, re: Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Ex Parte Meeting.*

On June 16, 2006, the Department issued its respondent selection memorandum stating that we selected Amanda, Fimex, and Phuong Nam as the three mandatory respondents since they were the three largest exporters, by volume, of the remaining companies. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents ("Respondent Selection Memo").* On July 11, 2006, the Department selected three new mandatory respondents: Fish One, Seaprodex Hanoi, and Kisimex (the three largest remaining exporters, by volume) based on the withdrawals of requests for review from the three previously selected mandatory respondents. *See Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Cindy Lai Robinson, Senior Analyst re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Additional Mandatory Respondents ("Second Respondent Selection Memo").*

Questionnaires

The following sixteen companies remain in the administrative review: Aquatic Products Trading Company, Bac Lieu Fisheries, Camranh Seafoods, Seaprodex Hanoi, Incomfish, Kisimex, Nha Trang Company Limited, Nhattrang Fisco, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-

Export Company Ltd., Song Huong ASC Joint Stock Company, Vietnam Fish One, Viet Nhan Company, and V N Seafoods.

On March 20, 2006, the Department issued Grobest the non-market economy questionnaire. On July 12, 2006, the Department issued its non-market economy questionnaire to the three new mandatory respondents Fish One, Seaprodex Hanoi, and Kisimex.⁸

Grobest responded to the Department's non-market economy questionnaire and subsequent supplemental questionnaires between April 2006 and November 2006. Fish One responded to the Department's non-market economy questionnaire and subsequent supplemental questionnaires between August 2006 and November 2006. Between August and November 2006, the Petitioner submitted comments regarding Fish One's questionnaire responses.

Surrogate Country and Surrogate Values

On June 20, 2006, the Department sent interested parties a letter requesting comments on surrogate country and information pertaining to valuing factors of production. Grobest, Fish One, and the Petitioner submitted surrogate country comments and surrogate value data between November 16, 2006, and February 12, 2007.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act"), provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the

information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

1. Fish One Unreported Factors of Production ("FOPs")

For these preliminary results, in accordance with sections 776(a)(2)(A) of the Act, we have determined that the use of facts available is appropriate for Fish One's unreported consumption of salt² and marinade.

Fish One did not report salt² or marinade consumption in its three

⁸ Prior to the withdrawal of their requests for review, on June 20, 2006, the Department issued its non-market economy questionnaire to the three mandatory respondents: Amanda, Fimex, and Phuong Nam, in the instant administrative review.

⁹ Fish One reported using salt in its production of shrimp, however, it also uses salt in its production of ice, which we are referring to as "salt2."

submissions of FOP data dated August 25, 2006, October 26, 2006, and November 21, 2006. At verification, we discovered that Fish One used salt2 and marinade during the production of subject merchandise. *See Fish One Verification Report*, at 10; *see also Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Viet Hai Seafoods Company Ltd. (Vietnam Fish One)*, dated February 28, 2007 at 3. Because Fish One withheld this data and failed to report its actual salt2 and marinade consumption to the Department, despite multiple opportunities to provide complete FOP data,¹⁰ we are applying facts available for Fish One's salt2 and marinade consumption pursuant to section 776(a)(2)(A) of the Act.

Section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also SAA* accompanying the URAA at 870. An adverse inference may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

In this instance, Fish One failed to act to the best of its ability to comply with the Department's repeated requests for information regarding all of its FOP used during the POR, *i.e.* salt2 and marinade. Only at verification did it become clear that these two previously unreported factors of production existed. As noted above, Fish One had several opportunities to provide the information regarding these two FOPs and was the sole entity with both possession and control of this information; however, Fish One failed to report the data for these two FOPs. Throughout the proceeding, Fish One did not indicate that it was unable to submit complete FOP information in the requested form and manner, nor did

Fish One provide a full explanation or suggest an alternative form in which to submit the information, in accordance with section 782(c)(1) of the Act. Therefore, we find that Fish One failed to cooperate to the best of its ability with respect to these FOPs and we are applying AFA for these two factors used by Fish One in these preliminary results, pursuant to section 776(b) of the Act. As partial AFA for Fish One's salt2 and marinade FOPs, we are using the highest single monthly usage rate for these inputs and applying this monthly usage ratio to all months during the POR.

2. Vietnam-Wide Entity and Non-Responsive Companies

As mentioned in the "General Background" section above, based on withdrawals and subsequent rescissions, the administrative review covers sixteen companies. Of those sixteen companies, only one mandatory respondent (Fish One) and four separate rate companies (Bac Lieu Fisheries, Camranh Seafoods, Incomfish, and Nhatrang Fisco) chose to participate. The remaining eleven companies did not provide responses to the Department's requests for information. On July 12, 2006, the Department issued the non-market economy questionnaire to mandatory respondents, Kisimex and Seaprodex Hanoi. Neither respondent provided a response to Section A of the Department's antidumping questionnaire by the deadline of August 2, 2006. The Department sent letters to both companies on August 4, 2006, stating that the final opportunity to submit a response to the Department's questionnaire would be August 11, 2006, but neither company responded. Additionally, the nine remaining companies¹¹ did not respond at any point to the Department's Q&V and separate rate questionnaires, despite the fact that these companies, as outlined above, were given two opportunities to do so. Furthermore, at no point in the administrative review did any of these companies submit comments regarding their status in this proceeding. As such, we find it appropriate to apply facts available to these eleven companies in accordance with sections 776(a)(2)(A) and (B) of the Act. Moreover, we find that because these eleven companies did not respond to the Department's questionnaires, they did not cooperate to the best of their ability and therefore,

adverse facts available is appropriate. As these eleven companies did not provide the information necessary to conduct a separate rate analysis, we also consider these companies as part of the Vietnam-wide entity. Therefore, we are applying an adverse inference to the Vietnam-wide entity (including the eleven non-responsive companies) in accordance with section 776(b) of the Act.¹²

As AFA, we are applying the highest rate from any segment of this proceeding which in this case is the rate assigned to the Vietnam-wide entity in the LTFV investigation. Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870 and 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The AFA rate we are applying for the current review of frozen shrimp was corroborated in the investigation. *See VN Shrimp Order*, 70 FR 5152 (February 1, 2005). No information has been presented in the current review that calls into question the reliability of the information used for this AFA rate. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping*

¹² *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006) ("HFHT's Final 2006") and *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

¹⁰ August 25, 2006, October 25, 2006, and November 21, 2006 responses to the Department's original and supplemental Section C and D questionnaires.

¹¹ Aquatic Products Trading Company, Nha Trang Company Limited, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Viet Nhan Company, and V N Seafoods.

Administrative Review, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected (*i.e.*, 25.76 percent) is the rate currently applicable to the Vietnam-wide entity. The Department assumes that if an uncooperative respondent could have demonstrated a lower rate, it would have cooperated. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review, we determine that this rate has relevance.

As this rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with section 776(c)'s requirement that secondary information be corroborated to the extent practicable (*i.e.*, that it has probative value).

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verifications of the sales and factors of production ("FOP") for Grobest¹³ and Fish One.¹⁴ The Petitioner submitted pre-verification

¹³ The verification of Grobest's sales and FOPs and that of its affiliated United States importer Ocean Duke took place from November 29, 2006, through December 8, 2006. *See Memorandum to the file through Alex Villanueva, Program Manager, Office 9, Import Administration, from Nicole Bankhead, Analyst, Office 9: Verification of the Sales and Factors Response of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest") and its affiliate Ocean Duke in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam.*

¹⁴ The verification of Fish One's sales and FOPs took place from December 11, 2006, through December 15, 2006. *See Memorandum to the file through Alex Villanueva, Program Manager, Office 9, Import Administration, from Matthew Renkey, Senior Case Analyst, Office 9: Verification of the Sales and Factors Response of Vietnam Fish One Co., Ltd. ("Fish One") in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam.*

comments for Fish One on November 20, 2006.

New Shipper Reviews Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Grobest for the new shipper review. We preliminarily find that the new shipper sale made by Grobest is a *bona fide* transaction. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Grobest, and our verification thereof, as well as the company's eligibility for a separate rate (*see* Separate Rates section below) and the Department's preliminary determination that Grobest was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Grobest has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of review, we are treating Grobest's respective sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.¹⁵

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all

¹⁵ *See Memorandum from Nicole Bankhead, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp: Grobest, dated February 28, 2007 ("Grobest Prelim Bona Fide Memo").*

companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In the LTFV investigation for this case, the Department granted separate rates to Fish One, the only mandatory respondent in the instant review, and to the four participating separate rate respondents, Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods, and Incomfish. *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) and accompanying Memorandum to James C. Doyle, Office Director, AD/CVD Enforcement, NME Unit, Office IX, THROUGH: Alex Villanueva, Program Manager, AD/CVD Enforcement, NME Unit, Office IX, FROM: Nicole Bankhead, Case Analyst, re: *Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Separate Rates Memorandum for Section A Respondents; see also VN Shrimp Order*, 70 FR 5152 (February 1, 2005) and accompanying MEMORANDUM TO: James C. Doyle, Office Director, AD/CVD Enforcement, Office 9, THROUGH: Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9, FROM: Nicole Bankhead, Case Analyst, and Paul Walker, Case Analyst, RE:

Antidumping Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Ministerial Error Allegations at Comments 7,8,9,10, and 11. However, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. See *Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

In this review, only Fish One, Grobest, and the four participating separate rate companies submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of governmental control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.¹⁶

B. Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the Respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, Fish One and the separate rate companies submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues. Therefore, the Department preliminarily finds that Fish One and the separate rate companies have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*. Additionally, Grobest reported that it is wholly owned by foreign entities. Therefore, an additional separate-rates analysis is not necessary to determine whether Grobest's export activities are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned, thus, qualified for a separate rate).

Separate Rate Calculation

Based on timely requests from individual exporters and petitioners, the Department originally initiated this review with respect to 84 companies. During the course of the review, numerous requests for review were withdrawn; however, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected three exporters, Fish One, Seaprodex Hanoi, and Kisimex as mandatory respondents in this review. Four additional companies (Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods and Incomfish) submitted timely information as requested by the Department and remain subject to review as cooperative separate rate respondents.

Fish One participated fully in this review and is receiving a preliminary

antidumping duty rate of zero. As noted above, however, the remaining two mandatory respondents, Seaprodex Hanoi and Kisimex, did not respond to our questionnaires. As a result, these two entities are not entitled to a separate rate in this review and thus are considered to be part of the Vietnam-wide entity. As part of the Vietnam-wide entity, these two companies are receiving a preliminary antidumping duty rate of 25.76 percent.

The Department must also assign a rate to the remaining four cooperative separate rate respondents not selected for individual examination. We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on adverse facts available. In the instant review, however, the rates for the mandatory respondents include only a single zero rate and a rate for the Vietnam-wide entity based on total AFA.

While the statute does not specifically address this particular set of circumstances, section 735(c)(5)(B) of the Act does specify the methodology to be followed when a similar fact pattern arises in the context of the all-others rate established in an investigation. While not entirely analogous to the determination of a rate to be applied to responsive separate rate respondents in the context of a NME review, we find it to be instructive in these circumstances.

Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 (facts available section), "the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated."

The Statement of Administrative Action ("SAA") states that in using any reasonable method to calculate the all-others rate, "the expected method in

¹⁶ The preliminary finding applies to (1) the one mandatory participating respondent of this administrative review: Fish One; (2) the new shipper company under review: Grobest; and (3) the non-selected respondents of this administrative review seeking a separate rate: Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods, and Incomfish.

such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.” See SAA accompanying the Uruguay Round Agreements Act, H.Doc. 316, Vol 1., 103rd Cong (1994)(SAA) at 203. However, the SAA also provides that: [I]f this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable means.” *Id.*

In this case, because of the nature of the shrimp industry, the Department preliminarily concludes that it cannot accurately determine a margin based on information provided by the separate rate entities, furthermore, we preliminarily find that we cannot employ such alternative methods as weight-averaging AFA, *de minimis*, and zero rates or partial use of the information on the record. Specifically, while the separate rates entities have given us total volume and value information with respect to subject merchandise, we note that shrimp prices vary dramatically, principally due to count-size. Thus, margins calculated on the basis of average prices without regard to count size and other factors do not reflect a meaningful, accurate comparison. Because the Department does not have comparable information with respect to the count sizes sold by the separate entities, we find we must look to other reasonable means to determine an appropriate margin for the separate rate entities subject to this review.

The Department has preliminarily determined to apply the margin calculated for cooperative separate rate respondents in the immediately preceding segment of this proceeding, *i.e.*, the margin of 4.57 percent assigned to such companies in the LTFV investigation. We believe this methodology constitutes a reasonable method by which to calculate such rate. The rate of 4.57 percent calculated in the LTFV was based on the Department’s thorough examination of several cooperative companies accounting for a majority of exports during the period of investigation. We believe, therefore, that this rate is reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. Therefore, we find it a reasonable means by which to determine a rate for non-examined cooperative separate entities and have employed this methodology for purposes of these preliminary results.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production (“FOPs”), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the “Normal Value” section below and in *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Matthew Renkey, Senior Analyst, Office 9: Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results*, February 28, 2007 (“*Factor Valuation Memo*”).

As discussed in the “Separate Rates” section, the Department considers Vietnam to be an NME country. The Department has treated Vietnam as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Accordingly, we treated Vietnam as an NME country for purposes of this review and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are countries comparable to Vietnam in terms of economic development.¹⁷ Moreover, it is the Department’s practice to select an appropriate surrogate country based on

¹⁷ *Memorandum from Ron Lorentzen, Director, Office of Policy, to Jim Doyle, Office Director, AD/CVD Enforcement, Office 9: New Shipper Review of Certain Warmwater Shrimp from Vietnam: Request for a List of Surrogate Countries*, dated June 20, 2006, at Attachment I; *Memorandum from Ron Lorentzen, Director, Office of Policy, to Jim Doyle, Office Director, AD/CVD Enforcement, Office 9: Antidumping Duty Administrative Review of Certain Warmwater Shrimp (“Shrimp”) from Vietnam: Request for a List of Surrogate Countries* dated June 20, 2006, at Attachment II (“*Surrogate Country Lists*”).

the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, (March 1, 2004) (“*Policy Bulletin*”). In this case, we have found that Bangladesh, Indonesia, and India are all significant producers of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Nicole Bankhead, Senior Case Analyst, Subject: First Antidumping Duty New Shipper Review and Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Surrogate Country*, (February 28, 2007) (“*Surrogate Country Memo*”). Furthermore, we note that Bangladesh has been the primary surrogate country in past segments and both the Petitioner and Respondents submitted surrogate values based on Bangladeshi data that are contemporaneous to the POR, which gives further credence to the use of Bangladesh as a surrogate country.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review and a new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

U.S. Price

A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price (“EP”) for sales to the United States for Fish One because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (“CEP”) was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, we

used the actual cost per kilogram of the freight. *See Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

B. Constructed Export Price

For Grobest, we based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by its U.S. affiliate to unaffiliated purchasers. For Grobest's sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnam service providers or paid for in Vietnamese Dong, we valued these services using surrogate values (see "Factors of Production" section below for further discussion). For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Grobest, *see Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest")*, dated February 28, 2007.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a)

of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POR, except as noted above. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, Thailand, and India may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("CTVs from the PRC") at accompanying issues and decision memorandum at Comment 7; *see also Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. The

legislative history provides that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation, rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. *See* H.R. Rep. 100–576 at 590 (1988).

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based surrogate values to value the input. Except as discussed below, the Department used United Nations ComTrade Statistics ("UN ComTrade"), provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi surrogate value data.¹⁸ The data represents cumulative values for the calendar year 2004, for inputs classified by the Harmonized Commodity Description and Coding System ("HS") number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be non-market economy ("NME") countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (*i.e.*, Indonesia, Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value. *See CTVs from the PRC*, 69 FR 20594 (April 16, 2004).

It is the Department's practice to calculate price index adjusters to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 29509 (May 24, 2004). However, in this case, a wholesale price index was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index ("CPI")

¹⁸ This can be accessed online at: <http://unstats.un.org/unsd/comtrade/>.

rate for Bangladesh, or the Wholesale Price Index (“WPI”) for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the *International Financial Statistics* (“IFS”) of the International Monetary Fund (“IMF”).

Certain surrogate values were calculated using data from the *2004 Statistical Yearbook of Bangladesh* (“Bangladesh Government Statistics”), published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2004. Certain other Bangladeshi sources were used as well. See *Factor Valuation Memo*. The unit values were initially calculated in takas/unit.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department’s Web site.

Shrimp Value

The value of the main input, head-on, shell-on (“HOSO”) shrimp, is an important factor of production in our dumping calculation as it accounts for a significant percentage of normal value. As a general matter, the Department prefers to use publicly available data to value surrogate values from the surrogate country to determine factor prices that, among other things represent a broad market average and are contemporaneous with the POR. The Respondents and the Petitioner have placed numerous Bangladeshi shrimp values on the record. In this case, the Department has determined that data contained in a study of the Bangladeshi shrimp industry published by the Network of Aquaculture Centres in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the UN’s Food and Agriculture Organization, is a suitable surrogate value for shrimp from the surrogate country, namely, Bangladesh.

The Department’s practice when selecting the “best available information” for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are: publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. See *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China*, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2. The data

contained in the NACA study appear to satisfy these requirements.

To value the by-products, the Department used a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize this surrogate value is not from Bangladesh, the primary surrogate, this information represents the best information on the record and is being used for these preliminary results. This information is specific to the by-product in question, shrimp shells, whereas the Bangladeshi data on the record represent a basket category. See *Factor Valuation Memo*, at Exhibit 11.

To value packing materials, we used UN ComTrade data as the primary source of Bangladeshi surrogate value data.

To value factory overhead (“FOH”), Selling, General & Administrative (“SG&A”) expenses, and profit, we used the simple average of the 2004–2005 and 2005–2006 financial statement of Apex Foods Limited (“Apex”), the 2005 financial statement of Bionic Seafood Exports Limited, and the 2004–2005 financial statement of Gemini Seafood Limited, all of which are Bangladeshi shrimp processors. See *Factor Valuation Memo*, at Exhibit 12.

Preliminary Results of the Reviews

The Department has determined that the following preliminary dumping margins exist for the period July 16, 2004, through January 31, 2006:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/Exporter	Weighted-average margin (percent)
Produced and Exported by Grobest.	1.08.
Fish One	0.01 (<i>de minimis</i>).
Nha Trang Fisco	4.57.
Bac Lieu Fisheries	4.57.
Cam Ranh Seafoods	4.57.
Incomfish	4.57.
Vietnam-Wide Rate ¹⁹	25.76.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later

¹⁹ The Vietnam-Wide entity includes Aquatic Products Trading Company, Seaprodex Hanoi, Kisimex, Nha Trang Company Limited, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Viet Nhan Company, and V N Seafoods.

than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department will issue the final results of this administrative review and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Grobest entered, or withdrawn from warehouse, for consumption on or after the

publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Grobest, the cash-deposit rate will be that established in these final results of reviews and (2) for subject merchandise exported by Grobest, but manufactured by any other party, the cash deposit rate will be Vietnam-wide rate (*i.e.*, 25.76 percent).

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Fish One, the cash-deposit rate will be that established in these final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other Vietnam exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be Vietnam-wide rate of 25.76 percent; (4) for all non-Vietnam exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the Vietnam exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, the new shipper reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.213(g), 351.214(h) and 352.221(b)(4).

Dated: February 28, 2007.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E7-4281 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-331-802

Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador with respect to 23 companies.¹ The respondents which the Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review (POR) covers August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by OceanInvest and Promarisco have been made below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-3773, respectively.

¹ This figure does not include the company for which the Department is rescinding the administrative review. See "Partial Rescission of Review" section for further discussion.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Ecuador. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (February 1, 2005) (*Shrimp Order*). On February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Ecuador for the period August 4, 2004, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, the petitioner² submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received timely requests under 19 CFR 351.213(b)(2) to conduct an administrative review of the sales of certain frozen warmwater shrimp from the following producers/exporters of subject merchandise: Empacadora del Pacifico S.A., Empacadora Dufer Cia. Ltda., Exporklore, S.A., Promarisco, and Sociedad Nacional de Galapagos C.A.

On April 7, 2006, the Department published a notice of initiation of administrative review for 71 companies and requested that each provide data on the quantity and value of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (April 7, 2006) (*Notice of Initiation*).

During the period April 27, 2006, through June 13, 2006, we received responses to the Department's quantity and value questionnaire from 59 companies. A number of these companies reported that their names

² The petitioner is the Ad Hoc Shrimp Trade Action Committee.

were duplicated in the *Notice of Initiation*.

Subsequently, the Department received withdrawal requests with respect to many of the companies. However, based upon our consideration of the responses to the quantity and value questionnaire and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review request remained. As a result, on July 11, 2006, we selected the two largest remaining producers/exporters by export volume of certain frozen warmwater shrimp from Ecuador during the POR, OceanInvest and Promarisco, as the mandatory respondents in this review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Ecuador: Selection of Respondents," dated July 11, 2006. On this same date, we issued the antidumping questionnaire to OceanInvest and Promarisco.

On July 20, 2006, we published a notice rescinding the administrative review with respect to 47 companies for which the requests for an administrative review were withdrawn in a timely manner,³ in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from Ecuador; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41198 (July 20, 2006).

We received responses to section A of the questionnaire from Promarisco and OceanInvest on August 8 and August 15, 2006, respectively.

On August 11, 2006, the petitioner submitted comments regarding third country market selection with respect to Promarisco.

On August 25, 2006, the Department postponed the preliminary results in this review until no later than February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews*, 71 FR 50387 (August 25, 2006).

We received responses to sections B and C of the questionnaire from

OceanInvest and Promarisco on September 6, 2006. In addition, on this date Promarisco submitted a response to section D of the questionnaire.

On September 19, 2006, we published a notice amending the initiation and partial rescission of the administrative review to include an additional company which was inadvertently omitted. See *Certain Frozen Warmwater Shrimp From Ecuador; Notice of Amended Initiation and Amended Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 54797 (September 19, 2006).

On September 20, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of OceanInvest. On October 20, 2006, we initiated this investigation. See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Petitioner's Allegation of Sales Below the Cost of Production for OceanInvest S.A.," dated October 20, 2006 (OceanInvest COP Initiation Memo). On that date, we instructed OceanInvest to respond to the Department's section D questionnaire.

We issued a supplemental section A, B, and C questionnaire to OceanInvest on September 21, 2006, and received responses on October 13 and 17, 2006. We issued a supplemental section A, B, and C questionnaire to Promarisco on October 3, 2006, along with an additional information request on October 16, 2006, and received responses on October 11, 23, and 27, 2006.

On October 17, 2006, the petitioner submitted additional comments on the appropriate comparison market to be used for Promarisco. Promarisco responded to these comments in its October 23, 2006, submission.

On November 6, 2006, we determined that Spain constitutes the appropriate comparison market with respect to Promarisco. See Memorandum to James Maeder, Director Office 2, AD/CVD Operations, from The Team entitled "Selection of the Appropriate Third Country Market for Promarisco," dated November 6, 2006.

OceanInvest submitted its response to section D of the questionnaire on November 16, 2006. In response to Department requests, OceanInvest also submitted additional information concerning its section B and C questionnaire responses on November 9, 20, and 28, 2006.

We issued a section D supplemental questionnaire to Promarisco on November 21, 2006, and to OceanInvest on December 19, 2006. On December 22, 2006, and January 18, 2007, respectively, we received responses to

these supplemental questionnaires. We issued additional supplemental section D questionnaires to OceanInvest on January 24 and February 5, 2007, and to Promarisco on February 9, 2007. OceanInvest submitted its responses on February 2 and 12, 2007, and Promarisco submitted its response on February 21, 2007.

We conducted a verification of OceanInvest's reported sales data in December 2007, and issued our verification report on January 18, 2007. In response to our January 22, 2007, request, OceanInvest submitted revised third-country and U.S. sales data bases reflecting certain verification findings on January 30, 2007.

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (January 23, 2007).

We conducted a verification of OceanInvest's reported cost data in February 2007. Our cost verification report will be issued following the preliminary results.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁴ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted

³ Among the 47 companies referenced in the rescission notice is one company we determined was a duplicate name for another company included in the review.

⁴ "Tails" in this context means the tail fan, which includes the telson and the uropods.

shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Partial Rescission of Review

In response to our quantity and value data solicitation, Studmark, S.A. claimed that the only shipment of subject merchandise it made during the POR was being reviewed in the context of a new shipper review that was initiated prior to the initiation of this administrative review.⁵ Having confirmed the accuracy of this claim with CBP, and having issued final results in the new shipper review covering Studmark's single shipment, we are rescinding this review with respect to Studmark, S.A.

Application of Facts Available

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.

Doblertel, S.A., Pacfish, S.A. (*Pacfish*), and Sociedad Atlantico Pacifico, S.A. claimed that they made no shipments of subject merchandise to the United States during the POR. However, because we were unable to confirm the accuracy of these companies' claims with CBP, we requested further information/clarification from them. Pacfish responded to our request,⁶ but Doblertel, S.A. and Sociedad Atlantico Pacifico, S.A. failed to provide the requested information/clarification. By doing so, these companies withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available is appropriate.

⁵ The final results of this new shipper review were published on September 20, 2006. See *Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador*, 71 FR 54977 (September 20, 2006) (NSR).

⁶ Pacfish's response states that it erred in initially reporting that it made no shipments during the POR and acknowledges that it made a small quantity of sales during the POR. See "Pacfish Response Submission to Department's September 19, 2006, Letter," and Memorandum to the File dated October 31, 2006. This information was generally consistent with the data obtained from CBP. Accordingly, we have determined that Pacfish was responsive to the Department's request for information, and therefore, are assigning to Pacfish the rate applied to other non-mandatory respondents in this review.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *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 (August 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) (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198–99. 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); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Doblertel, S.A. and Sociedad Atlantico Pacifico, S.A. 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 requests for information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. See *Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as 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., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative*

Review in Part, 71 FR 65082, 65084 (November 7, 2006).

In selecting an appropriate AFA rate, the Department considered: 1) the rates alleged in the petition (*see Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3879 (January 27, 2004)); 2) the rates calculated in the final determination of the investigation, which ranged from 2.48 to 4.42 percent (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156, 5157 (February 1, 2005) (*LTFV Amended Final Determination and Order*)); and 3) the rate calculated in the NSR, 9.20 percent. As discussed further below, we do not find that the rates alleged in the petition have probative value for purposes of this review. In addition, we find that the weighted-average rates calculated for respondents in previous segments of this proceeding, as well as in the instant review, are not sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we do not find that any of these rates are high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). Therefore, we have preliminarily assigned a rate of 48.61 percent as AFA, which is the highest transaction-specific rate calculated for a respondent in this review. The Department has applied this methodology in previous proceedings, such as *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and the accompanying Issues and Decision Memorandum at Comment 15; and *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 12, 2006), and the accompanying Issues and Decision Memorandum at Comment 3. We consider the 48.61 percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the

Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d); *see also SAA* at 870. With respect to consideration of the rates alleged in the petition, information from prior segments of the proceeding constitutes secondary information and to the extent practicable, the Department will examine the reliability and relevance of the information to be used.

Because the companies did not submit information to the Department or participate in a previous segment of this proceeding, we do not have such information to consider in determining whether the petition rate is relevant to each of them. To determine whether the margin is reliable and relevant in this administrative review, we examined the transaction-specific rates of the respondents in this administrative review compared to the petition rates and found that they were not relevant for use in this administrative review. The highest transaction-specific rate calculated for a respondent in this review was 48.61 percent, which is substantially lower than the lowest margin alleged in the petition. We then examined the elements of the export price (EP) and NV calculations on which the margins in the petition were based. The petitioner based EP on the average unit values (AUVs) for Ecuadorian shrimp of various count sizes as calculated from CBP data and reported on a headless, shell-on (HLSO) basis. The petitioner based NV on an Italian price list for head-on, shell-on (HOSO) shrimp of various count sizes and made several adjustments to those prices, including conversion from an HOSO to an HLSO basis. We compared the EPs and NVs in the petition to entered values in the U.S. sales listings for both respondents, and gross unit prices for HLSO shrimp in the Italian market from OceanInvest's sales listing, respectively. Although we found the U.S. entered values reported in this review to be comparable to the AUVs in the petition, OceanInvest's POR sales prices in the Italian market were substantially different from the NVs in the petition. *See* Memorandum to the File entitled "Procedures Conducted to Corroborate Data Contained in Petition for Assignment of Appropriate Adverse Facts Available Rate," dated February 28, 2007, for further discussion. Therefore, we cannot conclude that the petition rates have probative value for AFA assignment purposes in this review.

As noted above, we do not find the weighted-average rates calculated for respondents in this and previous segments of this proceeding to be

sufficiently adverse. Therefore, we are applying the highest transaction-specific rate calculated for the mandatory respondents in this review. With respect to corroboration of a rate calculated in a segment of a proceeding, we note that, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for calculated dumping margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283, 44284 (July 28, 2003) (unchanged in final). Therefore, given that we are using the highest of the transaction-specific rates calculated for the mandatory respondents in this administrative review, it is not necessary to question the reliability of this rate.

The Department will, however, consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available and have found none. Because we did not find evidence indicating that the margin used as facts available in this proceeding is not appropriate, we have determined that the the highest transaction-specific rate calculated for any mandatory respondent in this administrative review is appropriate as AFA and are assigning this rate to Doblertel, S.A. and Sociedad Atlantico Pacifico, S.A.

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by OceanInvest and Promarisco to the United States were made at less than

NV, we compared EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by OceanInvest and Promarisco covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales to sales made in Italy for OceanInvest and Spain for Promarisco within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by OceanInvest and Promarisco in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

With respect to Promarisco's U.S. sales of broken shrimp, we compared them to constructed value (CV), as Promarisco did not make any sales of broken shrimp in its comparison market.

Export Price

For all U.S. sales made by OceanInvest and Promarisco, we applied the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

A. OceanInvest

We based EP on FOB or delivered, duty-paid (DDP) prices to the first unaffiliated purchaser in the United

States. Where appropriate, we made adjustments to the starting price for billing adjustments. We also made deductions to the starting price for demurrage expenses, foreign inland freight expenses, Ecuadorian brokerage and handling expenses, ocean freight expenses, U.S. customs duties (*including merchandise processing and harbor maintenance fees*), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

OceanInvest reported certain price adjustments and demurrage expenses as direct selling expenses. We reclassified these items as billing adjustments and movement expenses, respectively.

As noted in the sales verification report (*see* "Verification of the Sales Response of OceanInvest S.A. in the 2004–2006 Antidumping Administrative Review of Frozen Warmwater Shrimp from Ecuador," Memorandum to the File dated January 18, 2007 (OceanInvest SVR)) at page 18, OceanInvest inadvertently reported many adjustments for glazed sales on a glaze-inclusive basis rather than glaze-exclusive basis. We recalculated the per-unit amounts to reflect a glaze-exclusive basis using the methodology outlined in the verification report.

Based on our sales verification findings, we made minor revisions to the movement expenses reported for a small number of U.S. sales. *See* Memorandum to the File entitled "OceanInvest S.A., Preliminary Results Notes and Margin Calculation," dated February 28, 2007 (OceanInvest Preliminary Results Memo).

B. Promarisco

We based EP on CIF or DDP prices to the first unaffiliated purchaser in the United States. We made deductions to the starting price for foreign inland freight expenses, ocean freight expenses, marine insurance expenses, U.S. customs duties (*including merchandise processing and harbor maintenance fees*), U.S. brokerage and handling expenses, and U.S. warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in

accordance with section 773(a)(1)(C) of the Act.

In the less-than-fair-value (LTFV) investigation segment of this proceeding, the Department determined that a particular market situation existed which rendered the Ecuadorian market inappropriate for purposes of determining NV for the three respondents in the LTFV investigation, including Promarisco. *See* Memorandum dated June 7, 2004, entitled "Home Market as Appropriate Comparison Market," as included at Exhibit A–2 of Promarisco's August 8, 2006, section A Questionnaire response. Promarisco reported that the particular market situation still applies to its home market sales and there is no information on the record to suggest otherwise. Accordingly, although the aggregate volume of Promarisco's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, because of the particular market situation, we could not rely on Promarisco's home market sales for determining NV. Therefore, we used Promarisco's sales to Spain, Promarisco's largest third country market, as the basis for comparison-market sales. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "Selection of the Appropriate Third Country Market for Promarisco," dated November 8, 2006, for a more detailed discussion of this issue.

Furthermore, based on our analysis of OceanInvest's questionnaire responses, we determined that OceanInvest's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise.⁷ Therefore, with respect to OceanInvest, we used sales to Italy, which is OceanInvest's largest third country market, as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling

⁷ Because OceanInvest's sales in the home market did not meet the viability threshold, it was unnecessary to address whether a particular market situation existed with respect to such sales.

activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See, *id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁸ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. OceanInvest

OceanInvest sold frozen warmwater shrimp to distributors and traders in the U.S. market, and distributors in the Italian market. OceanInvest reported that it made EP sales in the U.S. market through two channels of distribution: FOB sales, and DDP. We examined the selling activities performed for these channels, and found that OceanInvest performed the following selling functions for both channels: packing, order input/processing, direct sales personnel services, and claim services (*i.e.*, billing adjustments). In addition, for DDP sales, OceanInvest made freight and delivery arrangements. These selling activities can be generally grouped into two core selling function categories for analysis: 1) sales and marketing (*e.g.*, order input/processing, direct sales personnel services, claim services); and 2) freight and delivery. Accordingly, based on the core selling functions, we find that OceanInvest performed sales and marketing for all U.S. sales, and freight and delivery services as well for certain U.S. sales. We do not find that the provision of freight and delivery services for one channel of distribution is sufficient to distinguish it as a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the Italian market, OceanInvest reported one channel of distribution, FOB sales. We examined the selling activities performed for this channel, and found that OceanInvest performed the following selling functions: packing, order input/processing, direct sales personnel services, payment of commissions, and claim services (*i.e.*, billing adjustments). These selling activities can be generally grouped into one core selling function for analysis: sales and marketing. Accordingly, we find that OceanInvest performed the core selling function of sales and marketing for all customers in the Italian market. Because all sales in the Italian market are made through a single distribution channel, we preliminarily determine that there is one LOT in the Italian market.

Finally, we compared the EP LOT to the comparison market LOT and found that, with the exception of freight and delivery services performed on some U.S. sales, and the payment of commissions on Italian sales, the core selling functions performed for U.S. and Italian market customers are virtually identical. Therefore, we determined that sales to the U.S. and Italian markets during the POR were made at the same

LOT, and as a result, no LOT adjustment was warranted.

2. Promarisco

Promarisco made direct sales of frozen warmwater shrimp to retailers, food processors, restaurant chains, and distributors in the U.S. market, and food processors and distributors in the Spanish market. Promarisco reported that it made EP sales in the U.S. market on a CIF or DDP basis through one channel of distribution. We examined the selling activities performed for this channel, and found that Promarisco performed the following selling functions: sales forecasting, sales promotion, order input/processing, technical assistance, pay commissions, freight and delivery, and claim services. These selling activities can be generally grouped into two core selling function categories for analysis: 1) sales and marketing (*e.g.*, order input/processing, sales promotion, claim services); and 2) freight and delivery. Accordingly, we find that Promarisco performed the core selling functions of sales and marketing, and freight and delivery for all customers in the U.S. market. Because all sales in the U.S. market are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the Spanish market, Promarisco reported that it made sales on an FOB, C&F, or CIF basis through one channel of distribution. We examined the selling activities performed for this channel, and found that Promarisco performed the following selling functions: sales forecasting, sales promotion, order input/processing, technical assistance, pay commissions, freight and delivery, and claim services. These selling activities can be generally grouped into two core selling function categories for analysis: 1) sales and marketing (*e.g.*, order input/processing, sales promotion, claim services); and 2) freight and delivery. Accordingly, based on the core selling functions, we find that Promarisco performed sales and marketing for all Spanish sales, and freight and delivery services as well for certain Spanish sales. We do not find that the provision of freight and delivery services for some sales is sufficient to distinguish it as a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the Spanish market.

Finally, we compared the EP LOT to the comparison-market LOT and found that the core selling functions performed for U.S. and Spanish market customers are virtually identical. Therefore, we determined that sales to the U.S. and Spanish markets during the

⁸ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (SG&A) expenses, and profit for CV, where possible.

POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that OceanInvest's sales of frozen warmwater shrimp in the third-country market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether OceanInvest's sales were made at prices below their respective COPs. See OceanInvest

COP Initiation Memo.

In the LTFV investigation, the most recently completed segment of this proceeding as of April 7, 2006, the publication date of the initiation of this review, we found that Promarisco had made sales below the cost of production. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 47091 (August 4, 2004); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 76913, (December 23, 2004), and *LTFV Amended Final Determination and Order*. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Promarisco made sales in the third-country market at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Promarisco to respond to the section D (Cost of Production) questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see "Test of Comparison Market Sales Prices" section below for treatment of third country selling expenses). The Department relied on the COP data submitted by each respondent in its most recent supplemental section D questionnaire response for the COP calculation, except for the following instances where the information was not appropriately quantified or valued.

a. OceanInvest

We made an adjustment to OceanInvest's reported costs of manufacture to account for unreconciled costs. Our revision to OceanInvest's COP data is discussed in the Memorandum from Laurens van Houten, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - OceanInvest, S.A.," dated February 28, 2007.

b. Promarisco

We recalculated Promarisco's G0z7 A expense ratio to include research and development expenses. Our revision to Promarisco's COP data are discussed in the Memorandum from Frederick W. Mines, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Promarisco S.A.," dated February 28, 2007.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, and direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" section.

3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given

product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of OceanInvest's and Promarisco's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable third country sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. OceanInvest

We based NV for OceanInvest on FOB prices to unaffiliated customers in Italy. We made adjustments, where appropriate, to the starting price for billing adjustments. We made deductions, where appropriate, from the starting price for foreign inland freight and Ecuadorian brokerage and handling expenses, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale (COS) for imputed credit expenses, bank fees, testing fees, bill of lading fees, and international courier fees. As discussed above under "Export Price," we recalculated the per-unit amounts for these expenses to reflect a glaze-exclusive basis. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, as commissions were

granted in the Italian market but not in the U.S. market, we made an upward adjustment to NV for the lesser of 1) the amount of commission paid in the Italian market, or 2) the amount of indirect selling expenses incurred in the U.S. market.

We also deducted comparison-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

OceanInvest reported certain price adjustments relevant to Italian sales as direct selling expenses. We reclassified these items as billing adjustments. We also recalculated the imputed credit expense for both U.S. and Italian sales to account for these items.

We recalculated the reported per-unit commission expenses applicable to Italian sales based on our verification findings. See OceanInvest SVR at page 23 and OceanInvest Preliminary Results Memo.

We recalculated indirect selling expenses to include the cost of a product sample. See OceanInvest Preliminary Results Memo.

2. Promarisco

We calculated NV based on CIF, C&F or FOB prices to unaffiliated customers in the Spanish market. We made adjustments, where appropriate, to the starting price for billing adjustments. We made deductions from the starting price for movement expenses, including inland freight, marine insurance, and international freight, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in COS for imputed credit expenses. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of 1) the amount of commission paid in the U.S. market, or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

We also deducted comparison market packing costs and added U.S. packing

costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

In response to the Department's inquiry, Promarisco submitted a letter on February 14, 2007, explaining that three transactions reported in the Spanish sales data base with missing payment dates were actually free product samples. As this information was received too late for consideration in the preliminary results and did not include any supporting documentation, we have included these transactions in our calculation of NV and set the payment date equal to February 28, 2007, the date of the preliminary results, for purposes of calculating imputed credit expenses.

Promarisco reported in its December 22, 2006, questionnaire response that it did not recalculate the imputed credit expense after revisions were made to the Spanish market sales file to include certain missing payment dates in its October 27, 2006, questionnaire response. Accordingly, we recalculated the imputed credit expense for the Spanish market sales to account for the revised payment dates, based on Promarisco's methodology described in its response.

Promarisco reported certain movement-related insurance expenses incurred on sales to Spain as direct selling expenses. We reclassified these expenses as movement expenses. In addition, we have corrected and recalculated these expenses and marine insurance expenses incurred on certain Spanish sales, in accordance with the information provided in Promarisco's February 12, 2007, submission.

We recalculated indirect selling expenses to include certain expenses Promarisco excluded from its indirect selling expense calculation. See Memorandum to the File entitled "Promarisco, S.A. Preliminary Results Notes and Margin Calculation," dated February 28, 2007.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison-market sales because there were no useable sales of a comparable product, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we

calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison-market sales from, and adding U.S. direct selling expenses to, CV.

Currency Conversion

We did not make any currency conversions pursuant to section 773A of the Act and 19 CFR 351.415 because all sales and cost data for both respondents were reported in U.S. dollars.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period August 4, 2004, through January 31, 2006, as follows:

Manufacturer/Exporter	Percent Margin
OceanInvest, S.A.	4.54
Promarisco, S.A.	1.02

Review-Specific Average Rate Applicable to the Following Companies:⁹

Manufacturer/Exporter	Percent Margin
Agrol S.A.	2.25
Camarones (Camarones Del Mar COBUS S.A.)	2.25
Comercializadora del Mar COMAR Cia. Ltda.	2.25
Empacadora y Exportadora Calvi Cia. Ltda.	2.25
Emprede S.A.	2.25
Exportadora del Oceano Oceanexa C. A.	2.25
Fortumar Ecuador S.A.	2.25
Gambas del Pacifico ...	2.25
Hectorosa S.A.	2.25
Inepexa S.A.	2.25
Jorge Luis Benitez Lopez	2.25

⁹ This rate is based on the weighted-average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Luis Loaiza Alvarez	2.25
Mardex Cia. Ltda.	2.25
Marines C.A.	2.25
Pacfish, S.A.	2.25
PCC Congelados & Frescos SA	2.25
Pescazuil S.A.	2.25
Productos Cultivados del Mar "Proculmar" Cia. Ltda.	2.25
Promarosa S.A.	2.25

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Doblertel S.A.	48.61
Sociedad Atlantico Pacífico, S.A.	48.61

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Interested parties may submit case briefs not later than 30 days after the date of issuance of the last verification report in this case. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of issuance of the last verification report in this case. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate

entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Regarding OceanInvest, for those sales where it reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For those sales where OceanInvest did not report the entered value of its U.S. sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

Regarding Promarisco, because it reported the entered value of all of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and*

Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). 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 that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.58 percent, the "All Others" rate made effective by the LTFV investigation. See *Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-4295 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-337-806

Certain Individually Quick Frozen Red Raspberries from Chile: Notice of Extension of Time Limit for 2005-2006 Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Yasmin Nair or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3813 or (202) 482-0196, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 30, 2006, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile, covering the period July 1, 2005, through June 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in*

Part, 71 FR 51573 (August 30, 2006).

The preliminary results for this administrative review are currently due no later than April 2, 2007.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review, analyze, and verify the sales and cost information submitted by the parties in this administrative review. Moreover, the Department requires additional time to issue supplemental questionnaires and fully analyze the responses. Thus, it is not practicable to complete this review within the original time limit (*i.e.*, April 2, 2007). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than July 31, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 05, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-4318 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-809]

Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On September 29, 2006, the U.S. Department of Commerce ("the Department") published a notice of initiation of an administrative review of the antidumping duty order on small diameter seamless carbon and alloy steel standard, line and pressure pipe ("seamless line and pressure pipe") from Argentina. The review covers one manufacturer/exporter, Siderca S.A.I.C. ("Siderca"). The period of review ("POR") is August 1, 2005, through July 31, 2006. Following the receipt of a certification of no shipments by Siderca, we notified the domestic interested party of the Department's intent to rescind this review and provided an opportunity to comment on the rescission. We received no comments. Therefore, we are rescinding this administrative review.

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Helen Kramer or Angelica Mendoza, 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) 482-0405 and (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on seamless line and pressure pipe from Argentina for the period August 1, 2005, through July 31, 2006. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 43441 (August 1, 2006). On August 31, 2006, United States Steel Corporation ("U.S. Steel"), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of Siderca. On September 29, 2006, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Notice of Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). On October 4, 2006, the Department issued its antidumping duty questionnaire to Siderca. On October 18, 2006, Siderca submitted a letter to the Department, certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR. Siderca also certified that the company's U.S. affiliate, Tenaris Global Services U.S.A. Corporation, also did not sell, enter, or import subject merchandise for consumption into the United States during the POR.

Scope of the Order

The antidumping duty order on imports from Argentina covers small diameter seamless carbon and alloy standard, line, and pressure pipes ("seamless pipes") produced to the American Standard for Testing and Materials ("ASTM") standards A-335, A-106, A-53, and American Petroleum Institute ("API") standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical

parameters described below, regardless of specification. For purposes of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to this order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics and Uses

The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above.

Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A-106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A-335 must be used if temperatures and stress levels exceed those allowed for A-106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at

elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A-106 specification necessarily meet the API 5L and ASTM A-53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A-53 specification. However, pipes meeting the A-53 or API 5L specifications do not necessarily meet the A-106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A-106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and offshore), such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A-106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the A-335, A-106, A-53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe that, because of overlapping characteristics, could potentially be used in A-106 applications. These specifications generally include A-162, A-192, A-210, A-333, and A-524. When such pipes are used in a standard, line or pressure pipe application, such

products are covered by the scope of this order.

Specifically excluded from the scope of this order are boiler tubing and mechanical tubing, if such products are not produced to A-335, A-106, A-53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this order when used in standard, line or pressure applications. Finally, also excluded from this order are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Rescission of the Administrative Review

As noted above, on October 18, 2006, Siderca submitted a letter to the Department indicating that it did not make any shipments or entries of subject merchandise to the United States during the POR. In response to the Department's query to U.S. Customs and Border Protection (CBP), CBP confirmed that a small quantity of subject merchandise was entered for consumption into the United States during the POR from a third country. On February 8, 2007, the Department placed on the record of this review copies of the entry documents in question. On the basis of these documents, the Department concluded that Siderca could not have known that the merchandise exported to a third country would be re-exported to the United States. On February 20, 2007, the Department notified counsel for U.S. Steel of its intent to rescind this administrative review and requested comments on the intended rescission. Counsel notified the Department on the following day that they would not comment and had no objection to rescission. See Memorandum to the File from Helen M. Kramer, Case Analyst, dated February 22, 2007.

Based upon Siderca's certification and the evidence on the record, we are satisfied that Siderca had no shipments of subject merchandise to the United States during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no

entries, exports, or sales of the subject merchandise. Therefore, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3).

Although Siderca did not have any sales or exports of subject merchandise to the United States during the POR, its subject merchandise entered the United States during the POR under its antidumping case number, without its knowledge, by way of intermediaries. The Department will instruct CBP 15 days after the publication of this notice to liquidate such entries at the "All Others" rate in effect on the date of the entry. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We are issuing and publishing this notice in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 5, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-4289 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

C-475-819

Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

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

EFFECTIVE DATE: March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Brandon Farlander or Audrey Twyman, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0182 and (202) 482-3534, respectively.

Background

On July 24, 1996, the Department of Commerce ("the Department") published a countervailing duty order on certain pasta ("pasta" or "subject merchandise") from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 3, 2006, the Department published a notice of "Opportunity to Request Administrative

Review" of this countervailing duty order for calendar year 2005, the period of review ("POR"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 30, 2006 for the 2005 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51573 (August 30, 2006). The preliminary results for this review are currently due no later than April 2, 2007.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing supplemental information provided by the respondents and the Government of Italy in this review. Because the Department requires additional time to review, analyze, and issue additional supplemental questionnaires, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by April 2, 2007). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than July 31, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 05, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-4315 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee (ETAC); Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Thursday, April 12, 2007 from 1:00-4:00 at the Ronald Reagan Building, Trade Information Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, Training Room A.

The ETAC is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid at (202) 482-5154.

Date: March 5, 2007.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E7-4282 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Healthcare Technologies Trade Mission to Turkey, Jordan, and Egypt

October 24 to November 1, 2007

I. Mission Description

The United States Department of Commerce, International Trade Administration, U.S. Commercial Service, Office of Global Trade Programs, in conjunction with the Global Healthcare Team, will lead a healthcare technologies trade mission to Istanbul, Turkey; Amman, Jordan; and Cairo, Egypt from October 24 to November 1, 2007. This mission will allow representatives of U.S. medical equipment and healthcare technology firms interested in entering or expanding existing business in these

markets. Companies can choose the stops they wish to visit. However, preference will be given to participants selecting two or more stops.

II. Mission Objective

This U.S. Department of Commerce trade mission is the ideal way for small and mid-sized companies to evaluate these markets and make important business contacts.

During the trade mission participants will receive:

- (A) Briefings on local medical markets;
- (B) Introductions to potential distributors, facility administrators, and purchasing managers through group events;
- (C) Hospital and other site visits, if applicable;
- (D) One-on-one meetings tailored to each firm's interests; and
- (E) Meetings with local business representatives and government officials, as suitable.

The precise schedule will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

Applications for this Mission are available, and may be obtained by contacting: Lisa Huot, USDOC/CS—Room 2118, 1401 Constitution Ave., NW., Washington, DC 20230. Tel: 202-482-2796; Fax 202-482-0115. E-mail: lisa.huot@mail.doc.gov.

Lisa Huot,

International Trade Specialist, Global Trade Programs.

[FR Doc. E7-4316 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022307A]

Endangered and Threatened Species; Initiation of a Status Review under the Endangered Species Act for Cusk

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

ACTION: Notice of initiation of a status review under the Endangered Species Act (ESA); request for information.

SUMMARY: We, NMFS, announce the initiation of a status review for the cusk and solicit information on the status of, and threats to, the species.

DATES: Information regarding the status of, and threats to, the cusk must be received by April 1, 2007.

ADDRESSES: You may submit information by any one of the following methods:

- Fax: 978-281-9394, Attention: Kim Damon-Randall-Damon
- Mail: Information on paper, disk, or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930.
- E-mail: cuskinfo@noaa.gov. Include in the subject line the following identifier: cusk status review.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS Northeast Region, 978-281-9300 ext. 6535; or Marta Nammack, NMFS-HQ, Office of Protected Resources, 301-713-1401 ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Because of concern over declines in abundance, we identified cusk (*Brosme brosme*) as a species of concern on April 15, 2004 (69 FR 19975). In May 2003, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) completed a status report for cusk in Canada and assessed the species status as threatened. In April 2006, the Minister of the Environment referred the assessment back to COSEWIC for further information and consideration. It is, therefore, unclear whether cusk will be listed in Canada under the Species at Risk Act.

Our Northeast Fisheries Science Center (NEFSC) autumn bottom trawl survey biomass index for cusk has fluctuated considerably, but a declining trend has been evident since the late 1960s, with all indices remaining at or close to record-low levels from 1985 through 2002 (Sosebee and Cadrin, 2006). The 1998 biomass index is near zero and is the record low. Cusk have been found to be distributed primarily in deeper waters in the central portion of the Gulf of Maine where a declining trend is also apparent on the distribution maps, and where very few fish were caught in 1993-1997 and 1998-2002 (Sosebee and Cadrin, 2006). Mean length has also declined from 24 inches (62 cm) during 1964 to 1987 to 19 inches (50 cm) during the period of 1988 to 1998. In the early 1970s, individual fish weight averaged 3 kg but was reduced by 50 percent to 1.5 kg in the late 1990s. Landings and survey indices have dropped considerably from 1984 to 2004 (NMFS, 2004). The ratio of landings to survey biomass estimates

has been increasing since 1986, which implies increased exploitation over that time period.

In the United States, the cusk fishery is not presently managed. Fishing was unrestricted in Canada until 1999 when limitations were established for landings in the Scotia-Fundy region. Despite these limitations, fishing continues to be a source of mortality. Fishing mortality is one of the prime factors for the observed decline. This appears to be a transboundary species, and, as such, conservation measures may be needed both in the United States and Canada.

Our notice establishing the species of concern list states that as resources permit, we intend to conduct status reviews, collect documentation, and make appropriate amendments relevant to species on the list (69 FR 19975; April 15, 2004). As such, we are initiating a status review for cusk. We will use the status review report and any other information that we obtain during this process to determine if listing this species under the ESA is warranted or if this species should be retained or removed from the species of concern list.

Request for Information

To support this status review, we are soliciting information relevant to the status of and threats to the species, including, but not limited to, information on the following topics: (1) Historical and current abundance and distribution of the species; (2) potential factors for the species' decline throughout its range; (3) rates of capture and release of the species from both recreational and commercial fisheries; (4) post-release mortality; (5) life history information (size/age at maturity, growth rates, fecundity, reproductive rate/success, etc.); (6) morphological and molecular information to assist in determining stock structure; (7) threats to the species, particularly: (a) Present or threatened destruction, modification, or curtailment of habitat or range; (b) over-utilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence; and (8) any ongoing conservation efforts for the species. See **DATES** and **ADDRESSES** for guidance on and deadlines for submitting information.

Dated: March 5, 2007.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. E7-4260 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030107G]

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permit upgrades.

SUMMARY: NMFS is soliciting applications for American Samoa longline limited entry permit upgrades. Fourteen (14) permit upgrades will be available in 2007 for Class A vessel permit holders to upgrade to larger vessel size classes (B-1, C-1, or D-1) in the American Samoa pelagic longline fishery. The permit upgrades are available only to Class A permit holders who participated in the fishery before March 22, 2002, and the highest priority for receiving a permit upgrade will be given to the person with the earliest date of documented participation.

DATES: Completed permit upgrade applications must be received by NMFS by May 8, 2007.

ADDRESSES: Applicants should send completed applications to NMFS Pacific Islands Region (PIR), ATTN: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Application forms may be obtained from NMFS PIR, ATTN: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700, or from the NMFS PIR Web site: <http://www.fpir.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, NMFS PIR (808)944-2275.

SUPPLEMENTARY INFORMATION: On May 25, 2005, NMFS published a final rule (70 FR 29646) that established a limited entry program for the pelagic longline fishery based in American Samoa, under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries in the Western Pacific Region. American Samoa longline limited entry permits

were established for four vessel size classes, based on length:

- Class A: less than or equal to 40 ft (12.2 m),
- Class B and B-1: over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive,
- Class C and C-1: over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive, and
- Class D and D-1: over 70 ft (21.3 m).

A total of 60 initial American Samoa longline limited entry permits were issued, 22 in Class A, five in Class B, 12 in Class C, and 21 in Class D. These numbers are the vessel size class limits on the number of allowed American Samoa longline limited entry permits, as defined by the regulations setting the maximum limit on permits under the limited entry program.

The limited entry program allows for a total of 26 permit upgrades to be made available for the exclusive use of permit holders in Class A, distributed over a four-year period following the issuance of initial limited entry permits. In 2006, eight permit upgrades were available (four in Class B-1, two in Class C-1, and two in Class D-1), but only one Class B-1 upgrade and one Class D-1 upgrade were issued, leaving six unissued. In 2007, 14 permit upgrades will be available (four new and three unissued in Class B-1, two new and two unissued in Class C-1, and two new and one unissued in Class D-1). The Regional Administrator may initially issue Class B-1, C-1 and D-1 permit upgrades only to persons who hold a Class A permit and who participated in the American Samoa pelagic longline fishery before March 22, 2002. The highest priority will be given to those with the earliest date of documented participation. Those receiving upgraded permits must surrender their Class A permits and the surrendered permits are deducted from the allowed Class A permit total.

This notice announces the availability of permit upgrades and solicits applications for the upgrades. Complete applications must include the completed and signed application form (available from NMFS), legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee. Documents supporting fishery participation should show that fishing was conducted using longline gear. Properly completed applications must be received by NMFS (see **ADDRESSES**) by May 8, 2007 to be considered for eligibility for the 2007 permit upgrades.

Authoritative additional information on the American Samoa longline limited

entry program may be found at 50 CFR part 665.

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

Dated: March 5, 2007.

James P. Burgess,

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

[FR Doc. E7-4258 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030507F]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will hold a Population Dynamics Sub-group public meeting.

DATES: The meeting will be held on Friday, March 30, 2007, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, Baltimore-Washington Airport, 1671 Nursery Rd., Linthicum, MD 21090; telephone: (410) 859-8855.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to address issues related to recruitment dynamics and stock rebuilding for the Atlantic butterfish stock. Additional technical issues concerning standards defining best available scientific data may also be discussed.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674-2331 extension 18, at least 5 days prior to the meeting date.

Dated: March 6, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-4222 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030507G]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the National Marine Fisheries Service's Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), Atlantic States Marine Fisheries Commission (ASMFC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Wednesday, April 4, 2007, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport, 1850 Post Road, Warwick, RI 02886, telephone: (401) 738-4000.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to tour the new research vessel FSV Henry B. Bigelow, discuss Protocol Development Cruises, NEFSC's upcoming Calibration Design Workshop, NEAMAP cruise usage in defining differences between inshore and offshore stations, and gear standardization issues.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674-2331 extension 18, at least 5 days prior to the meeting date.

Dated: March 6, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-4224 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030507E]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad Hoc Sector Omnibus Committee (Committee) in March, 2007 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, March 29, 2007, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339-2200; fax: (508) 256-2550.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Committee will continue development of sector programs and operational guidelines.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: March 6, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-4221 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030507H]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The meetings will be held from Monday, March 26 through Tuesday, April 3, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, March 28, continuing through Tuesday, April 3, 2007. The Council will meet jointly with the Alaska Board of Fisheries from 1 p.m. to 5 p.m. on Wednesday, March 28.

The agenda will consist of: Halibut Charter Management; Steller Sea Lion (SSL) Recovery Plan and Biological Opinion (BiOp); Salmon Bycatch; Potential sector split for cod in the Gulf of Alaska (GOA) and License Limitation Program (LLP) recency in the GOA and tendering issues; Dark Rockfish in the GOA (and potential state management aspects); Request for closed area around Unalaska Bay; Arctic Management Plan discussion paper.

The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, March 26 and continue through Saturday, March 31.

The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, March 26 and continue through Wednesday March 28, 2007.

The Enforcement Committee will meet Tuesday, March 27, from 9 a.m. to 12 noon, in the Birch/Willow Room.

The Ecosystem Committee will meet March 27, from 1 p.m. to 5 p.m., in the Birch/Willow Room.

All meetings are open to the public, except executive sessions. Council Plenary Session:

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

- Executive Director's Report (including revised National Environmental Protection Act (NEPA) process, Statement of Organization, Practices, and Procedures).

- NMFS Management Report (including National Bycatch Report Updates and annual catch limit guidelines).

- U.S. Coast Guard Report.

- Alaska Department of Fish & Game Report.

- U.S. Fish & Wildlife Service Report.
- Protected Species Report (including update on recovery plan/BiOp).

2. Charter Halibut Management:

NMFS Report on International Pacific Halibut Commission (IPHC) action; receive Stakeholder Committee report, action as necessary; Final action on Moratorium; State/Federal Management - review discussion paper; Review discussion paper on sport fish discard mortality; Initial review of analysis of Area 2C Guideline Harvest Levels (GHLs) measures; Discussion paper on halibut allocations, action as necessary; Report on Alaska Department of Fish & Game (ADF&G) logbook data (SSC only).

3. GOA Groundfish Management

Review: Review discussion paper on GOA sideboards; review problem statement and develop alternatives GOA sector split; review problem statement and develop alternatives for GOA latent licenses; review discussion paper on Western GOA pollock trip limits and action as necessary.

4. Trawl LLP Recency: Review

discussion paper on interactions with other limited entry programs; review discussion paper on implementation issues; action as necessary.

5. Bering Sea Aleutian Island (BSAI) Crab Management: Review 18-month BSAI Crab Review report, and take

action as necessary; review crab data collection protocols, action as necessary.

6. Observer Program: Progress report and action as necessary.

7. Community Development Quota (CDQ): Review of legal opinion about CDQ Program roles and responsibilities, and action as necessary (T).

8. Socioeconomic Data: Receive

workgroup report on Comprehensive Socioeconomic Data Collection.

9. Scallop Management: Review and approve Scallop Stock Assessment Fishery Evaluation (SAFE).

10. Groundfish Management:

Discussion paper on ≤Other Species= management; final action on Dark Rockfish management; stock assessment review guidelines, action as necessary; SSCs Salmon Bycatch Workshop; action as necessary.

11. Habitat Conservation: Initial Review of Bering Sea habitat conservation measures; review Habitat Area of Particular Concern (HAPC) priorities and timing, action as necessary; final action on Essential Fish Habitat Aleutian Island open area adjustment.

12. Aleutian Island Fishery Ecosystem Plan (FEP): Initial review of FEP (T).

13. Arctic Management: Review discussion paper, and take action as necessary.

14. Staff Tasking: Review Committees and tasking, and take action as necessary.

15. Other Business.

The SSC agenda will include the following issues:

1. Protected Species

2. Charter Halibut Management

3. GOA Groundfish Management

4. BSAI Crab Management

5. Trawl LLP Recency

6. Socioeconomic Data

7. Scallop Management

8. Groundfish Management

9. Habitat Conservation

10. Aleutian Island Fishery Ecosystem Plan

11. Arctic Management

The Advisory Panel will address the same agenda issues as the Council, except for reports.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: March 6, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-4223 Filed 3-8-07; 8:45 am]

BILLING CODE 3510-22-S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 07-C0004]

Fisher-Price, Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Fisher-Price Inc., a corporation, containing a civil penalty of \$975,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 26, 2007.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 07-C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7582.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: February 28, 2007.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

[CPSC Docket No. 07-C0004]

In the Matter of Fisher-Price, Inc. a Corporation

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (the "staff") of the U.S.

Consumer Product Safety Commission ("CPSC" or the "Commission") and Fisher-Price, Inc. ("Fisher-Price"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement and the incorporated attached Order resolve the staff's allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2084.

3. Fisher-Price is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate office in East Aurora, New York. At all times relevant herein, Fisher-Price designed, imported and sold toys and juvenile products.

Staff Allegations

4. Between June 17, 2002 and July 31, 2002, Fisher-Price imported and sold nationwide approximately 67,000 Little People® Animal Sounds Farm toys (the "Farm(s)" or "products"). The Farms are shaped like a barn and make animal sounds when the doors of the cow or horse stall are opened.

5. The Farms are "consumer product(s)" and, at the times relevant herein, Fisher-Price was a "manufacturer" of "consumer product(s)," which were "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11) and (12).

6. The Farms are defective because the ringed nail fasteners used to attach the toy "stall doors" in place can disengage from the product. If this should occur, young children could choke on or aspirate the loose nail fastener.

7. On or about September 11, 2002, Fisher-Price first learned of an incident in which a nail fastener disengaged from one of the stall doors.

8. By November 18, 2002, Fisher-Price had become aware of nine reports of nail fasteners coming loose from the stall doors, including one report from a consumer that a nail fastener came out and that her child placed it in her mouth.

9. By early February of 2003, Fisher-Price was aware of two telephone calls in which consumers indicated a concern that this problem posed a choking hazard to children.

10. On February 14, 2003, Fisher-Price learned of a December 30, 2002 incident in which a 14-month old child aspirated a Farm nail fastener into his lung. The child was taken to a hospital where emergency surgery was performed to remove the nail fastener.

11. Despite being aware of the information set forth in paragraphs 4 through 10, Fisher-Price did not report to the Commission until March 14, 2003. By that time, Fisher-Price was aware of at least 33 reports of incidents in which a nail fastener came loose from the stall doors. These included four reports of children who put a fastener in the mouth (including a report of a child who cut the inside of her mouth), and one report of a

child who required emergency surgery to remove an aspirated nail fastener from his lung.

12. Although Fisher-Price had obtained sufficient information to reasonably support the conclusion that the Farms contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3). In failing to do so, Fisher-Price "knowingly" violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Fisher-Price is subject to civil penalties for its failure to make a timely report under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Fisher-Price

14. Fisher-Price denies that the Farms contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

15. Fisher-Price believes that the Farms do not violate any CPSC regulations regarding small parts or otherwise and do not violate any applicable safety standards.

16. Fisher-Price denies any liability or wrongdoing of any kind.

17. Fisher-Price was not advised of the December 30, 2002 incident, in which a consumer's child was reported to have aspirated a fastener, until February 14, 2003. The consumer advised Fisher-Price that the incident had been reported to the CPSC. Fisher-Price, nevertheless, filed a Full Report with the CPSC pursuant to Section 15(b) of the CPSA on March 14, 2003 and undertook a Fast Track Recall of the product on April 23, 2003.

Agreement of the Parties

18. The Commission has jurisdiction over this matter and over Fisher-Price under the CPSA, 15 U.S.C. 2051–2084.

19. In settlement of the staff's allegations, Fisher-Price agrees to pay a civil penalty of nine hundred seventy five thousand dollars (\$975,000.00) within twenty (20) calendar days of service of the Final Order of the Commission accepting this Settlement Agreement. This payment shall be made by check payable to the order of the United States Treasury.

20. The parties enter this Settlement Agreement for settlement purposes only. The Settlement Agreement does not constitute an admission by Fisher-Price or a determination by the Commission that Fisher-Price violated the CPSA's reporting requirements.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written requests not to accept

the Settlement Agreement and Order within 15 calendar days, the Agreement and Order shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Fisher-Price knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or consent of the Commission's actions; (iii) a determination by the Commission as to whether Fisher-Price failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. This Settlement Agreement shall apply to, and be binding upon Fisher-Price and each of its successors and assigns, its parent entity, its parent's subsidiaries, and each of their respective successors and assigns.

25. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084, and a violation of the Order may subject those referenced in paragraph 24 above to appropriate legal action.

26. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

27. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approval by the Commission.

28. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Fisher-Price determine that severing the provision materially changes the purpose of the Settlement Agreement and Order.

Fisher-Price, Inc.

Dated:

By: _____
Neil Friedman
President

By: _____
Neil A. Goldberg
Goldberg Segalla, LLP
665 Main Street, Suite 400
Buffalo, New York 14203
Counsel for Fisher-Price, Inc.

U.S. Consumer Product Safety Commission
John Gibson Mullan
Assistant Executive Director
Office of Compliance and Field Operations

Dated:
By: _____
Ronald G. Yelenik
Acting Director
Legal Division
Office of Compliance and Field Operations

United States of America

Consumer Product Safety Commission

CPSC Docket No. 07–C0004

In the Matter of Fisher-Price, Inc., a Corporation

Order

Upon consideration of the Settlement Agreement entered into between Fisher-Price, Inc. ("Fisher-Price") and the staff of the U.S. Consumer Product Safety Commission (the "Commission"), and the Commission having jurisdiction over the subject matter and over Fisher-Price, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Fisher-Price shall pay a civil penalty in the amount of nine hundred seventy five thousand dollars (\$975,000.00). This payment shall be made payable to the order of the United States Treasury within twenty (20) calendar days of service of the Final Order of the Commission upon Fisher-Price. Upon the failure of Fisher-Price to make full payment in the prescribed time, interest on the outstanding balance shall accrue and be paid at the federal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 28th day of February, 2007.

By Order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 07–1071 Filed 3–8–07; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0017]

Proposed Collection; Comment Request

AGENCY: DoD, National Defense University; National Security Education Program.

ACTION: Notice

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Defense University, announces the proposed revision of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 8, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the National Security Education Program, PO Box 20010, attn: Angel Park, Arlington, VA 22219, or call the National Security Education Program Office, at (703) 696–1991.

Title; Associated Form; and OMB Number: National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards, DD Form 2752; and National Security Education Program (NSEP) Service Agreement Report (SAR), DD Form 2753; OMB Control Number 0704–0368.

Needs and Uses: The information collection requirement is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling service obligation mandated by the National Security Education Program Act of 1991, Title VIII of Pub. L. 102–183, as amended.

Affected Public: Individuals or households; Federal government.

Annual Burden Hours: 275.

Number of Respondents: 250 (DD Form 2752) and 1400 (DD Form 2753).

Responses per Respondent: 1.

Average Burden per Responses: 10 minutes.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are recipients of undergraduate scholarships and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD Form 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward fulfilling this obligation between students who receive NSEP undergraduate scholarships and graduate fellowship awards, the program office, and the Department.

Dated: March 2, 2007.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1104 Filed 3–8–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–HA–0021]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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

information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received May 8, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the TRICARE Management Activity—Aurora, Office of Program Requirements Division, 16401 E. Centretech Parkway, ATTN: John J.M. Leininger, Aurora, CO 80011-9066, or call TRICARE Management Activity, Office of Program Requirements Division at (303) 676-3613.

Title, Associated Form, and OMB Number: Health Insurance Claim Form; CMS-1500; OMB Control Number 0720-0001.

Needs and Uses: This information collection requirement is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Annual Burden Hours: 6,000,000.

Number of Respondents: 24,000,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by health care providers under the TRICARE Program. TRICARE is a health benefits entitlement program for the dependents of active duty Uniformed Services member and deceased sponsors, retirees and their dependents, dependents of Department of Homeland Security (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. The CMS-1500 form is used by individual professional health care or health care related providers to file for reimbursement of civilian health care services or supplies provided to TRICARE beneficiaries. This is the national standard claim form accepted by all major commercial and government payers.

Dated: March 2, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-1110 Filed 3-8-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD-2007-OS-0016]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 8, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any person identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel Readiness) (Military Community and Family Policy/Educational Opportunities Directorate), ATTN: Mr. Gary Woods, 4000 Defense Pentagon, Washington, DC 20301-4000, or call at (703) 602-4949, ext. 161.

Title, Associated Form, and OMB Control Number: Department of Defense Public and Community Service (PACS) Program, DD Forms 2581 and 2581-1, OMB Control Number 0704-0324.

Needs and Uses: This information collection requirement is necessary to allow for the continued implementation of the Public and Community Service (PACS) Program. The PACS Program encourages eligible Service members to work in the public or community service arena upon separation from active duty. Employers with job openings in the public and community service arena will complete the one-time DD Form 2581, "Operation Transition Employer Registration," to register in the PACS employer database. The DD Form 2581 also allows PACS employers to post employment opportunities on the Operation Transition Bulletin Board (TBB). Employers hiring separated Service members under the Temporary Early Retirement ACT (TERA) are required to complete the DD Form 2581-1, "Public and Community

Service Organization Validation” to be validated as a PACS employer. This validation allows TERA retirees, being hired by a PACS organization, to earn additional retirement credit needed towards gaining full retirement for 20 years of credible service. Once the retiree reaches age 62, he/she will be compensated for retirement for 20 years of service. The information from the DD Form 2581-1 is also used by the Department of Defense to validate that the employer meets the criteria of a PACS organization.

Accepted Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal government.

Annual Burden Hours: 90.

Number of Respondents: 361.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is needed to satisfy Public Law 101-510, the Defense Department's Fiscal Year 1991 Authorization Act, November 5, 1990, which directed the Secretary of Defense release to civilian employers, organization and other appropriate entities, the names (and other pertinent information) of separating members of the Armed Forces, their spouses, and civilian employees who are seeking employment in the civilian sector. The collection is also required to satisfy Public Law 102-484, the Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter into employment in the public and community services arena. DD Form 2581, "Operation Transition Employer Registration," and DD Form 2581-1, "Public and Community Service Organization Validation," are used to support this effort.

Dated: February 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-1145 Filed 3-8-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Sunshine Act Meeting

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), announcement is made of the following committee meeting:

NAME OF COMMITTEE: Department of Defense Task Force on the Future of the Military Health Care, a duly established subcommittee of the Defense Health Board.

DATE OF MEETING: March 28, 2007.

TIME OF MEETING: 8:30 a.m. to 4 p.m.

PLACE OF MEETING: National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, Washington, DC 20594.

PURPOSE OF MEETING: TO OBTAIN, REVIEW, AND EVALUATE INFORMATION RELATED TO THE TASK FORCE'S CONGRESSIONALLY-DIRECTED MISSION TO EXAMINE MATTERS RELATING TO THE FUTURE OF MILITARY HEALTH CARE. THE TASK FORCE MEMBERS WILL RECEIVE BRIEFINGS ON TOPICS RELATED TO THE DELIVERY OF MILITARY HEALTH CARE DURING THE PUBLIC MEETING.

AGENDA: Discussion topics include Beneficiary and Government cost sharing structure and premium payments structure.

Prior to the public meeting the Task Force will conduct an Administrative Working Meeting from 8:30 a.m. to 9:15 a.m. to discuss solely administrative matters of the Task Force. In addition, the Task Force, following its public meeting, will conduct a Preparatory Working Meeting from 3:30 p.m. to 4 p.m. to solely analyze relevant issues and facts in preparation for the Task Force's next meeting. Both the Administrative and Preparatory Working Meetings will be held at the National Transportation Safety Board Conference Center. Pursuant to 41 Code of Federal Regulations, Part 102-3.160, both the Administrative and Preparatory Working Meetings will be closed to the public.

Additional information and meeting registration is available online at the Defense Health Board Web site, <http://www.ha.osd.mil/dhb>.

FOR FURTHER INFORMATION CONTACT:

Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, Skyline One, 5205 Leesburg Pike,

Suite 810, Falls Church, VA 22041, (703) 681-3279, ext. 109 (christine.bader@ha.osd.mil).

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the National Transportation Safety Board Conference Center. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document to the Executive Secretary of the Department of Defense Task Force on the Future of Military Health Care, christine.bader@ha.osd.mil, no later than 10 business days prior to the scheduled meeting.

Dated: March 6, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-1138 Filed 3-7-07; 1:08 pm]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act Meeting; Independent Review Group To Report on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs); DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the following meeting notice is announced.

NAME OF COMMITTEE: Independent Review Group To Report on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center—a subcommittee of the Defense Health Board (DHB).

DATES: March 13, 2007 (Open Session). March 14, 2007 (Open Session).

TIMES: 13:30 p.m.–15 p.m. (March 13, 2007). 13:30 p.m.–15 p.m. (March 14, 2007).

LOCATION: Joel Auditorium, Building 1, Walter Reed Army Medical Center, 16th Street, Washington, DC 20307 (March 13, 2007) and Clark Auditorium, Building 10, National Naval Medical

Center, 8901 Rockville Pike, Wisconsin Avenue, Bethesda, MD 20889 (March 14, 2007).

PURPOSE OF THE MEETING: The purpose of the meeting is to discuss the mechanisms the Independent Review Group to Report on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center (hereafter referred to as the "Independent Review Group") is using and will use to identify critical shortcomings in and opportunities to improve rehabilitative care, administrative processes, and quality of life for injured and sick members of the Armed Forces at the Walter Reed Army Medical Center (SRAMC) and the National Naval Medical Center (NNMC)—in order to make recommendations for corrective actions. This meeting is intended as one of these mechanisms as interested individuals and groups will be given an opportunity to provide relevant input directly to the Independent Review Group.

AGENDA: The Honorable John O. Marsh (Co-chair) will open both sessions and present a short summary of mechanisms the Independent Review Group is using and will use to identify shortcomings and opportunities for improvement. After comments from group members, members of the public invited to make oral presentations (in accordance with procedures described in this notice) will be given an opportunity to orally provide relevant information. The Honorable Togo West (Co-chair) will close each session, reviewing mechanisms members of the public may use to provide additional information to the Independent Review Group.

Members of the public wishing to provide input to the Independent Review Group at either open sessions should submit written statements in accordance with 41 CFR 102–3.140(C), section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should be no longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting written statements must submit their statements to the Defense Health Board's Designated Federal Officer at the address detailed below and should provide a fax copy directly to the Independent Review Group Staff Director at 703–602–6989. If a written

statement is not received at least 1 calendar day prior to the sessions which are the subject of this notice, then it may not be possible to arrange for an opportunity to present at one of the sessions. Regardless of whether a written statement leads to oral presentation at one of the sessions, it will still be provided to the members of the Independent Review Group for their review.

The Designated Federal Officer will review all timely submissions with the Independent Review Group Co-Chairs and ensure they are provided to members of the Independent Review Group before the sessions that are subject to this notice. After reviewing the written statements, the Chairperson and the Designated Federal Officer may choose to invite those who submit statement to orally present their issues during the sessions.

The Designated Federal Officer, in consultation with the Independent Review Group Co-Chairs, may, if desired, allot a specific amount of time for members of the public to orally present their issues for review and discussion by the members of the Independent Review Group.

On March 1, 2007 the members of the Independent Review Group had an administrative working meeting to discuss administrative matters pertaining to the Independent Review Group, and to receive administrative information from the Department of Defense. During the meeting the members of the Independent Review Group indicated that they wanted to hold a public meeting at the earliest opportunity, and the earliest that a meeting could be scheduled was March 13–14, 2007. Since these dates are within the 15-calendar day notification window, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), grants the Independent Review Group a waiver to the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT:

Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Room 810, Falls Church, Virginia 22041–3206, (703) 681–3279, Ext. 123, (roger.gibson@ha.osd.mil)

Editorial note: This document was received at the Office of the Federal Register March 7, 2007.

Dated: March 6, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1140 Filed 3–7–07; 1:08 pm]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Removal of Low-Activity Contamination

AGENCY: Defense National Stockpile Center (DNSC), Defense Logistics Agency.

ACTION: Notice of availability of environmental assessment and a draft finding of no significant impact for the removal of low-activity contamination.

SUMMARY: The Defense Logistics Agency announces the availability of the Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI) for the removal of low-activity contamination resulting from storage of radioactive source material in the National Defense Stockpile of strategic and critical materials.

Stockpiles of commodities containing source material have been removed from DNSC depots at Curtis Bay, MD and Hammond, IN. At the Curtis Bay Depot, the commodities containing source material (columbium/tantalum, thorium nitrate, tungsten ore and concentrates, thorium hydroxide, thorium oxide, monazite sand, uranium pitchblende ore, and sodium sulfate) were previously stored in 16 of the original 59 warehouses. Since the middle 1980s, over 19,000 drums of thorium nitrate were stored in three warehouses. Previously the thorium nitrate stockpile was stored for short periods in six other warehouses on the site. At the Hammond Depot, the commodities containing source material (columbium/tantalum, thorium nitrate, monazite sands, sodium sulfate, and tungsten ore and concentrates) were previously stored in two of the three warehouses on the site. Cleanup of any residual contamination from storage of the commodities containing source material is one task DNSC must complete before its Nuclear Regulatory Commission license can be terminated.

Following evaluation of reasonable alternatives conducted by Oak Ridge National Laboratory on behalf of DNSC, DNSC proposes to remove residual contamination and transfer the contaminants to a regulated disposal site. This disposal will be performed in a manner that will be safe, secure, and environmentally sound and minimizes radiation exposure and potential for risk to workers, the public, and the environment.

DATES: Comments on the draft FONSI received by April 9, 2007 will be considered when preparing the final version of the FONSI.

The EA and draft FONSI are available for review on the DNSC Web site (<https://www.dnsc.dla.mil/EAandDraftFONSI.asp>). Comments should be sent to Mr. Michael Pecullan, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, VA 22060-6221. Comments may also be faxed to Mr. Pecullan at (703) 767-7716.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pecullan, Phone (703) 767-7620 or E-Mail: michael.pecullan@dla.mil.

Dated: March 6, 2007.

Essie Schloss,

Deputy Administrator, Defense National Stockpile Center.

[FR Doc. E7-4234 Filed 3-8-07; 8:45 am]

BILLING CODE 3620-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

South Bay Salt Pond Restoration Project, San Francisco Bay, CA

AGENCIES: Fish and Wildlife Service, Interior; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability: Draft environmental impact statement/environmental impact report; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG) are proposing a restoration plan for 15,100 acres (6,111 hectares) of former commercial salt ponds in south San Francisco Bay. This South Bay Salt Pond (SBSP) Restoration Project would use a combination of restored tidal marsh, managed ponds, flood control measures and public access features to meet the three goals of the plan: to restore wildlife habitat, to provide flood protection and to provide wildlife-oriented public access. The ponds are located at the Don Edwards San Francisco Bay National Wildlife Refuge and at the Eden Landing State Ecological Reserve.

The Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) includes program-level evaluation of the SBSP long-term alternatives as well as project-level analysis of the first phase of restoration (the Phase 1 actions).

The Draft EIS/EIR has been prepared jointly by the Service, the U.S. Army

Corps of Engineers (Corps) and the CDFG to analyze the impacts of the SBSP. The EIS/EIR presents a limited evaluation of the potential impacts associated with the list of possible South San Francisco Bay Shoreline Study (Shoreline Study) actions. The Shoreline Study area includes the SBSP Restoration Project area as well as shoreline and floodplain areas in the counties of Alameda, San Mateo, and Santa Clara. The Corps and non-Federal sponsors will prepare an EIS/EIR for the Shoreline Study, which will tier off of this EIS/EIR and cover specific project-level actions.

Note that the Draft SBSP EIS/EIR is being submitted for public review under separate Federal and State processes. The following addresses and due dates are applicable to the Federal NEPA review process:

DATES: For the Federal process, written comments under the National Environmental Policy Act should be received on or before April 23, 2007. We will hold two public meetings in March 2007 to solicit comments on the draft Environmental Impact Statement. Dates, times, and addresses for the public meetings follow.

- March 28, 2007, 6 p.m. to 8 p.m., NASA Research Center, Building 943 (Eagle Room), Moffett Field, CA 94035.
- March 29, 2007, 6 p.m. to 8 p.m., Centennial Hall, 22292 Foothill Boulevard, Room 4, Hayward, CA 94541.

Call Anna Schneider at (510) 286-1015 if directions are needed. Persons needing reasonable accommodations in order to attend and participate in these public meetings should contact Anna Schneider at (510) 286-1015 sufficiently in advance of the meeting to allow time to process the request.

ADDRESSES: Written comments and requests for information should be sent to Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay NWR, 9500 Thornton Avenue, Newark, CA 94560. Written comments may also be sent by facsimile to (510) 792-5828 or through the public comments link on the South Bay Salt Pond Restoration Project Web site, at http://www.southbayrestoration.org/Question_Comment.html. All comments received, including names and addresses, will become a part of the administrative record and be made available to the public.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Federal National Environmental Policy Act (NEPA) process may be directed to Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay NWR, at the

above address; telephone (510) 792-0222, or Yvonne LeTellier, Project Manager, U.S. Army Corps of Engineers, 1455 Market Street, San Francisco, CA 94103; (415) 503-6744. Questions related to the California Environmental Quality Act (CEQA) process may be directed to John Krause, California Department of Fish and Game, Region 3 Headquarters, P.O. Box 47, Yountville, CA 94599; telephone (707) 944-5500.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the Draft EIS/EIR should contact the Service by letter, facsimile to the San Francisco Bay National Wildlife Refuge Complex or contact through the restoration project Web site (see **ADDRESSES**). The document is also available for public inspection, by appointment, during regular business hours, at the San Francisco Bay National Wildlife Refuge Complex, Fremont, California, U.S. Army Corps of Engineers, San Francisco, California, the California Dept. of Fish and Game, Region 3 Headquarters, 7329 Silverado Trail, Napa, CA 94558, and the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, California, 95118. Copies are also available for public review at:

- *Alviso Branch Library:* 5050 North First St., San José, CA 95002, (408) 263-3626;
- *City of Mountain View Library:* 585 Franklin Street, Mountain View, CA 94041, (650) 903-6337;
- *Palo Alto Main Library:* 1213 Newell Road, Palo Alto, CA 94303, (650) 329-2436;
- *Menlo Park Library:* 800 Alma Street, Menlo Park, CA 94025, (650) 330-2500;
- *Sunnyvale Public Library:* 665 West Olive Avenue, Sunnyvale, CA 94086, (408) 730-7300;
- *Hayward Public Library:* 835 C Street, Hayward, CA 94541, (510) 293-8685; and
- *Fremont Main Library:* 2400 Stevenson Blvd, Fremont, CA 94538, (510) 745-1400.

The document may also be viewed on the restoration project Web site <http://www.southbayrestoration.org>.

Background

On March 16, 2003, the State of California and the Service acquired 15,100 acres of commercial salt ponds from Cargill, Inc. in South San Francisco Bay which are the subject of the SBSP. The purpose of the acquisition was to protect, restore and enhance the property for fish and wildlife, as well as to provide

opportunities for wildlife-oriented recreation and education. Of the acquired lands, CDFG owns and manages the 5,500-acre Eden Landing pond complex and the Service owns the 8,000-acre Alviso pond complex and the 1,600-acre Ravenswood pond complex.

The SBSP Restoration Project was planned in close coordination with a related but separate project, the Shoreline Study. The Congressionally-authorized Shoreline Study will identify and recommend for Federal funding one or more projects for flood damage reduction, ecosystem restoration and related purposes such as public access. Because they have similar objectives and geographic scope and include restoration and flood management components, the planning and management of these two projects is being closely integrated. Planning for the Shoreline Study will be conducted through several stages referred to as Interim Feasibility Studies, and the Corps is currently developing alternatives for the first stage of the Shoreline Study (the Alviso Ponds and Santa Clara County Interim Feasibility Study) in partnership with the Study's non-Federal sponsors, the Santa Clara Valley Water District and the California Coastal Conservancy and in cooperation with the Service. Potential Shoreline Study actions include flood protection improvements, ecosystem restoration, and recreation and public access features, which may overlap considerably with proposed SBSP Restoration Project actions.

The Initial Stewardship Plan (ISP) is an interim plan now in operation to maintain and enhance the biological and physical conditions within the SBSP area in the interim period between the cessation of salt production and the implementation of the long-term restoration plan that will emerge from the SBSP Restoration Project planning process. Because the SBSP Restoration Project will be implemented in phases over time, some ponds may be managed under the ISP for many years. The ISP actions include construction and operation of water control structures to circulate bay waters through a series of pond clusters to maintain low salinity, provide wildlife habitat, and maintain at least the current level of flood protection. Three of the ponds' levees were breached to allow full tidal wetland restoration. Additionally, some ponds are managed as seasonal wetlands that are allowed to fill with rain water in the winter and dry through evaporation during the summer months while other ponds are operated as high salinity ponds to provide habitat for

wildlife requiring those conditions. Certain ponds are still being managed by Cargill while they reduce the salinity levels by moving the saltiest brines to its plant site in Newark, California.

The actual long-term restoration of the salt ponds is the subject of the SBSP Restoration Project. Implementation of the long-term restoration plan is expected to be conducted in phases with some phases extending beyond 20 years. This EIS/EIR is programmatic, covering the long-term plan for the entire SBSP planning area and is project specific for the Phase 1 projects which will be implemented in the near term.

Alternatives Analyzed

The Draft EIS/EIR considers three programmatic alternatives for the SBSP: a No Action Alternative (Alternative A), a Managed Pond Emphasis Alternative (Alternative B), and a Tidal Emphasis Alternative (Alternative C).

Under the No Action alternative (Alternative A), the expected scenario at Year 50 is evaluated as if no long-term restoration plan is implemented. CDFG and the Service would continue to operate and maintain the ponds in a manner similar to the ISP, although it is assumed that CDFG and the Service would not have the funding to maintain full ISP operations over the 50-year planning horizon. No new public access or recreational facilities are proposed under this alternative.

Under the Managed Pond Emphasis Alternative (50 percent tidal habitat: 50 percent managed ponds by area) (Alternative B), the expected scenario at Year 50 would contain approximately 7,500 acres of tidal habitat and 7,500 acres of managed pond habitat. Approximately 20 percent of the managed ponds would be reconfigured to improve foraging, roosting, and nesting opportunities for shorebirds, waterfowl, and other waterbirds. In addition, Alternative B would provide a cohesive line of flood protection along the perimeter of the project area. This alternative would also provide public access and recreation features in the form of trails and viewing platforms, interpretive stations, waterfowl hunting, access to and interpretation of cultural resource features, opportunities for education and interpretation, non-motorized boat launching points and associated staging and parking areas.

Under the Tidal Emphasis Alternative (90 percent tidal habitat : 10 percent managed ponds by area), the expected scenario at Year 50 would contain approximately 13,400 acres of tidal habitat and 1,600 acres of managed pond habitat. All managed ponds in

Alternative C would be reconfigured to substantially enhance foraging, roosting and nesting opportunities for shorebirds, waterfowl and other waterbirds. Flood protection under Alternative C would be similar to Alternative B, with the exception that the length of existing slough levees abandoned would increase in Alternative C. Alternative C would also provide public access and recreation features similar to those described for Alternative B.

Alternatives B and C are "bookends" that represent possible outcomes ranging from a 50:50 tidal to managed pond scenario to a 90:10 tidal to managed pond scenario. The optimal configuration of tidal habitat and managed ponds that achieves the SBSP objectives while avoiding significant impacts to environmental resources would fall somewhere between these bookends and would be guided by the Adaptive Management Plan, the cornerstone of the SBSP.

The Draft EIS/EIR also addresses, at the project level, Phase 1 of the SBSP. The Phase 1 actions are common elements of the long-term Alternatives B and C. Phase 1 actions would include a range of habitat types and early experiments that will be used to inform the Adaptive Management Plan. These include creating tidal, muted tidal and managed pond habitats as well as a variety of public-access features.

The Service and the Corps invite the public to comment on the Draft Environmental Impact Statement during a 45-day public comment period. The Service and the Corps will evaluate the comments submitted thereon to prepare a Final EIS/EIR. A decision will be made no sooner than 30 days after the publication of the Final EIS/EIR. It is anticipated that a Record of Decision will be issued by the Service in the fall of 2007.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: February 28, 2007.

Steve Thompson,

Manager, California/Nevada Operations, Sacramento, CA.

Dated: March 1, 2007.

Craig W. Kiley,

Lieutenant Colonel, U.S. Army, Commanding.
[FR Doc. 07-1061 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Public Hearing for the Draft Environmental Impact Statement for Kilo Wharf Extension, Apra Harbor Naval Complex, Guam, Mariana Islands****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (DON) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the proposed Kilo Wharf Extension, Apra Harbor Naval Complex (AHNC), Guam, Mariana Islands.

The DON will conduct one public hearing to receive oral and written comments on the Draft EIS. Federal, Territorial, local agencies and interested individuals are invited to be present or represented at the public hearing. DON representatives will be available to clarify information related to the Draft EIS. This notice announces the date and location of the public hearing for this Draft EIS.

DATES AND ADDRESSES: A public hearing will be held on Wednesday, March 28, 2007, at 6 p.m. at the Hyatt Regency Guam, 1155 Pale San Vitores Road, Tuman Bay, Guam, Mariana Islands.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command, Pacific, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, *Attn:* Ms. Nora Macariola-See, telephone 808–472–1402, facsimile 808–474–5419, *E-mail:* kiloeis@navy.mil.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this Draft EIS was published in the **Federal Register** on July 29, 2005 (70 FR 43848). Two public scoping meetings were held on Guam, Mariana Islands. The first public scoping meeting was held on August 30, 2005, at the Guam Hilton, 202 Hilton Road, Tumon Bay, Guam. The second public scoping meeting was originally scheduled to be held on August 31, 2005, but rescheduled due to typhoon warnings to September 2, 2005, at the Santa Rita Community Center, 183 A.B. Won Pat Lane, Santa Rita, Guam.

The proposed action is to provide adequate berthing facilities (including shore utilities and wharf-side handling area) to support the T-AKE which is a new class of multi-purpose dry cargo/

ammunition ship that will replace existing ammunition ships currently forward deployed to the AHNC, Guam. As part of its ordnance support function, Commander, Navy Region Marianas (COMNAVREGMARIANAS) is charged with providing adequate facilities for the new T-AKE vessels scheduled to be in service in Guam in fiscal year 2010. The new T-AKE will be homeported in San Diego, CA, with two ships forward deployed to AHNC as ammunition ships serving Guam, Asia, the Western Pacific, and the Middle East. The two T-AKE ships will replace two T-AE ammunition ships that are currently forward-deployed to Guam. The existing Kilo Wharf, located within the AHNC in Outer Apra Harbor, is 400-foot (ft) long (122 meters (m)), and is the DoD's only dedicated ammunition wharf in the Western Pacific Region. The T-AKE is 689 ft (210 m) long, and requires 800 ft (244 m) for berthing. The proposed action is needed because Kilo Wharf is inadequate to support the T-AKE and there are no other suitable facilities on Guam available to accommodate this class of ammunition ship. The new wharf facilities must meet DoD technical design standards to ensure safe and efficient ordnance loading/offloading for the T-AKE.

COMNAVREGMARIANAS evaluated a range of alternatives that would meet action objectives, and applied screening criteria to identify those alternatives that were "reasonable" (i.e., practical and feasible from an operations, technical, and economic standpoint). Reasonable alternatives were carried through the Draft EIS analysis. The Draft EIS considers three alternatives: (1) Extending Kilo Wharf by 400 ft (122 m) to the west ("West Extension Alternative"), (2) extending Kilo Wharf by 115 ft (35 m) to the east and 285 ft (87 m) to the west ("East-West Extension Alternative"), and (3) the No Action Alternative, considered in accordance with Section 1502.14(d) of the NEPA regulation. The West Extension Alternative is considered the Preferred Alternative. Both the West Extension Alternative and the East-West Extension Alternative would provide adequate berthing for the T-AKE in accordance with DoD technical design standards, and include utility and infrastructure upgrades to accommodate the T-AKE. The Draft EIS also considers the No Action Alternative, which assumes that the T-AKE would be berthed at the existing Kilo Wharf with no wharf improvements or utility and infrastructure upgrade.

The Draft EIS evaluates the environmental effects associated with the wharf construction on the physical

environment, land and water use, the social and economic environment, infrastructure and services, cultural resources, hazardous and regulated materials and waste, and biological resources, including marine habitats that provide ecological services. Methods to reduce or minimize impacts to affected marine habitats are also addressed. The analysis includes an evaluation of the direct, indirect, and cumulative impacts. Implementation of the proposed action is not expected to result in any significant short or long term impacts on physical, socioeconomic, or biological resources, however, there would be unavoidable adverse impacts to limited areas of marine benthic habitat.

The Draft EIS has been distributed to various Federal and Territorial agencies, elected officials, special interest groups, and interested parties, and is available for public review at the following public libraries: (1) Nieves M. Flores Memorial Library, 254 Martyr Street, Hagatna, Guam 96910; (2) Robert F. Kennedy Memorial Library, University of Guam, 303 University Drive, Mangilao, Guam 96923.

The DON will conduct a public hearing to receive oral and written comments concerning the Draft EIS. The public hearing will include a brief presentation followed by a request for comments on the Draft EIS. Federal, Territorial, and local agencies, and interested parties are invited to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be electronically recorded and transcribed by a stenographer. To assure accuracy of the record, all statements, both oral and written, will become part of the public record on the Draft EIS and will be responded to in the Final EIS. Equal weight will be given to both oral and written statements. In the interest of available time and to ensure that all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or faxed or mailed to: Naval Facilities Engineering Command Pacific, 258 Makalapa Drive, Ste 100, Pearl Harbor, HI 96860–3134, *Attn:* Ms. Nora Macariola-See, facsimile 808–474–5419, *E-mail:* kiloeis@navy.mil. All written comments postmarked by April 23, 2007, will become part of the official public record and will be responded to in the Final EIS.

Dated: March 6, 2007.

M.C. Holley,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7-4312 Filed 3-8-07; 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 May 8, 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: March 5, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of the Early Childhood Educator Professional Development Program.

Frequency: Other: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 81.

Burden Hours: 95.

Abstract: The Evaluation of the Early Childhood Educator Professional Development (ECEPD) program will describe and analyze the strategies ECEPD projects are using to deliver professional development, and it will synthesize the outcomes of ECEPD projects. In addition to describing the outcomes for participants and outcomes for children to the extent that they can be summarized from grantee evaluations, this study will also identify promising practices in professional development for early childhood educators.

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 3286. 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. E7-4296 Filed 3-8-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Magnet Schools Assistance Program (MSAP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.

Dates:

Applications Available: March 9, 2007.

Deadline for Notice of Intent to Apply: April 6, 2007.

Deadline for Transmittal of Applications: April 27, 2007.

Deadline for Intergovernmental Review: June 27, 2007.

Eligible Applicants: Local educational agencies (LEAs) or consortia of LEAs.

Estimated Available Funds: \$100,000,000.

Estimated Range of Awards: \$350,000-\$4,000,000 per year.

Estimated Average Size of Awards: \$2,500,000 per year.

Maximum Award: We will not fund any application at an amount exceeding the maximum amount of \$4,000,000 per year specified in section 5309(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) for a single fiscal year. We may choose not to further consider or review applications with budget requests for any 12-month budget period that exceed this amount, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSAP provides grants to eligible LEAs and consortia of LEAs to support magnet schools that are part of an approved desegregation plan. Through the implementation of magnet schools, these program resources can be used in pursuit of the objectives of the ESEA, which supports State and local efforts to enable all elementary and secondary students to achieve to high standards and holds schools, LEAs, and States accountable for ensuring that their students do so. In particular, the MSAP provides an opportunity for eligible entities to focus on expanding their capacity to provide public school choice to students who attend schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA (Title I).

Priorities: This competition includes four competitive preference priorities and one invitational priority that are explained in the following paragraphs.

Competitive Preference Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), Priorities 1, 2 and 3 are from the regulations for this program (34 CFR 280.32). Priority 4 is from the notice of final priority for this program (NFP), published elsewhere in this issue of the **Federal Register**.

For FY 2007 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 40 points depending on how well the application meets these priorities. The maximum possible points for each priority are indicated in parentheses following the name of the competitive preference priority. These points are in addition to any points the application earns under the selection criteria.

These priorities are:

Priority 1—Need for assistance (up to 10 additional points). The Secretary evaluates the applicant's needs for assistance under the MSAP regulations in 34 CFR part 280, by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet schools project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

Priority 2—New or revised magnet schools projects (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Priority 3—Selection of students (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

Priority 4—Expanding Capacity to Provide Choice (up to 10 additional points). This priority supports projects that will—

(1) Help parents whose children attend low-performing schools (that is,

schools that have been identified for school improvement, corrective action, or restructuring under Title I of the ESEA) by—

(a) Selecting schools identified for school improvement, corrective action, or restructuring under Title I as magnet schools to be funded under this project and improving the quality of teaching and instruction in these schools; or

(b) Maximizing the opportunity for students in low-performing schools to attend higher-performing magnet schools funded under the project and thereby reduce minority group isolation in the low-performing sending schools; and

(2) Effectively inform parents whose children attend low-performing schools about choices that are available to them in the magnet schools to be funded under the project.

Note: For the purpose of selecting applications under this priority, *school improvement* has the meaning given in 34 CFR 200.32(a)(1), *corrective action* has the meaning given in 34 CFR 200.33(a), and *restructuring* has the meaning given in 34 CFR 200.34(a).

Invitational Priority: For FY 2007 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Priority 5—Experimental and Quasi-Experimental Evaluation Designs. This invitational priority supports projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—e.g., students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—e.g., students, teachers, classrooms, or schools—with non-

participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

Definitions

As used in this invitational priority—

Scientifically based research (section 9101(37) of the ESEA as amended, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a

numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score ("cut score") are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the "cut score" is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

General

Applicants who are planning to respond to this invitational priority are strongly encouraged to review the following technical assistance resources:

(1) Random Assignment in Program Evaluation, Qs and As: <http://www.ed.gov/rschstat/eval/resources/randomqa.pdf>. This document lists basic questions and answers that an educator or administrator might have about random assignment and why it is an effective and beneficial tool to use in education.

(2) How to Report the Results of Your Study: A User-Friendly Guide for Evaluators of Educational Programs and Practices: http://www.whatworkshelpdesk.ed.gov/guide_SRF.pdf. This guide can help grantees produce reports that are user-

friendly and include the appropriate information needed to accurately and fully convey their findings to an audience.

(3) Key Items to Get Right When Conducting a Randomized Control Trial in Education: http://www.whatworkshelpdesk.ed.gov/guide_RCT.pdf. This guide discusses planning a study, the random assignment process, measuring outcomes, and analysis.

Program Authority: 20 U.S.C. 7231–7231j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 280. (c) The amended final regulations for this program published elsewhere in this issue of the **Federal Register**. (d) The NFP for the MSAP, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$100,000,000.

Estimated Range of Awards:

\$350,000–\$4,000,000 per year.

Estimated Average Size of Awards:

\$2,500,000 per year.

Maximum Award: We will not fund any application at an amount exceeding the maximum amount of \$4,000,000 per year specified in section 5309(c) of the ESEA for a single fiscal year. We may choose not to further consider or review applications with budget requests for any 12-month budget period that exceed this amount, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* Applicants must submit with their applications one of the following types of plans to establish eligibility to receive MSAP assistance: (a) A desegregation plan required by a court order; (b) a plan required by a State agency or an official of competent jurisdiction; (c) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of

1964 (Title VI plan); or (d) a voluntary plan adopted by the applicant and submitted to us for approval as part of the application.

Under the MSAP regulations, applicants are required to provide all of the information required in 34 CFR 280.20(a) through (g) in order to satisfy the civil rights eligibility requirements found in 34 CFR 280.2(a)(2) and (b).

In addition to the particular data and other items for required and voluntary plans described in the application package, an application must include—

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. *Plans required by a court order.* An applicant that submits a plan required by a court order must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. *Plans required by a State agency or official of competent jurisdiction.* An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. *Title VI required plans.* An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. *Modifications to required plans.* A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency, or official that originally

approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR regional office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof of approval of all modifications to their plans to ED by June 1, 2007. Proof of plan modifications should be mailed to the person and address identified in **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

Voluntary Plans

A voluntary plan must be approved by ED each time an application is submitted for funding. Even if ED has approved a voluntary plan in an LEA in the past, the plan must be resubmitted for approval as part of the application.

The enrollment and other information as required by the regulations in 34 CFR 280.20(f) and (g) for applicants with voluntary plans (specific requirements are detailed in the application package) are critical to our determination of an applicant's eligibility under a voluntary plan.

The purposes of the MSAP include the reduction, elimination, or prevention of minority group isolation. All voluntary plans proposed in an LEA's application must be adequate under Title VI. The Department believes that LEAs submitting voluntary plans can achieve the statutory purposes of reducing, eliminating, or preventing minority group isolation using race-neutral admissions practices. The United States Supreme Court is expected to provide additional guidance about the use of race in voluntary plans in two cases prior to the award of FY 2007 grants. The Department will examine the implications of those decisions on the MSAP program when making FY 2007 awards.

IV. Application and Submission Information

1. *Address to Request Application Package:* Joan Scott-Ambrosio, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W236, Washington, DC 20202-5970.
Telephone: (202) 260-2715 or by *e-mail:* joan.scott-ambrosio@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain a copy of the application package

in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to joan.scott-ambrosio@ed.gov.

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and two of the competitive preference priorities that reviewers use to evaluate your application. The two competitive preference priorities that must be addressed in the application narrative are Competitive Preference Priority 1—Need for Assistance and Competitive Preference Priority 4—Expanding Capacity to Provide Choice. You must limit Part III to the equivalent of no more than 250 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances, certifications, the desegregation plan and related information, and the forms used to respond to Competitive Preference Priority 2—New or revised magnet schools projects and Competitive Preference Priority 3—

Selection of students; or the one-page abstract, the resumes, or letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. Submission Dates and Times:
Applications Available: March 9, 2007.

Deadline for Notice of Intent to Apply: April 6, 2007.

Deadline for Transmittal of Applications: April 27, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Deadline for Intergovernmental Review: June 27, 2007.

4. Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. Funding Restrictions: We specify unallowable costs in 34 CFR 280.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements. Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications. Applications for grants under the Magnet Schools Assistance Program, CFDA Number 84.165A must be submitted electronically using the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a

copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Magnet Schools Assistance Program at <http://www.Grants.gov>. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.165, not 84.165A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the

application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the

application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Joan Scott-Ambrosio, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W225, Washington, DC 20202-5970. Fax: (202) 205-5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.165A), 400 Maryland Avenue, SW., Washington, DC 20202-4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.165A),

7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.165A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* All of the selection criteria for this program are from 34 CFR 280.31, with the exception of the selection criterion for the Quality of project design. The Quality of project design selection criterion is from sections 5305(b)(1)(A), 5305(b)(1)(B), 5305(b)(1)(D)(i), 5305(b)(2)(D) and 5307(b) of the ESEA, in accordance with 34 CFR 75.209.

The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is included in parentheses. Each criterion also includes the factors that reviewers will consider in determining whether an application meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score an application may receive based on the priority points and the selection criteria is 140 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, e.g., women and girls in mathematics, science, or technology courses, and disabled students; and

(v) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) The project director (if one is used) is qualified to manage the project;

(ii) Other key personnel are qualified to manage the project;

(iii) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) The applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of project design.* (35 points)

(1) The Secretary reviews each application to determine the quality of the project design based on sections 5305(b)(1)(A), 5305(b)(1)(B), 5305(b)(1)(D)(i), 5305(b)(2)(D) and 5307(b) of the ESEA.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) Promote desegregation, including how each proposed magnet school program will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(ii) Improve student academic achievement for all students attending each magnet school program, including the manner and extent to which each magnet school program will increase student academic achievement in the instructional area or areas offered by the school;

(iii) Implement high-quality activities that are directly related to improving student academic achievement based on the State's academic content standards and academic achievement standards or directly related to improving students' reading skills or knowledge of mathematics, science, history, geography, English, foreign languages, art, or music, or to improving vocational, technological, and professional skills; and

(iv) Encourage greater parental decisionmaking and involvement.

(d) *Budget and resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) The adequacy of the facilities that the applicant plans to use;

(2) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary determines the extent to which the evaluation plan for the project—

(1) Includes methods that are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and capacity.* (10 points)

(1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under the regulations is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) Is committed to the magnet schools project; and

(ii) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the **APPLICABLE REGULATIONS** section of this notice.

We reference the regulations outlining the terms and conditions of an award in the **APPLICABLE REGULATIONS** section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118, including information that documents the extent of success in addressing the performance measures described in the following paragraph. For specific requirements on grantee reporting, please go to the ED Performance Report Form 524B at <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* We have established three performance measures for the MSAP:

(a) The percentage of magnet schools whose student applicant pool reflects a racial and ethnic composition that, in relation to the total enrollment of the school, reduces, eliminates or prevents minority group isolation. The Secretary has set an overall performance target that calls for the percentage of magnet schools whose student applicant pool would have a beneficial effect on the reduction, prevention or elimination of minority group isolation in participating project schools to increase annually from a baseline established with magnet school applicant data from the first year of the project.

(b) The percentage of magnet schools whose students from major racial and ethnic groups meet or exceed their State's adequate yearly progress standard, in accordance with their State's plan required by section 1111 of the ESEA. The Secretary has set an overall performance target that calls for the percentage of magnet schools whose students meet or exceed the adequate yearly progress standard to increase annually from a baseline established by participating schools' performance in the school year prior to the beginning of the project.

(c) The percentage of magnet schools that receive assistance and that are still operating magnet school programs three years after Federal funding ends and the percentage of magnet schools that received assistance that meet State standards at least three years after Federal funding ends. The Secretary has set an overall performance target that calls for the percentage of magnet schools that are in operation and meet or exceed State standards three years after Federal funding ends to increase annually from a baseline established three years after Federal funding ceases.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202-5970. Telephone: (202) 260-2476 or by e-mail: steve.brockhouse@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 6, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E7-4271 Filed 3-8-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces a priority under the Magnet Schools Assistance Program (MSAP). The Assistant Deputy Secretary may use this priority for competitions in fiscal year (FY) 2007 and later years. We intend this priority to encourage eligible applicants to focus on expanding their capacity to provide public school choice by using magnet schools to provide public school choice options to parents whose children attend schools that have been identified for school improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

DATES: *Effective Date:* This priority is effective April 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202-5970. Telephone: (202) 260-2476 or via Internet:

steve.brockhouse@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The MSAP provides grants to eligible local educational agencies (LEAs) and consortia of LEAs to support magnet schools that are part of an approved desegregation plan. For the purpose of the MSAP, a magnet school is a public elementary school, public secondary school, public elementary education center, or public secondary education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

Through the implementation of magnet schools, MSAP resources support objectives and activities that enable all elementary and secondary students to achieve to high standards, hold schools and LEAs accountable for ensuring they do so, and help schools and LEAs develop and design innovative educational methods and practices that support desegregation efforts to eliminate, reduce, or prevent minority group isolation and increase choices in public elementary and secondary schools.

Consistent with the statutory purpose of the MSAP, magnet schools are designed to eliminate, reduce, or prevent minority group isolation in schools with substantial numbers or percentages of minority group students, bring students of different backgrounds together, assist LEAs in achieving systemic reforms, provide all students the opportunity to meet challenging State content standards and challenging State performance standards, and increase choices in public elementary and secondary schools.

The priority, Expanding Capacity to Provide Choice, provides eligible LEAs with an opportunity to continue to use magnet schools, consistent with their desegregation plan objectives for the elimination, reduction, or prevention of

minority group isolation, to expand their capacity to provide public school choice to parents whose children attend schools identified for school improvement, corrective action, or restructuring.

The priority provides eligible applicants the flexibility to use either or both of two approaches to expanding their capacity to provide public school choice.

First, an eligible applicant could convert one or more schools identified for improvement, corrective action, or restructuring under Title I to magnet schools in order to improve the quality of teaching and instruction in these schools. Using this approach, conversion of a school to a magnet school would benefit students already attending the school by offering a magnet curriculum that would include subject matter or teaching methodology that is generally not available at other schools in the LEA and would be more challenging and innovative than the curricular program that the school had previously provided. The implementation of the magnet curriculum, along with resources such as equipment, supplies and staff development to support the implementation of the magnet curriculum, would also help the school reduce, eliminate, or prevent minority group isolation at the magnet school and/or at the sending schools by attracting other students, including higher-achieving students of different backgrounds, based on their interest in a curricular program that would not be available to them in the schools that they would otherwise attend.

Second, an eligible applicant could use higher-performing schools as magnet schools and, by doing so, significantly increase the opportunity for students attending schools identified for school improvement, corrective action, or restructuring to participate in public school choice by attending a higher-performing school. Using this approach, an eligible applicant would need to ensure that the magnet school would have sufficient space available to accommodate students who would likely be interested in transferring from schools identified for school improvement, corrective action, or restructuring. Additionally, the LEA would need to show how the enrollment of the magnet and/or sending schools (i.e., the schools identified for school improvement, corrective action, or restructuring from which students would transfer) would change in a manner that resulted in the elimination, reduction, or prevention of minority

group isolation in those sending schools.

Under either approach, an applicant would be required to show how it would effectively inform parents whose children attend schools identified for school improvement, corrective action, or restructuring about the new choices made available to them in the magnet schools to be funded under the project.

We published a notice of proposed priority for this program in the **Federal Register** on April 12, 2006 (71 FR 18728).

There are no differences between the notice of proposed priority and this notice of final priority.

Public Comment

In the notice of proposed priority, we invited comments on the proposed priority. We did not receive any comments.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Expanding Capacity To Provide Choice

This priority supports projects that will—

(1) Help parents whose children attend low-performing schools (that is, schools that have been identified for school improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended) by—

(a) Selecting schools identified for school improvement, corrective action, or restructuring under Title I as magnet schools to be funded under this project and improving the quality of teaching and instruction in these schools; or

(b) Maximizing the opportunity for students in low-performing schools to attend higher-performing magnet schools funded under the project and thereby reduce minority group isolation in the low-performing sending schools; and

(2) Effectively inform parents whose children attend low-performing schools about choices that are available to them in the magnet schools to be funded under the project.

Note: For the purpose of selecting applications under this priority, *school improvement* has the meaning given in 34 CFR 200.32(a)(1), *corrective action* has the meaning given in 34 CFR 200.33(a), and *restructuring* has the meaning given in 34 CFR 200.34(a).

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, we have determined that the benefits of the final priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential cost associated with this final priority is minimal while the benefits are significant.

The benefit of the final priority is that it will help applicants prepare high-quality proposals that expand their capacity to provide public school choice to parents whose children attend schools that have not made adequate yearly progress.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 280.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/magnet/applicant.html>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

Program Authority: 20 U.S.C. 7231-7231j.

Dated: March 6, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E7-4272 Filed 3-8-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; School-Based Student Drug-Testing Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184D.

DATES:

Applications Available: March 9, 2007.

Deadline for Transmittal of Applications: May 8, 2007.

Deadline for Intergovernmental Review: July 9, 2007.

Eligible Applicants: Local educational agencies (LEAs) and public and private entities.

Estimated Available Funds: \$1,600,000. Contingent upon the availability of funds, the Secretary may make additional awards later in FY 2007 and in subsequent years from the list of

unfunded applicants from this competition.

Estimated Range of Awards: \$100,000-\$200,000.

Estimated Average Size of Awards: \$150,000.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of the Program: The School-Based Student Drug-Testing program awards grants to LEAs and public and private entities to develop and implement, or expand, school-based drug-testing programs for students.

Priority: This priority is from the notice of final eligibility and application requirements, priorities, and selection criteria for this program, published in the **Federal Register** on July 7, 2005 (70 FR 39254).

Absolute Priority: For FY 2007 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Mandatory Random and Voluntary Student Drug-Testing Programs. Under this priority, we will provide Federal financial assistance to eligible applicants to develop and implement, or expand, school-based mandatory random or voluntary drug-testing programs for students in one or more grades 6 through 12. Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

(1) Students who participate in the school's athletic program;

(2) Students who are engaged in competitive, extracurricular, school-sponsored activities; and

(3) A voluntary drug-testing program for students who, along with their parent or guardian, have provided written consent to participate in a random drug-testing program. Applicants that propose voluntary drug testing for students who, along with their parent or guardian, provide written consent, must not prohibit students who do not consent from participating in school or extracurricular activities.

Application Requirements: The following requirements apply to all applications submitted under this program. Requirements (1) and (3) through (5) are from the notice of final eligibility and application requirements, priorities, and selection criteria for this

program, published in the **Federal Register** on July 7, 2005 (70 FR 39254). Requirement (2) is from the notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

(1) Applicants may not submit more than one application for an award under this program.

(2) Eligibility under this grant competition is limited to applicants that do not currently have an active grant under the Department of Education's School-Based Student Drug-Testing Program (CFDA 84.184D). For the purpose of this requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

(3) Non-LEA applicants must submit a letter of agreement to participate from an LEA. The letter must be signed by the applicant and an authorized representative of the LEA. Letters of support are not acceptable as evidence of the required agreement.

(4) Funds may not be used for the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in programs;

(c) Drug treatment; or

(d) Drug prevention curricula or other prevention programs.

(5) Applicants must:

(a) Identify a target population and demonstrate a significant need for drug testing within the target population;

(b) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(c) Provide a comprehensive plan for referring students who are identified as drug users through the testing program to a student assistance program, counseling, or drug treatment if necessary;

(d) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications;

(e) Limit the cost of site-based evaluations to no more than 10 percent of total funds requested; and

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be reviewed by a certified medical review officer;

(iv) That legal counsel has reviewed the proposed program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a student drug-testing program; and

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299. (b) The notice of final eligibility and application requirements, priorities, and selection criteria published in the **Federal Register** on July 7, 2005 (70 FR 39254). (c) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$1,600,000. Contingent upon the availability of funds, the Secretary may make additional awards later in FY 2007 and in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards:

\$100,000–\$200,000.

Estimated Average Size of Awards:

\$150,000.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. **Eligible Applicants:** LEAs and public and private entities.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching.

3. Other:

(a) **Participation by Private School Children and Teachers.** Entities receiving a grant under the School-Based Student Drug-Testing program are required to provide for the equitable participation of private school children and their teachers or other educational personnel. In order to ensure that grant program activities address the needs of private school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate. Administrative direction and control over grant funds must remain with the grantee. See Section 9501, Participation by Private School Children and Teachers, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

(b) **Maintenance of Effort.** An LEA may receive a grant under the School-Based Student Drug-Testing program only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of a free public education by the agency for the preceding fiscal year were not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(c) **Participation of Faith-based Organizations.** Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

IV. Application and Submission Information

1. **Address to Request Application Package:** Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

You may also access the electronic version of the application at the following Web sites: <http://www.grants.gov> or <http://www.ed.gov/fund/grant/apply/grantapps/index/html>.

If you request an application from ED Pubs be sure to identify this competition as follows: CFDA number 84.184D.

Individuals with disabilities may obtain a copy of the application in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. Submission Dates and Times:

Applications Available: March 9, 2007.

Deadline for Transmittal of Applications: May 8, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. **Other Submission Requirements** in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Intergovernmental Review: July 9, 2007.

4. **Intergovernmental Review:** This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. **Funding Restrictions:** We reference additional regulations outlining funding restrictions in the **Applicable Regulations** section of this notice.

6. **Other Submission Requirements:** Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. **Electronic Submission of Applications.** To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The School-Based Student-Drug Testing Programs competition, CFDA Number

84.184D, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for School-Based Student Drug-Testing Programs at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184D).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/>

[help/GrantsgovSubmissionProcedures.pdf](#).

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov

tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

- **Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:** If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. **Submission of Paper Applications by Mail.** If you submit your application in paper format by mail (through the

U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.184D),
400 Maryland Avenue, SW.,
Washington, DC 20202-4260;
or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop
4260, Attention: (CFDA Number
84.184D), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery. If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184D), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive the notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the notice of final eligibility and application requirements, priorities, and selection criteria published in the **Federal Register** on July 7, 2005 (70 FR 39254), and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We also may require more frequent performance reports in accordance with 34 CFR 75.720(c).

4. *Performance Measures:* The Department has established the following Government Performance and Results Act (GPRA) performance measures for the School-Based Student Drug-Testing program: the reduction of

the incidence of drug use in the past month and the reduction of the incidence of drug use in the past year. The Secretary has set an overall performance target that calls for the prevalence of drug use by students in the target population to decline by five percent annually.

These measures constitute the Department's indicator of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these measures in conceptualizing the approach and evaluation for their proposed project. If funded, applicants will be asked to collect and report data in their annual performance and final reports about progress toward these measures.

VII. Agency Contacts

For Further Information Contact: Sigrid Melus or Kandice Kostic, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202-6450. Telephone: (202) 260-3954. E-mail address: OSDFSdrugtesting@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/drugtesting/applicant.html>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 6, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7-4273 Filed 3-8-07; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Numbers EPA-HQ-OECA-2007-0032 to 0035, 0043 to 0065 and 0125 to 0128; FRL-8285-8]

Agency Information Collection Activities: Request for Comments on Thirty-One Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following thirty-one existing, approved, continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICRs. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before May 8, 2007.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, section A.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, section II. C.

SUPPLEMENTARY INFORMATION:

A. How Can I Access the Docket and/or Submit Comments?

1. Docket Access Instructions

EPA has established a public docket for the ICRs listed in the **SUPPLEMENTARY INFORMATION**, section II. B. The docket is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) docket is (202) 566-1752.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified in this document.

2. Instructions for Submitting Comments

Submit your comments by one of the following methods:

1. *Electronic Submission:* Access <http://www.regulations.gov> and follow the on-line instructions for submitting comments.
2. *E-mail:* docket.oeca@epa.gov.
3. *Fax:* (202) 566-1511.
4. *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
5. *Hand Delivery:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Direct your comments to the specific docket listed in **SUPPLEMENTARY INFORMATION**, section II. B, and reference the OMB Control Number for the ICR. It is EPA's policy that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The <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 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 that you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

B. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

- (1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
- (3) Enhance the quality, utility, and clarity of the information to be collected.
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

C. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. ICRs to Be Renewed

A. For All ICRs

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the PRA.

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

The listed ICRs address Clean Air Act information collection requirements in standards (*i.e.*, regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the Agency displays a currently valid OMB control number. The OMB

control numbers for EPA's regulations under Title 40 of the Code of Federal Regulations are published in the **Federal Register**, or on the related collection instrument or form. The display of OMB control numbers for certain EPA regulations is consolidated at 40 CFR part 9.

B. What information collection activity or ICR does this apply to?

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following thirty-one continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Docket ID Number:* EPA-HQ-OECA-2007-0043

Title: NSPS for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da).

ICR Numbers: EPA ICR Number 1053.09, OMB Control Number 2060-0023.

ICR Status: This ICR is scheduled to expire on October 31, 2007.

(2) *Docket ID Number:* EPA-HQ-OECA-2007-0044

Title: NSPS for VOC Emissions from Petroleum Refinery Wastewater System (40 CFR Part 60, Subpart QQQ).

ICR Numbers: EPA ICR Number 1136.09, OMB Control Number 2060-0172.

ICR Status: This ICR is scheduled to expire on October 31, 2007.

(3) *Docket ID Number:* EPA-HQ-OECA-2007-0045

Title: NSPS for Phosphate Rock Plants (40 CFR Part 60, Subpart NN).

ICR Numbers: EPA ICR Number 1078.08, OMB Control Number 2060-0111.

ICR Status: This ICR is scheduled to expire on November 30, 2007.

(4) *Docket Number:* EPA-HQ-OECA-2007-0046

Title: NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc).

ICR Numbers: EPA ICR Number 1564.07, OMB Control Number 2060-0202.

ICR Status: This ICR is scheduled to expire on November 30, 2007.

(5) *Docket Number:* EPA-HQ-OECA-2007-0125

Title: NSPS for Rubber Tire Manufacturing (40 CFR Part 60, Subpart BBB).

ICR Numbers: EPA ICR Number 1158.09, OMB Control Number 2060-0156.

ICR Status: This ICR is scheduled to expire on November 11, 2007.

(6) *Docket Number:* EPA-HQ-OECA-2007-0047

Title: NSPS for Onshore Natural Gas Processing Plants (40 CFR Part 60, Subparts KKK & LLL).

ICR Numbers: EPA ICR Number 1086.08, OMB Control Number 2060-0120.

ICR Status: This ICR is scheduled to expire on December 31, 2007.

(7) *Docket Number:* EPA-HQ-OECA-2007-0048

Title: NESHAP for Beryllium (40 CFR Part 61, Subpart C).

ICR Numbers: EPA ICR Number 0193.09, OMB Control Number 2060-0092.

ICR Status: This ICR is scheduled to expire on December 31, 2007.

(8) *Docket Number:* EPA-HQ-OECA-2007-0049

Title: NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR Part 60, Subpart Ec).

ICR Numbers: EPA ICR Number 1730.05, OMB Control Number 2060-0363.

ICR Status: This ICR is scheduled to expire on December 31, 2007.

(9) *Docket Number:* EPA-HQ-OECA-2007-0050

Title: NESHAP for Benzene Emissions from Coke By-Product Recovery Plants (40 CFR Part 61, Subpart L).

ICR Numbers: EPA ICR Number 1080.12, OMB Control Number 2060-0185.

ICR Status: This ICR is scheduled to expire on December 31, 2007.

(10) *Docket Number:* EPA-HQ-OECA-2007-0051

Title: NSPS for Asphalt Processing and Roofing Manufacture (40 CFR Part 60, Subpart UU).

ICR Numbers: EPA ICR Number 0661.09, OMB Control Number 2060-0002.

ICR Status: This ICR is scheduled to expire on January 31, 2008.

(11) *Docket Number:* EPA-HQ-OECA-2007-0032

Title: NSPS for Portland Cement Plants (40 CFR Part 60, Subpart F).

ICR Numbers: EPA ICR Number 1051.10, OMB Control Number 2060-0025.

ICR Status: This ICR is scheduled to expire on January 31, 2008.

(12) *Docket Number:* EPA-HQ-OECA-2007-0052

Title: NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (40 CFR Part 63, Subpart W).

ICR Numbers: EPA ICR Number 1681.06, OMB Control Number 2060-0290.

ICR Status: This ICR is scheduled to expire on February 29, 2008.

(13) *Docket Number:* EPA-HQ-OECA-2007-0127

Title: NESHAP for Primary Aluminum Reduction Plants (40 CFR Part 63, Subpart L).

ICR Numbers: EPA ICR Number 1767.05, OMB Control Number 2060-0360.

ICR Status: This ICR is scheduled to expire on February 29, 2008.

(14) *Docket Number:* EPA-HQ-OECA-2007-0033

Title: NSPS for Polymeric Coating of Supporting Substrates Facilities (40 CFR Part 60, Subpart VVV).

ICR Numbers: EPA ICR Number 1284.08, OMB Control Number 2060-0181.

ICR Status: This ICR is scheduled to expire on March 31, 2008.

(15) *Docket Number:* EPA-HQ-OECA-2007-0053

Title: NESHAP for Beryllium Rocket Motor Fuel Firing (40 CFR Part 61, Subpart D).

ICR Numbers: EPA ICR Number 1125.05, OMB Control Number 2060-0394.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(16) *Docket Number:* EPA-HQ-OECA-2007-0054

Title: NESHAP for Vinyl Chloride (40 CFR Part 61, Subpart F).

ICR Numbers: EPA ICR Number 0186.11, OMB Control Number 2060-0071.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(17) *Docket Number:* EPA-HQ-OECA-2007-0034

Title: NESHAP for Pulp and Paper Production (40 CFR Part 63, Subpart S).

ICR Numbers: EPA ICR Number 1657.06, OMB Control Number 2060-0387.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(18) *Docket Number:* EPA-HQ-OECA-2007-0035

Title: NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills (40 CFR Part 63, Subpart MM).

ICR Numbers: EPA ICR Number 1805.05, OMB Control Number 2060-0377.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(19) *Docket Number:* EPA-HQ-OECA-2007-0055

Title: Standards of Performance for New and Existing Stationary.

Sources: Utility Steam Generating Units (40 CFR Part 60, Subparts Da and HHHH).

ICR Numbers: EPA ICR Number 2137.03, OMB Control Number 2060-0567.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(20) *Docket Number:* EPA-HQ-OECA-2007-0126

Title: NESHAP for Petroleum Refineries (40 CFR Part 63, Subpart CC).

ICR Numbers: EPA ICR Number 1692.06, OMB Control Number 2060-0340.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(21) *Docket Number:* EPA-HQ-OECA-2007-0056

Title: NSPS for Municipal Waste Combustors (40 CFR Part 60, Subparts Ea and Eb).

ICR Numbers: EPA ICR Number 1506.11, OMB Control Number 2060-0210.

ICR Status: This ICR is scheduled to expire on April 30, 2008.

(22) *Docket Number:* EPA-HQ-OECA-2007-0057

Title: NESHAP for Pesticide Active Ingredient Production (40 CFR Part 63, Subpart MMM).

ICR Numbers: EPA ICR Number 1807.04, OMB Control Number 2060-0370.

ICR Status: This ICR is scheduled to expire on June 30, 2008.

(23) *Docket Number:* EPA-HQ-OECA-2007-0058

Title: NESHAP for Marine Tank Vessel Loading Operations (40 CFR Part 63, Subpart Y).

ICR Numbers: EPA ICR Number 1679.06, OMB Control Number 2060-0289.

ICR Status: This ICR is scheduled to expire on July 31, 2008.

(24) *Docket Number:* EPA-HQ-OECA-2007-0059

Title: NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR Part 63, Subpart GGGG).

ICR Numbers: EPA ICR Number 1947.04, OMB Control Number 2060-0471.

ICR Status: This ICR is scheduled to expire on July 31, 2008.

(25) *Docket Number:* EPA-HQ-OECA-2007-0060

Title: NESHAP for Engine Test Cells/ Stands (40 CFR Part 63, Subpart PPPPP).

ICR Numbers: EPA ICR Number 2066.04, OMB Control Number 2060-0483.

ICR Status: This ICR is scheduled to expire on July 31, 2008.

(26) *Docket Number:* EPA-HQ-OECA-2007-0061

Title: NESHAP for Friction Materials Manufacturing (40 CFR Part 63, QQQQQ).

ICR Numbers: EPA ICR Number 2025.04, OMB Control Number 2060-0481.

ICR Status: This ICR is scheduled to expire on July 31, 2008.

(27) *Docket Number:* EPA-HQ-OECA-2007-0062

Title: NESHAP for Cellulose Products Manufacturing (40 CFR Part 63, Subpart UUUU).

ICR Numbers: EPA ICR Number 1974.05, OMB Control Number 2060-0488.

ICR Status: This ICR is scheduled to expire on July 31, 2008.

(28) *Docket Number:* EPA-HQ-OECA-2007-0128

Title: NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR Part 63, Subpart XXX).

ICR Numbers: EPA ICR Number 1831.04, OMB Control Number 2060-0391.

ICR Status: This ICR is scheduled to expire on September 30, 2008.

(29) *Docket Number:* EPA-HQ-OECA-2007-0063

Title: NESHAP for Primary Copper Smelters (40 CFR Part 63, Subpart QQQ).

ICR Numbers: EPA ICR Number 1850.05, OMB Control Number 2060-0476.

ICR Status: This ICR is scheduled to expire on September 30, 2008.

(30) *Docket Number:* EPA-HQ-OECA-2007-0064

Title: NESHAP for Leather Finishing Operations (40 CFR Part 63, Subpart TTTT).

ICR Numbers: EPA ICR Number 1985.04, OMB Control Number 2060-0478.

ICR Status: This ICR is scheduled to expire on September 30, 2008.

(31) *Docket Number:* EPA-HQ-OECA-2007-0065

Title: NESHAP for Metal Coil Surface Coating Plants (40 CFR Part 63, Subpart SSSS).

ICR Numbers: EPA ICR Number 1957.05, OMB Control Number 2060-0487.

ICR Status: This ICR is scheduled to expire on September 30, 2008.

C. Contact Individuals for ICRs

(1) NSPS for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to:

williams.learia@epa.gov; EPA ICR Number 1053.09; OMB Control Number 2060-0023; expiration date October 31, 2007.

(2) NSPS for VOC Emissions From Petroleum Refinery Wastewater System (40 CFR Part 60, Subpart QQQ); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1136.09; OMB Control Number 2060-0172; expiration date October 31, 2007.

(3) NSPS for Phosphate Rock Plants (40 CFR Part 60, Subpart NN); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1078.08; OMB Control Number 2060-0111; expiration date November 30, 2007.

(4) NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1564.07; OMB Control Number 2060-0202; expiration date November 30, 2007.

(5) NSPS for Rubber Tire Manufacturing (40 CFR Part 60, Subpart BBB); contact María Malavé of the Office of Compliance at (202) 564-7027 or via e-mail to: malave.maria@epa.gov; EPA ICR Number 1158.09; OMB Control Number 2060-0156; expiration date November 11, 2007.

(6) NSPS for Onshore Natural Gas Processing Plants (40 CFR Part 60, Subparts KKK & LLL); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1086.08; OMB Control Number 2060-0120; expiration date December 31, 2007.

(7) NESHAP for Beryllium (40 CFR Part 61, Subpart C); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 0193.09; OMB Control Number 2060-0092; expiration date December 31, 2007.

(8) NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR Part 60, Subpart Ec); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1730.05; OMB Control Number 2060-0363; expiration date December 31, 2007.

(9) NESHAP for Benzene Emissions From Coke By-Product Recovery Plants (40 CFR Part 61, Subpart L); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1080.12; OMB Control Number 2060-0185; expiration date December 31, 2007.

(10) NSPS for Asphalt Processing and Roofing Manufacture (40 CFR Part 60, Subpart UU); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 0661.09; OMB Control Number

2060-0002; expiration date January 31, 2008.

(11) NSPS for Portland Cement Plants (40 CFR Part 60, Subpart F); Leonard Lazarus of the Office of Compliance at (202) 564-6369 or via e-mail to: lazarus.leonard@epa.gov; EPA ICR Number 1051.10; OMB Control Number 2060-0025; expiration date January 31, 2008.

(12) NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (40 CFR Part 63, Subpart W); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1681.06; OMB Control Number 2060-0290; expiration date February 29, 2008.

(13) NESHAP for Primary Aluminum Reduction Plants (40 CFR Part 63, Subpart L); contact María Malavé of the Office of Compliance at (202) 564-7027 or via e-mail to: malave.maria@epa.gov; EPA ICR Number 1767.05; OMB Control Number 2060-0360; expiration date February 29, 2008.

(14) NSPS for Polymeric Coating of Supporting Substrates Facilities (40 CFR Part 60, Subpart VVV); Leonard Lazarus of the Office of Compliance at (202) 564-6369 or via e-mail to: lazarus.leonard@epa.gov; EPA ICR Number 1284.08; OMB Control Number 2060-0181; expiration date March 31, 2008.

(15) NESHAP for Beryllium Rocket Motor Fuel Firing (40 CFR Part 61, Subpart D); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1125.05; OMB Control Number 2060-0394; expiration date April 30, 2008.

(16) NESHAP for Vinyl Chloride (40 CFR Part 61, Subpart F); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 0186.11; OMB Control Number 2060-0071; expiration date April 30, 2008.

(17) NESHAP for Pulp and Paper Production (40 CFR Part 63, Subpart S); Leonard Lazarus of the Office of Compliance at (202) 564-6369 or via e-mail to: lazarus.leonard@epa.gov; EPA ICR Number 1657.06; OMB Control Number 2060-0387; expiration date April 30, 2008.

(18) NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR Part 63, Subpart MM); Leonard Lazarus of the Office of Compliance at (202) 564-6369 or via e-mail to: lazarus.leonard@epa.gov; EPA ICR Number 1805.05; OMB Control

Number 2060-0377; expiration date April 30, 2008.

(19) Standards of Performance for New and Existing Stationary Sources: Utility Steam Generating Units (40 CFR Part 60, Subparts Da and HHHH); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 2137.03; OMB Control Number 2060-0567; expiration date April 30, 2008.

(20) NESHAP for Petroleum Refineries (40 CFR Part 63, Subpart CC); contact María Malavé of the Office of Compliance at (202) 564-7027 or via e-mail to: malave.maria@epa.gov; EPA ICR Number 1692.06; OMB Control Number 2060-0340; expiration date April 30, 2008.

(21) NSPS for Municipal Waste Combustors (40 CFR Part 60, Subparts Ea and Eb); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1506.11; OMB Control Number 2060-0210; expiration date April 30, 2008.

(22) NESHAP for Pesticide Active Ingredient Production (40 CFR Part 63, Subpart MMM); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1807.04; OMB Control Number 2060-0370; expiration date June 30, 2008.

(23) NESHAP for Marine Tank Vessel Loading Operations (40 CFR Part 63, Subpart Y); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1679.06; OMB Control Number 2060-0289; expiration date July 31, 2008.

(24) NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR Part 63, Subpart GGGG); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1947.04; OMB Control Number 2060-0471; expiration date July 31, 2008.

(25) NESHAP for Engine Test Cells/ Stands (40 CFR Part 63, Subpart PPPPP); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 2066.04; OMB Control Number 2060-0483; expiration date July 31, 2008.

(26) NESHAP for Friction Materials Manufacturing (40 CFR Part 63, Subpart QQQQ); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 2025.04; OMB Control

Number 2060-0481; expiration date July 31, 2008.

(27) NESHAP for Cellulose Products Manufacturing (40 CFR Part 63, Subpart UUUU); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1974.05; OMB Control Number 2060-0488; expiration date July 31, 2008.

(28) NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR Part 63, Subpart XXX); contact Maria Malavé of the Office of Compliance at (202) 564-7027 or via e-mail to: malave.maria@epa.gov; EPA ICR Number 1831.04; OMB Control Number 2060-0391; expiration date September 30, 2008.

(29) NESHAP for Primary Copper Smelters (40 CFR Part 63, Subpart QQQ); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1850.05; OMB Control Number 2060-0476; expiration date September 30, 2008.

(30) NESHAP for Leather Finishing Operations (40 CFR Part 63, Subpart TTTT); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1985.04; OMB Control Number 2060-0478; expiration date September 30, 2008.

(31) NESHAP for Metal Coil Surface Coating Plants (40 CFR Part 63, Subpart SSSS); Learia Williams of the Office of Compliance at (202) 564-4113; or via e-mail to: williams.learia@epa.gov; EPA ICR Number 1957.05; OMB Control Number 2060-0487; expiration date September 30, 2008.

D. Information for Individual ICRs

(1) NSPS for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da), Docket ID Number EPA-HQ-OECA-2007-0043, EPA ICR Number 1053.09, OMB Control Number 2060-0023, expiration date October 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of electric utility steam generating units which are capable of combusting more than 73 megawatts (MW) heat input of fossil fuel that commenced construction, modification, or reconstruction after the date of proposal.

Abstract: The New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da) were proposed on September 18, 1978, and promulgated on June 11, 1979.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Da.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually and quarterly.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 85 hours per response.

Respondents/Affected Entities: Electric utility steam generating units.

Estimated Number of Respondents: 655.

Frequency of Response:

Semiannually, quarterly.

Estimated Total Annual Hour Burden: 133,553.

Estimated Total Annual Cost: \$11,860,000, which is comprised of annualized capital/startup costs of \$2,200,000 and O&M costs of \$9,660,000.

(2) NSPS for VOC Emissions from Petroleum Refinery Wastewater System (40 CFR Part 60, Subpart QQQ), Docket ID Number EPA-HQ-OECA-2007-0044, EPA ICR Number 1136.09, OMB Control Number 2060-0172, expiration date October 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of petroleum refinery wastewater systems which includes individual drain systems, oil-water separators, and aggregate facilities commencing construction, modification or reconstruction after the date of proposal.

Abstract: The New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart QQQ) were proposed on May 4, 1987, and promulgated on November 23, 1988.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart QQQ.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring

system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 34.2 hours per response.

Respondents/Affected Entities: Petroleum refinery wastewater systems.

Estimated Number of Respondents: 135.

Frequency of Response: On occasion and semiannually.

Estimated Total Annual Hour Burden: 9,237.

Estimated Total Annual Cost: \$17,600, which is comprised of no annualized capital/startup costs and O&M costs of \$17,600.

(3) NSPS for Phosphate Rock Plants (40 CFR Part 60, Subpart NN), Docket ID Number EPA-HQ-OECA-2007-0045, EPA ICR Number 1078.08, OMB Control Number 2060-0111, expiration date November 30, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of new phosphate rock plants with capacities greater than four tons per hour which includes dryers, calciners, grinders, and ground rock handling and storage facilities that commenced construction, modification or reconstruction after the date of proposal.

Abstract: The New Source Performance Standards (NSPS) for Phosphate Rock Plants (40 CFR Part 60, Subpart NN), were proposed on September 21, 1979, and promulgated on April 16, 1982.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart AA, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart NN.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 55.2 hours per response.

Respondents/Affected Entities: Phosphate rock plants.

Estimated Number of Respondents: 13.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 1,602.

Estimated Total Annual Cost: \$124,000, which is comprised of annualized capital/startup costs of \$12,000 and O&M costs of \$112,000.

(4) NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc), Docket ID Number EPA-HQ-OECA-2007-0046, EPA ICR Number 1564.07, OMB Control Number 2060-0202, expiration date November 30, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of small industrial-commercial-institutional steam generating units with maximum design heat input capacity of 29 megawatts (MW) (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr), commencing construction, modification, or reconstruction after June 9, 1989.

Abstract: The New Source Performance Standards (NSPS) for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc) were proposed on June 9, 1989, and promulgated on September 12, 1990.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Dc.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 287 hours per response.

Respondents/Affected Entities: Small industrial-commercial-institutional steam generating units.

Estimated Number of Respondents: 235.

Frequency of Response: Initially, on occasion and semiannually.

Estimated Total Annual Hour Burden: 156,610.

Estimated Total Annual Cost: \$9,446,145, which is comprised of annualized capital/startup costs of \$1,491,005 and O&M costs of \$7,955,140.

(5) NSPS for Rubber Tire Manufacturing (40 CFR Part 60, Subpart BBB); Docket ID Number EPA-HQ-OECA-2007-0125; EPA ICR Number 1158.09; OMB Control Number 2060-

0156; expiration date November 11, 2007.

Affected Entities: Owners and operators of rubber tire manufacturing plants.

Abstract: The New Source Performance Standards (NSPS) for rubber tire manufacturing plants were proposed on January 20, 1983, and promulgated on September 15, 1987. Minor revisions to the standards of performance for the rubber tire manufacturing industry were proposed on February 14, 1989 and promulgated on September 19, 1989. These standards apply to undertread cementing operations, sidewall cementing operations, tread end cementing operations, bead cementing operations, green tire spraying operations, Michelin-A operations, Michelin-B operations, and Michelin-C automatic operations, commencing construction, modification or reconstruction after January 20, 1993.

The affected entities are subject to the General Provisions of the New Source Performance Standards (NSPS) at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart BBB. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 167 (rounded) hours per response.

Respondents/Affected Entities: Owners and operators of rubber tire manufacturing plants.

Estimated Number of Respondents: 41.

Frequency of Response: Initially, semiannually and annually.

Estimated Total Annual Hour Burden: 13,323 hours.

Estimated Total Annual Cost: \$16,000, which is comprised of O&M costs only. There are no annualized capital/startup costs.

(6) NSPS for Onshore Natural Gas Processing Plants (40 CFR Part 60, Subparts KKK & LLL), Docket ID Number EPA-HQ7-OECA-2007-0047, EPA ICR Number 1086.08, OMB Control Number 2060-0120, expiration date December 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of the following affected facilities located at onshore natural gas processing plants: compressors in volatile organic compound (VOC) service or in wet gas service, and the group of all equipment (except compressors) within a process unit, that commended construction, modification or reconstruction after the date of proposal.

Abstract: The New Source Performance Standards (NSPS) for Onshore Natural Gas Processing Plants (40 CFR Part 60, subparts LLL & KKK) were proposed on January 20, 1984, and promulgated on June 24, 1985 for subpart KKK, and October 1, 1985 for LLL.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, Subparts KKK and LLL.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 91 hours per response.

Respondents/Affected Entities: Onshore natural gas processing plants.

Estimated Number of Respondents: 563.

Frequency of Response: Semiannually, and on occasion.

Estimated Total Annual Hour Burden: 149,174.

Estimated Total Annual Cost: \$338,700, which is comprised of annualized capital/startup costs of \$219,000 and O&M costs of \$119,700.

(7) NESHAP for Beryllium (40 CFR Part 61, Subpart C), Docket ID Number EPA-HQ-OECA-2007-0048, EPA ICR Number 0193.09, OMB Control Number 2060-0092, expiration date December 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of all extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys or beryllium containing waste, also for machine shops which process beryllium, beryllium oxides, or any alloy when

such alloy contains more than five percent beryllium by weight.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium (40 CFR Part 61, Subpart C) were proposed on December 7, 1971, and promulgated on April 6, 1973.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart C.

Owners or operators of the affected facilities must make a one-time-only notification including: notification of any physical or operational change to an existing facility, notification of the initial performance test, and performance test measurements and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required on a monthly basis.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 16 hours per response.

Respondents/Affected Entities: Beryllium plants.

Estimated Number of Respondents: 33.

Frequency of Response: On occasion and monthly.

Estimated Total Annual Hour Burden: 2,627.

Estimated Total Annual Cost: \$35,000, which is comprised of no annualized capital/startup costs and O&M costs of \$35,000.

(8) NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR Part 60, Subpart Ec), Docket ID Number EPA-HQ-OECA-2007-0049, EPA ICR Number 1730.05, OMB Control Number 2060-0363, expiration date December 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of hospital/medical/infectious waste incinerators for which construction commenced after June 20, 1996, or for which modification commenced after the effective date of the NSPS.

Abstract: The New Source Performance Standards (NSPS) for Hospital/Medical/Infectious Waste Incinerators (40 CFR Part 60, Subpart Ec) were promulgated on September 15, 1997.

The affected entities are subject to the General Provisions of NSPS at 40 CFR

part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Ec.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 107 hours per response.

Respondents/Affected Entities: Hospital/Medical/Infectious waste incinerators.

Estimated Number of Respondents: 7.

Frequency of Response: Initially, on occasion, semiannually and annually.

Estimated Total Annual Hour Burden: 4,795.

Estimated Total Annual Cost: \$22,000, which is comprised of annualized capital/startup costs of \$2,000 and O&M costs of \$20,000.

(9) NESHAP for Benzene Emissions from Coke By-Product Recovery Plants (40 CFR Part 61, Subpart L), Docket ID Number EPA-HQ-OECA-2007-0050, EPA ICR Number 1080.12, OMB Control Number 2060-0185, expiration date December 31, 2007.

Affected Entities: Entities potentially affected by this action are owners or operators of existing and new facilities that are furnace or foundry coke by-product recovery plants that produce benzene emissions. New facilities include those that commenced construction, modification or reconstruction after the date of these rules.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Benzene Emissions from Coke By-Product Recovery Plants (40 CFR Part 61, Subpart L) were promulgated on December 15, 1989, and amended February 12, 1999.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart L.

Owners or operators of the affected facilities must submit initial notifications, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during

which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 92 hours per response.

Respondents/Affected Entities: Benzene emissions from coke by-product recovery plants.

Estimated Number of Respondents: 17.

Frequency of Response: On occasion and semiannually.

Estimated Total Annual Hour Burden: 3,138.

Estimated Total Annual Cost: There are no capital/startup or O&M costs associated with this ICR.

(10) NSPS for Asphalt Processing and Roofing Manufacture (40 CFR Part 60, Subpart UU), Docket ID Number EPA-HQ-OECA-2007-0051, EPA ICR Number 0661.09, OMB Control Number 2060-0002, expiration date January 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of asphalt processing and roofing manufacture. These standards apply to each saturator and each asphalt storage facility at asphalt roofing plants, and to each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants. New facilities include those that commenced construction, modification or reconstruction after the date of proposal.

Abstract: The New Source Performance Standards (NSPS) for Asphalt Processing and Roofing Manufacture (40 CFR Part 60, Subpart UU) were proposed on November 18, 1980, amended on May 26, 1981, and promulgated on August 6, 1982.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart UU.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 58.6 hours per response.

Respondents/Affected Entities: Asphalt processing and roofing manufacturers.

Estimated Number of Respondents: 169.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 30,419.

Estimated Total Annual Cost:

\$6,045,000, which is comprised of annualized capital/startup costs of \$200,000 and O&M costs of \$5,845,000.

(11) NSPS for Portland Cement Plants (40 CFR Part 60, Subpart F), EPA-HQ-OECA-2007-0032, EPA ICR Number 1051.10, OMB Control Number 2060-0025, expiration date January 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of portland cement plants.

Abstract: The New Source Performance Standards (NSPS) for Portland Cement Plants (40 CFR Part 60, Subpart F) were promulgated on July 25, 1977. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes or additions to the General Provisions specified at 40 CFR part 60, subpart F. Owners/operators of portland cement plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 64 hours per response.

Respondents/Affected Entities: Owners or operators of portland cement plants.

Estimated Number of Respondents: 118.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 13,806.

Estimated Total Annual Cost:

\$533,000, which is comprised of annualized capital/startup costs of \$37,000 and O&M costs of \$496,000.

(12) NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (40 CFR Part 63, Subpart W), Docket ID Number EPA-HQ-OECA-2007-0052, EPA ICR Number 1681.06, OMB Control Number 2060-0290, expiration date February 29, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of epoxy resin and non-nylon polyamide production which produces polymers and resins from epichlorohydrin and sources which manufacture epichlorohydrin-modified non-nylon polyamide resins.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Epoxy Resin and Non-Nylon Polyamide Production (40 CFR

Part 63, Subpart W) were proposed on May 16, 1994, and promulgated on March 8, 1995.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart W.

Owners or operators of the affected facilities must submit a one-time-only of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 214 hours per response.

Respondents/Affected Entities: Epoxy resin and non-nylon polyamide production plants.

Estimated Number of Respondents: 7.

Frequency of Response: Initially, quarterly and semiannually.

Estimated Total Annual Hour Burden: 3,853.

Estimated Total Annual Cost: \$9,000, which is comprised of no annualized capital/startup costs and O&M costs of \$9,000.

(13) NESHAP for Primary Aluminum Reduction Plants (40 CFR Part 63, Subpart L); Docket ID Number EPA-HQ-OECA-2007-0127; EPA ICR Number 1767.05; OMB Control Number 2060-0360; expiration date February 29, 2008.

Affected Entities: Owner or operators of primary aluminum reduction plants that are major sources of HAP emissions.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for primary aluminum reduction plants were proposed on September 26, 1996 and promulgated on October 7, 1997. These standards apply to the owners or operators of new or existing potlines, paste production plants, or anode bake furnaces associated with primary aluminum production and located at a major source, and for each new pitch storage tank associated with a primary aluminum reduction plant.

The affected entities are subject to the General Provisions of the New Source Performance Standards (NSPS) at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart L.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,189 (rounded) hours per response.

Respondents/Affected Entities: Owner or operators of new or existing primary aluminum reduction plants.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, on occasion, quarterly and semiannually.

Estimated Total Annual Hour Burden: 122,607 hours.

Estimated Total Annual Cost: \$114,000 which is comprised of only O&M costs. There are no capital/startup costs.

(14) NSPS for Polymeric Coating of Supporting Substrates Facilities (40 CFR Part 60, Subpart VVV), EPA-HQ-OECA-2007-0033, EPA ICR Number 1284.08, OMB Control Number 2060-0181, expiration date March 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of polymeric coating plants.

Abstract: The New Source Performance Standard (NSPS) polymeric coating of supporting substrates facilities at 40 CFR part 60, subpart VVV were promulgated on September 15, 1987, and revised most recently on September 19, 1989. The affected sources are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart VVV. Sources must: maintain records of startups, shutdowns, malfunctions; periods where the continuous monitoring system is inoperative; all measurements including performance tests; operating parameters of monitoring device results for catalytic or thermal incinerators, carbon adsorption system, condensation system, vapor capture system and/or total enclosure; monitor the annual use of volatile organic compounds (VOC); and make semiannual estimates of projected VOC use, if affected facility uses less than 95 Mg/year of volatile organic compounds or is subject to provisions specified at section 60.742(c)(3).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83 hours per response.

Respondents/Affected Entities: Owners or operators of polymeric coating plants.

Estimated Number of Respondents: 53.

Frequency of Response: Initially, on occasion, monthly, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 12,623.

Estimated Total Annual Cost: \$606,000, which is comprised of annualized capital/startup costs of \$49,000 and O&M costs of \$557,000.

(15) NESHAP for Beryllium Rocket Motor Firing (40 CFR Part 61, Subpart D), Docket ID Number EPA-HQ-OECA-2007-0053, EPA ICR Number 1125.05, OMB Control Number 2060-0394, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of existing and new beryllium rocket motor firing facilities that test rocket motors that use beryllium propellant.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium Rocket Motor Firing (40 CFR Part 61, Subpart D) were promulgated on April 6, 1973 and amended on November 7, 1985.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart D.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 8 hours per response.

Respondents/Affected Entities: Beryllium rocket motor firing facilities.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 8.

Estimated Total Annual Cost: There are no capital/startup or O&M costs associated with this ICR.

(16) NESHAP for Vinyl Chloride (40 CFR Part 61, Subpart F), Docket ID

Number EPA-HQ-OECA-2007-0054, EPA ICR Number 0186.11, OMB Control Number 2060-0071, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of vinyl chloride. These standards apply to exhaust gases and oxychlorination vents at ethylene dichloride (EDC) plants; exhaust gases at vinyl chloride monomer (VCM) plants, and exhaust gases, reactor opening losses, manual vent valves, and stripping residuals at polyvinyl chloride (PVC) plants.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride (40 CFR Part 61, Subpart F) were proposed on December 24, 1975 and promulgated on October 21, 1976.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart F.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 60 hours per response.

Respondents/Affected Entities: Vinyl chloride manufacturers.

Estimated Number of Respondents: 28.

Frequency of Response: Initially, on occasion and quarterly.

Estimated Total Annual Hour Burden: 11,825.

Estimated Total Annual Cost: \$1,260,000, which is comprised of no annualized capital/startup costs and O&M costs of \$1,260,000.

(17) NESHAP for Pulp and Paper Production (40 CFR Part 63, Subpart S), EPA-HQ-OECA-2007-0034, EPA ICR Number 1657.06, OMB Control Number 2060-0387, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of pulp and paper mills.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for pulp and paper production were promulgated on April 15, 1998. The affected sources are

subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes or additions to the General Provisions specified at 40 CFR part 63, subpart S.

Pulp mill owners/operators are required to submit initial notifications, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected source, or any period during which the emission monitoring system is inoperative. Respondents are required to monitor and keep records of specific operating parameters for each control device and to perform and document periodic inspections of the closed vent and wastewater conveyance systems.

All respondents must submit semiannual reports of the monitored parameters. They must also submit an additional monitoring report during each quarter in which monitored parameters were outside the ranges established in the standard or during initial performance tests.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 104 hours per response.

Respondents/Affected Entities: Owners or operators of pulp and paper mills.

Estimated Number of Respondents: 137.

Frequency of Response: Initially, quarterly and semiannually.

Estimated Total Annual Hour Burden: 42,444.

Estimated Total Annual Cost: \$377,000, which is comprised of no annualized capital/startup costs and O&M costs of \$337,000.

(18) NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR Part 63, Subpart MM), EPA-HQ-OECA-2007-0035, ICR Number 1805.05, OMB Control Number 2060-0377, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills at 40 CFR part 63, subpart MM were promulgated on January 12, 2001. The subject sources are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes or additions to the General

Provisions specified at 40 CFR part 63, subpart MM. These requirements include initial notifications; notifications of performance tests; notifications of performance evaluations; notifications of compliance status, including the results of performance tests; startup, shutdown, and malfunction reports; and semiannual compliance reports.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 475 hours per response.

Respondents/Affected Entities: Owners or operators of chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

Estimated Number of Respondents: 130.

Frequency of Response: Initially, on occasion, quarterly and semiannually.

Estimated Total Annual Hour Burden: 150,043.

Estimated Total Annual Cost: \$987,000, which is comprised of annualized capital/startup costs of \$123,000 and O&M costs of \$864,000.

(19) Standards of Performance for New and Existing Stationary Sources: Utility Steam Generating Units (40 CFR Part 60, Subparts Da and HHHH), Docket ID Number EPA-HQ-OECA-2007-0055, EPA ICR Number 2137.03, OMB Control Number 2060-0567, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of electric utility steam generating units. These standards apply to existing and new coal-fired electric utility steam generating units capable of firing more than 73 megawatts (MW) (250 million Btu/hour) heat input including industrial cogeneration facilities that sell more than 25 MW of electrical output and more than one-third of their potential output capacity to any utility power distribution system.

Abstract: The Standards of Performance for New and Existing Stationary Sources: Utility Steam Generating Units (40 CFR Part 60, Subparts Da and HHHH) were proposed on December 20, 2000, and promulgated on May 18, 2005.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 60, subpart A, and any changes, or addition to the General Provisions specified at 40 CFR part 60, subparts Da and HHHH.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain

records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 632 hours per response.

Respondents/Affected Entities: Electric utility steam generating units.

Estimated Number of Respondents: 1,125.

Frequency of Response:

Semiannually, quarterly, annually, daily, and on occasion.

Estimated Total Annual Hour Burden: 710,993.

Estimated Total Annual Cost: \$85,002, which is comprised of annualized capital/startup costs of \$11,870 and O&M costs of \$73,132.

(20) NESHAP for Petroleum Refineries (40 CFR Part 63, Subpart CC); Docket ID Number EPA-HQ-OECA-2007-0126; EPA ICR Number 1692.06; OMB Control Number 2060-0340; expiration date April 30, 2008.

Affected Entities: Petroleum refineries.

Abstract: The National Emission Standards for Hazardous Air Pollutants for petroleum refineries were proposed on July 15, 1994, and promulgated on August 18, 1995. These regulations apply to the following refining process units and emission points located at refineries that are major sources of HAP emissions: miscellaneous process vents, storage vessels, wastewater streams and treatment operations, equipment leaks, gasoline loading racks, and marine vessel loading operations. These regulations also apply to storage vessels and equipment leaks associated with bulk gasoline terminals or pipeline breakout stations that are related to an affected petroleum refinery. New facilities include those that commenced construction or reconstruction after the date of proposal.

The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants for (NESHAP) at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart CC. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. In addition, respondents are required to comply with applicable recordkeeping and reporting requirements under other rules including: 1) equipment leaks requirements in either 40 CFR part 61, subpart VV or 40 CFR part 63, subpart

H (i.e., an initial report and semiannual summary report of leak detection and repair); 2) wastewater operations requirements in 40 CFR part 61, subpart FF; gasoline loading racks requirements in 40 CFR part 63, subpart R; and marine tank vessel loading operations requirements in 40 CFR part 63, subpart Y.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 839 (rounded) hours per response.

Respondents/Affected Entities: Owner or operators of new or existing petroleum refineries.

Estimated Number of Respondents: 134.

Frequency of Response: Initially, on occasion, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 410,054 hours.

Estimated Total Annual Cost: There are no annual capital/startup or O&M costs associated with this ICR.

(21) NSPS for Municipal Waste Combustors (40 CFR Part 60, Subparts Ea and Eb), Docket ID Number EPA-HQ-OECA-2007-0056, EPA ICR Number 1506.11, OMB Control Number 2060-0210, expiration date April 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of municipal waste combustors. Both of these standards apply to municipal waste combustors with unit capacities greater than 225 megagrams per day.

Abstract: The New Source Performance Standards (NSPS) for Municipal Waste Combustors (40 CFR Part 60, Subparts Ea and Eb) were proposed on December 20, 1980, and September 20, 1994 (respectively), and promulgated on February 11, 1991, and December 19, 1995 (respectively).

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, Subparts Ea and Eb.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 198 hours per response.

Respondents/Affected Entities: Municipal waste combustors.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, quarterly, semiannually, annually.

Estimated Total Annual Hour Burden: 20,421.

Estimated Total Annual Cost: \$159,000, which is comprised of annualized capital/startup costs of \$60,000 and O&M costs of \$99,000.

(22) NESHAP for Pesticide Active Ingredient Production (40 CFR Part 63, Subpart MMM), Docket ID Number EPA-HQ-OECA-2007-0057, EPA ICR Number 1807.04, OMB Control Number 2060-0370, expiration date June 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of new and existing pesticide active ingredient facilities.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pesticide Active Ingredient Production (40 CFR Part 63, Subpart MMM) were promulgated on June 23, 1999.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart MMM.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 60 hours per response.

Respondents/Affected Entities: Pesticide active ingredient production facilities.

Estimated Number of Respondents: 88.

Frequency of Response: Initially, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 24,164.

Estimated Total Annual Cost: \$353,000, which is comprised of annualized capital/startup costs of \$236,000 and O&M costs of \$117,000.

(23) NESHAP for Marine Tank Vessel Loading Operations (40 CFR Part 63, Subpart Y), Docket ID Number EPA-HQ-OECA-2007-0058, EPA ICR

Number 1679.06, OMB Control Number 2060-0289, expiration date July 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of new and existing facilities that load marine tank vessels with petroleum or gasoline and have aggregate of 10 tons or more of each individual hazardous air pollutant or 25 tons or more combined.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations (40 CFR Part 63, Subpart Y) were proposed on May 13, 1994 and promulgated on September 19, 1995.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart Y.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 12 hours per response.

Respondents/Affected Entities: Marine tank vessel loading operations.

Estimated Number of Respondents: 804.

Frequency of Response: On occasion, semiannually and annually.

Estimated Total Annual Hour Burden: 9,872.

Estimated Total Annual Cost: There are no capital/startup or O&M costs associated with this ICR.

(24) NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR Part 63, Subpart GGGG), Docket ID Number EPA-HQ-OECA-2007-0059, EPA ICR Number 1947.04, OMB Control Number 2060-0471, expiration date July 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of new and existing vegetable oil production process, which is defined as a group of continuous process equipment used to remove oil from oilseeds through direct contact with an organic solvent such as n-hexane.

Abstract: The National Emission Standards for Hazardous Air Pollutants

(NESHAP) for Solvent Extraction for Vegetable Oil Production (40 CFR Part 63, Subpart GGGG) were proposed on May 26, 2000, and promulgated on April 21, 2001.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart GGGG.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 185 hours per response.

Respondents/Affected Entities: Solvent extraction for vegetable oil production facilities.

Estimated Number of Respondents: 101.

Frequency of Response: Annually, initially, and on occasion.

Estimated Total Annual Hour Burden: 39,385.

Estimated Total Annual Cost: There are no capital/startup or O&M costs associated with this ICR.

(25) NESHAP for Engine Test Cells/Standards (40 CFR Part 63, Subpart PPPPP), Docket ID Number EPA-HQ-OECA-2007-0060, EPA ICR Number 2066.04, OMB Control Number 2060-0483, expiration date July 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of new or reconstructed engine test cells/stands located at major source facilities that are being used for testing internal combustion engines with a rated power of 25 horsepower or more.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Engine Test Cells/Standards (40 CFR Part 63, Subpart PPPPP) were proposed on May 14, 2002, and promulgated on May 27, 2003.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart PPPPP.

Owners or operators of the affected facilities must submit initial notification, performance tests, and

periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 76 hours per response.

Respondents/Affected Entities: Engine test cells/stands.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, semiannually and annually.

Estimated Total Annual Hour Burden: 3,043.

Estimated Total Annual Cost: \$5,400, which is comprised of no annualized capital/startup costs and O&M costs of \$5,400.

(26) NESHAP for Friction Materials Manufacturing (40 CFR Part 63, Subpart QQQQQ), Docket ID Number EPA-HQ-OECA-2007-0061, EPA ICR Number 2025.04, OMB Control Number 2060-0481, expiration date July 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of new, reconstructed or existing friction materials manufacturing. Friction materials is subsequently used to manufacture friction products that include, but are not limited to, disc brake pucks, disc brake pads, brake linings, brake shoes, brake segments, brake blocks, brake discs, clutch facings, and clutches.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Friction Materials Manufacturing (40 CFR Part 63, Subpart QQQQQ) were proposed on October 4, 2001, and promulgated on October 18, 2002.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart QQQQQ.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 162 hours per response.

Respondents/Affected Entities: Friction materials manufacturing.

Estimated Number of Respondents: 4.

Frequency of Response: Initially, on occasion, semiannually and annually.

Estimated Total Annual Hour Burden: 1,296.

Estimated Total Annual Cost: \$1,000, which is comprised of no annualized capital/startup costs and O&M costs of \$1,000.

(27) NESHAP for Cellulose Products Manufacturing (40 CFR Part 63, Subpart UUUU), Docket ID Number EPA-HQ-OECA-2007-0062, EPA ICR Number 1974.05, OMB Control Number 2060-0488, expiration date July 31, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of a cellulose product manufacturing operation that is a major source of hazardous air pollutant, which includes the miscellaneous viscose processes source category that consists of, cellulose food casing, rayon, cellulosic sponge, and cellophane operations, and the cellulose ethers productions source category which covers all of the cellulose ether operations.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Cellulose Products Manufacturing (40 CFR Part 63, Subpart UUUU) were proposed on August 28, 2000 and promulgated on June 11, 2002.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart UUUU.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 141 hours per response.

Respondents/Affected Entities: Cellulose Products Manufacturing.

Estimated Number of Respondents: 13.

Frequency of Response: On occasion, weekly, and semiannually.

Estimated Total Annual Hour Burden: 12,088.

Estimated Total Annual Cost: \$1,000, which is comprised of no annualized capital/startup costs and O&M costs of \$1,000.

(28) NESHAP for Ferroalloys Production: Ferromanganese and Siliconmanganese (40 CFR Part 63, Subpart XXX); Docket ID Number EPA-HQ-OECA-2007-0128; EPA ICR Number 1831.04; OMB Control Number 2060-0391; expiration date September 30, 2008.

Affected Entities: Owners or operators of ferroalloy production facilities that manufacture ferromanganese and siliconmanganese.

Abstract: The national emission standards for hazardous air pollutants (NESHAP) for ferroalloy production facilities were proposed on August 4, 1998, promulgated on May 20, 1999, and amended most recently on March 22, 2001. The rule applies to affected facilities at ferroalloy production plants including: submerged arc furnaces; metal oxygen refining (MOR) process; crushing and screening operations; and fugitive dust sources.

The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart XXX. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83 (rounded) hours per response.

Respondents/Affected Entities: Ferroalloy production facilities that manufacture ferromanganese and siliconmanganese.

Estimated Number of Respondents: 1.

Frequency of Response: Initial, quarterly, semiannual and annually.

Estimated Total Annual Hour Burden: 584 hours.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(29) NESHAP for Primary Copper Smelters (40 CFR Part 63, Subpart

QQQ), Docket ID Number EPA-HQ-OECA-2007-0063, EPA ICR Number 1850.05, OMB Control Number 2060-0476, expiration date September 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of any existing, reconstructed, or new primary copper smelters. The affected sources are each copper concentrate dryer, each smelting furnace, each slag cleaning vessel, each copper converter department, and the entire group of fugitive emission sources.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelters (40 CFR Part 63, Subpart QQQ) were proposed on April 20, 1998 and promulgated on June 12, 2002.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart QQQ, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart QQQ.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 196 hours per response.

Respondents/Affected Entities: Primary copper smelters.

Estimated Number of Respondents: 3.

Frequency of Response: On occasion, initially, monthly, semiannually and annually.

Estimated Total Annual Hour Burden: 8,837.

Estimated Total Annual Cost: \$8,000, which is comprised of no annualized capital/startup costs and O&M costs of \$8,000.

(30) NESHAP for Leather Finishing Operations (40 CFR Part 63, Subpart TTTT), Docket ID Number EPA-HQ-OECA-2007-0064, EPA ICR Number 1985.04, OMB Control Number 2060-0478, expiration date September 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of any existing, reconstructed, or new leather finishing operation. A leather finishing operation is a single process or group of processes used to

adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprising of dyes, pigments, film-forming materials and performance modifiers dissolved or suspended in liquid carriers.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Leather Finishing Operations (40 CFR Part 63, Subpart TTTT) were proposed on October 2, 2000, and promulgated on February 27, 2002.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart TTTT.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 33 hours per response.

Respondents/Affected Entities: Leather finishing operations.

Estimated Number of Respondents: 10.

Frequency of Response: Initially, on occasion and annually.

Estimated Total Annual Hour Burden: 334.

Estimated Total Annual Cost: There are no capital/startup or O&M costs associated with this ICR.

(31) NESHAP for Metal Coil Surface Coating Plants (40 CFR Part 63, Subpart SSSS), Docket ID Number EPA-HQ-OECA-2007-0065, EPA ICR Number 1957.05, OMB Control Number 2060-0487, expiration date September 30, 2008.

Affected Entities: Entities potentially affected by this action are owners or operators of any existing, reconstructed, or new metal coil coating facility. The coil coating line is a process and the collection of equipment used to apply an organic coating to the surface of a metal coil that is less than 0.15 millimeters (0.006 inches) thick, and the coating line is controlled by a common control device that also receives organic hazardous air pollutant (HAP) emissions from a coil coating line that is subject to the requirements of this subpart.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Metal Coil Surface Coating Plants (40 CFR Part 63, Subpart SSSS) were proposed on July 18, 2000, and promulgated on June 10, 2002.

The affected entities are subject to the General Provisions of NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart SSSS.

Owners or operators of the affected facilities must submit one-time notification, one-time report on compliance status and performance test results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 119 hours per response.

Respondents/Affected Entities: Metal coil surface coating plants.

Estimated Number of Respondents: 89.

Frequency of Response: Semiannually, annually, weekly, initially, and on occasion.

Estimated Total Annual Hour Burden: 19,901.

Estimated Total Annual Cost: \$4,000, which is comprised of no annualized capital/startup costs and O&M costs of \$4,000.

EPA will consider any comments received and may amend any of the above ICRs, as appropriate. Then the final ICR packages will be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue one or more **Federal Register** notices pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR(s) to OMB and the opportunity to submit additional comments to OMB. If you have any questions about any of the above ICRs or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 23, 2007.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. E7-4288 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[ER-FRL-6684-8]****Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060462, ERP No. D-COE-K59006-CA, Cajon, Third Main Track, Construction from Summit to Keenbrook, Special Use Permit and U.S. Army COE 404 Permit, San Bernardino County, CA.

Summary: EPA expressed environmental concerns about air quality impacts and water-related issues. Rating EC2.

EIS No. 20060467, ERP No. D-FHW-K40262-CA, Interstate 5 (Santa Ana Freeway) Project, Improvement from State Route 91 in Orange County to Interstate 605 in Los Angeles County, CA.

Summary: EPA expressed environmental concerns about the potential for project segmentation, a lack of analysis for mobile source air toxics (MSATs) hotspots, and the inconsistent reporting of environmental justice impacts. EPA recommends quantifying the construction and operational emissions for MSATs, conducting dispersion modeling of the most significant MSATs, and identifying hotspots and appropriate avoidance, minimization, and/or mitigation opportunities. Rating EC2.

EIS No. 20060498, ERP No. D-COE-K60037-CA, Rio del Oro Specific Plan Project, To Establish a Development Framework for Land Use, Resource Protection, Circulation, Public Utilities and Services, City of Rancho Cordova, Sacramento County, CA.

Summary: EPA expressed environmental concerns about wetland impacts, and requested additional information regarding compliance with the Clean Water Act. Rating EC2.

EIS No. 20060509, ERP No. D-SFW-L61233-WA, Hanford Reach National Monument Comprehensive

Conservation Plan, Management of Monument Resources, Programs and Visitors for the next 15 years, Adams, Benton, Franklin and Grant Counties, WA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060518, ERP No. D-FHW-F40438-IN, I-69 Evansville to Indianapolis Project, I-69 Tier 2 Section 1: Evansville to Oakland City, from I-64 to IN-64, Gibson and Warrick Counties, IN

Summary: EPA does not object to the proposed action, but requests clarification of mitigation measures and their implementation. Rating LO.

EIS No. 20060535, ERP No. D-FHW-L40232-ID, US-95 Garwood to Sagle (from MP-438.4 to MP 469.75) Transportation Improvements to Present and Future Traffic Demand, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Kootenai and Bonner Counties, ID.

Summary: EPA expressed environmental concerns about potential impacts to aquatic resources, wildlife habitat, and prime farmland. EPA recommended mitigation for air quality impacts during construction, and requested more information regarding groundwater/sole source aquifer impacts, surface water quality and TMDL implementation, riparian and floodplain impacts and avoidance. Rating EC2.

EIS No. 20070001, ERP No. D-AFS-K65325-CA, Turntable Bay Marina Master Development Plan, To Build and Operate a Resort Marina, Special-Use-Permit, Shasta-Trinity National Forest, Shasta Lake at Turntable Bay, Shasta and Trinity Counties, CA.

Summary: While EPA does not object to the Preferred Alternative, but requested clarification on project goals and timing of construction to minimize air quality impacts. Rating LO.

EIS No. 20070011, ERP No. D-FHW-F40402-MI, I-94 Jackson Freeway Modernization Project, Improvements between Michigan State Route-60 (MI-60) and Sargent Road, Funding and NPDES and US Army COE Section 404 Permits Issuance, Jackson County, MI.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action. Rating LO.

EIS No. 20060477, ERP No. DS-AFS-J65403-00, Southern Rockies Canada Lynx Amendment, Updated Information, Incorporating Management Direction for Canada Lynx Habitat by Amending Land and

Resource Management Plans, for Arapaho-Roosevelt, Pike-San Isabel, Grand Mesa-Uncompahgre-Gunnison, San Juan, Rio Grande and Medicine Bow-Routt National Forests, Implementation, CO and WY.

Summary: EPA expressed environmental concerns about the preferred alternative has the most potential of the action alternatives to adversely effect water quality from erosion and sedimentation, impact wildlife and vegetation and cause fragmentation of critical lynx habitat. In addition, the final EIS should expand the analysis of cumulative impacts. Rating EC2.

Final EISs

EIS No. 20060533, ERP No. F-FHW-D40310-VA, I-73 Location Study, between Roanoke and the North Carolina State Line Commonwealth of Virginia, Construction and Operation, Cities of Roanoke and Martinsville, Counties of Bedford, Botetourt, Franklin, Henry, and Roanoke, VA.

Summary: EPA continues to have environmental concerns about forest habitat impacts, and requested mitigation to reduce those impacts.

EIS No. 20060538, ERP No. F-FRC-E03016-MS, Casotte Landing Liquefied Natural Gas (LNG) Import and Interstate Natural Gas Transmission Facilities, Construction and Operation, U.S. Army COE Section 404 Permit, (FERC/EIS-0193D), near the City of Pascagoula, Jackson County, MS.

Summary: EPA supports the selected preferred alternative for the proposed project with the FERC staff's mitigation measures identified in the final EIS. EPA requested that FERC and the applicant give further consideration to addressing the remaining outstanding issues including air quality, risk analysis, and wetland impacts.

EIS No. 20070000, ERP No. F-AFS-L65455-ID, Clearwater National Forest, Proposes to Approve Plans-of-Operation for Small-Scale Suction Dredging in Lolo Creek and Moose Creek, Clearwater National Forest, North Fork Ranger District, Clearwater and Idaho Counties, ID.

Summary: The final EIS adequately addressed EPA's major concerns with water quality, especially by using monitoring, timing and location provisions and adaptive management to minimize impacts from projects. Therefore, EPA does not object to the proposed project.

EIS No. 20070010, ERP No. F-FHW-G40187-LA, East-West Corridor

Highway Component, from I-130 to Louis Armstrong International Airport, to Central Business District (CBD), Jefferson, Orleans and St. Charles Parishes, LA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070013, ERP No. F-DOE-E01016-FL, Orlando Gasification Project (DOE/EIS-0383), To Provide Cost-Shared Funding for Construction, Design, and Operation a New Plant, Orlando, FL.

Summary: EPA continues to have environmental concerns about impacts to air quality and wetlands, and requested that additional mitigation measures be implemented.

EIS No. 20070020, ERP No. F-AFS-L65474-AK, Tuxekan Island Timber Sale(s) Project, Timber Harvesting, Implementation, Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Tongass National Forest, Thorne Bay Ranger District, Thorne Bay, AK.

Summary: EPA's previous environmental concerns about impacts to water quality, fisheries, wetlands, and wildlife habitat have been addressed; therefore, EPA does not object to the proposed action.

EIS No. 20070034, ERP No. F-SFW-J65447-WY, Bison and Elk Management Plan, Implementation, National Elk Refuge/Grand Teton National Park/John D. Rockefeller, Jr. Memorial Parkway, Teton County, WY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070054, ERP No. F-NPS-J61110-UT, Utah Museum of Natural History, Construction and Operation, New Museum Facility at University of Utah, Salt Lake City, UT.

Summary: No formal comment letter was sent to the preparing agency.

Dated: March 6, 2007.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-4246 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6684-7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 02/26/2007 through 03/02/2007 pursuant to 40 CFR 1506.9.

EIS No. 20070072, Second Draft Supplement, FHW, NC, NC 12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) Revisions and Additions, over Oregon Inlet Construction, Funding, U.S. Coast Guard Permit, Special-Use-Permit, Right-of-Way Permit, U.S. Army COE Section 10 and 404 Permit, Dare County, NC , *Comment Period Ends:* 04/23/2007, *Contact:* John F. Sullivan 919-856-4346.

EIS No. 20070073, Draft EIS, IBR, CO, Colorado River Interim Guidelines for Lower Basin Shortages and and Coordinated Operations for Lake Powell and Lake Mead, Implementation, Colorado River, CO, *Comment Period Ends:* 04/30/2007, *Contact:* Nan Yoder 702-293-8500.

EIS No. 20070074, Final EIS, SFW, CA, East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, Implementation, Incidental Take Permit, Cities of Brentwood, Clayton, Oakley and Pittsburg, Contra Costa County, CA, *Wait Period Ends:* 04/09/2007, *Contact:* Lori Rinek 916-444-6600.

EIS No. 20070075, Draft Supplement, APH, 00, Importation of Solid Wood Packing Material, To Reevaluate and Refine Estimates of Methyl Bromide Usage in the Treatment, Implementation, United States, *Comment Period Ends:* 04/23/2007, *Contact:* David A. Bergston 301-734-6103.

EIS No. 20070076, Final EIS, AFS, WI, Boulder Project, Timber Harvesting, Vegetation and Road Management, U.S. Army COE Section 404 Permit, Chequamegon-Nicolet National Forest, Lakewood-Laona Ranger District, Oconto and Langlade Counties, WI, *Wait Period Ends:* 04/09/2007, *Contact:* Paul Sweeney 715-276-6333.

EIS No. 20070077, Draft EIS, AFS, SD, Mitchell Project Area, To Implement Multiple Resource Management Actions, Mystic Ranger District, Black Hills National Forest, Pennington County, SD, *Comment Period Ends:* 04/23/2007, *Contact:* Roberts. J. Thompson 605-343-1567.

EIS No. 20070078, Draft EIS, NPS, NY, Sagamore Hill National Historic Site, General Management Plan, Implementation, Oyster Bay, Nassau County, NY, *Comment Period Ends:* 05/08/2007, *Contact:* Greg A. Marshall 516-922-4452.

EIS No. 20070079, Draft Supplement, AFS, WA., School Fire Salvage Recovery Project, To Clarify Definitions of Live and Dead Trees, Implementation, Pomeroy Ranger District, Umatilla National Forest, Columbia and Garfield Counties, WA, *Comment Period Ends:* 04/23/2007, *Contact:* Dean R. Millett 509-843-4644.

EIS No. 20070080, Draft EIS, NIG, CA, Graton Rancheria Casino and Hotel Project, Transfer of Land into Trust, Implementation, Federated Indians of Graton Rancheria (Tribe), Sonoma County, CA, *Comment Period Ends:* 04/23/2007, *Contact:* Brad Meharry 202-632-7003.

EIS No. 20070081, Final EIS, JUS, TX, Laredo Detention Facility, Proposed Contractor-Owned/Contractor-Operated Detention Facility, Implementation, Webb County, TX, *Wait Period Ends:* 04/09/2007, *Contact:* Scott P. Stermer 202-353-4601.

EIS No. 20070082, Final EIS, GSA, VA, Federal Bureau of Investigation (FBI) Central Records Complex, Alternative 4—Sempeles Site, Winchester, Frederick County, VA, *Wait Period Ends:* 04/09/2007, *Contact:* Katrina Scarpato 215-446-4651.

EIS No. 20070083, Draft EIS, SFW/COE, CA, PROGRAMMATIC—South Bay Salt Pond Restoration Project, Restored Tidal Marsh, Managed Ponds, Flood Control Measures and Public Access Features, Don Edward San Francisco Bay National Wildlife Refuge, Alameda, Santa Clara and San Mateo Counties, CA, *Comment Period Ends:* 04/23/2007, *Contact:* Clyde Morris 510-792-0222 (SFW); and Yvonne LeTellier, 415-503-6744 (COE).

EIS No. 20070084, Draft EIS, BPA, WA, Port Angeles—Juan de Fuca Transmission Project, Construct a 550-Megawatt Direct Current Cable from Victoria, British Columbia, across the Strait of Juan de Fuca to Port Angeles, Presidential Permit, Clallam County, WA, *Comment Period Ends:* 04/24/2007, *Contact:* Stacy Mason 503-230-5455.

EIS No. 20070085, Draft EIS, USN, GU, Kilo Wharf Extension (MILCON P-52), To Provide Adequate Berthing Facilities for Multi-Purpose Dry Cargo/Ammunition Ship (the T-AKE), Apra Harbor Naval Complex, Mariana Island, GU, *Comment Period Ends:* 04/23/2007, *Contact:* Nora Macariola 808-472-1402.

EIS No. 20070086, Final EIS, USA, VA, Fort Lee, Virginia and Fort A. P. Hill, Virginia Project, Implementation of Base Closure and Realignment (BRAC)

Recommendations and Other Army Actions, Prince George County, Petersburg, Virginia Hopewell, Virginia; Caroline County, Essex County, VA, *Wait Period Ends:* 04/09/2007, *Contact:* Karen Wilson 703-602-2861.

EIS No. 20070087, Final EIS, FTA, FL, Miami North Corridor Project, Build Alternative is Selected, Transit Improvement between NW 62 Street at Dr. Martin Luther King Jr. Station and NW 215th Street at the Dade/Broward Counties Line, Funding, Dade County, FL, *Wait Period Ends:* 04/09/2007, *Contact:* James Garland 404-562-3512.

Dated: March 6, 2007.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-4247 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0118; FRL-8117-5]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75624-EUP-E from The Acta Group, on behalf of Circle One Global, Inc., requesting an experimental use permit (EUP) for *Aspergillus flavus* NRRL 21882. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before April 9, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0118 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-2007-0118. 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 www.regulations.gov or e-mail. The Federal www.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 www.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 available in www.regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the www.regulations.gov web site to view the docket index or access available documents. 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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of pesticidal substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

The Acta Group, 1203 Nineteenth St., NW, Washington DC 20036-2401, on behalf of Circle One Global, Inc., P.O. Box 28, Shellman, GA 39886-0028 proposes to treat corn in Texas. The registrant plans to use the conditionally registered microbial pesticide containing *Aspergillus flavus* NRRL 21882, at 0.01 percent (EPA Registration Number 75624-2). This pesticide is currently used on peanuts.

III. What Action is the Agency Taking?

Following the review of The Acta Group application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency is authorized to take this action under FIFRA section 5.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: February 28, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7-4170 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0119; FRL-8117-6]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 71693-EUP-R from Interregional Research Project Number 4 (IR-4), on behalf of the Arizona Cotton Research and Protection Council, requesting an experimental use permit (EUP) for *Aspergillus flavus* AF36. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before April 9, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0119 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-2007-0119. 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 www.regulations.gov or e-mail. The Federal www.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 www.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 available in www.regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the www.regulations.gov web site to view the docket index or access available documents. 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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of pesticidal substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

IR-4, Rutgers University, 500 College Road East, Suite 201W, Princeton, NJ 08540, on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Avenue Phoenix, Arizona 85040-2933 proposes to treat pistachio in California. The registrant plans to use the a conditionally registered microbial pesticide containing *Aspergillus flavus* AF36, at 0.0008 percent (EPA Registration Number 71693-1). This pesticide is currently used on cotton in California.

III. What Action is the Agency Taking?

Following the review of the IR-4 application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency is authorized to take this action under FIFRA section 5.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: February 28, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7-4169 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2007-0019; FRL-8285-7]

Draft National Coastal Condition Report III

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 60-day public comment period on the draft National Coastal Condition Report III describing the condition of the Nation's coastal waters. Coastal waters are valuable from

both an environmental and economic perspective. These waters are vulnerable to pollution from diverse sources. EPA expects this report will increase public awareness of the extent and seriousness of pollution and advance efforts to protect and restore coastal waters. EPA seeks public input concerning the information in the report, the availability of additional data, and the appropriateness of conclusions drawn from the information presented.

DATES: Comments must be received on or before May 8, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2007-0019, by one of the following methods:

www.regulations.gov: Follow on-line instructions for submitting comments.

E-mail: ow.docket@epa.gov,

Mail: EPA Docket Center (EPA/DC), Environmental Protection Agency, Water Docket,

Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA/DC, Water Docket, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2007-0019. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT:

Barry Burgan, Ocean and Coastal Protection Division, Office of Water, 4504T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *telephone number:* 202-566-1242; *fax number:* 202-566-1336; *e-mail address:* Burgan.Barry@epa.gov or Virginia Engle, Gulf Ecology Division, Office of Research and Development, Environmental Protection Agency, 1 Sabine Island Drive, Gulf Breeze, Florida 32561; *telephone number:* (850) 934-9354; *fax number:* (850) 934-9201; *e-mail address:* Engle.Virginia@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

In 2001, the first National Coastal Condition Report was released, characterizing about 70% of the estuarine resources of the United States. Using available data from 1990-1996, EPA, the National Oceanic and Atmospheric Administration (NOAA), U.S. Geological Survey (USGS), U.S. Fish and Wildlife Service (USFWS), and U.S. Department of Agriculture (USDA) determined that the Nation's estuarine resources were in fair condition and presented this information in the first Report. The second National Coastal Condition Report, released in 2005, described the condition of 100% of the Nation's estuaries in the contiguous 48

states and Puerto Rico. This third edition of the National Coastal Condition Report serves as a continuing foundation for the Nation's efforts to protect, manage, and restore coastal ecosystems. Four Federal agencies (EPA, NOAA, USGS and the USFWS) and several state and regional/local organizations have come together to report on the current condition of the Nation's coasts.

The draft National Coastal Condition Report III describes the condition of coastal waters based on several available data sets from different agencies and areas of the country and summarizes them to present a continuing picture of the condition of coastal waters. Although the data sets presented do not cover all coastal areas (e.g., no data were collected in Alaska other than south central Alaska and the Trust Territories), they do provide a multi-regional assessment of coastal condition in the conterminous United States and Puerto Rico. For example, EPA's National Coastal Assessment is conducting estuarine monitoring in all 23 coastal states and Puerto Rico, accounting for 99.8% of estuarine acreage in the continental U.S. and Puerto Rico. Data from several regional and national programs conducted by NOAA, USGS and the USFWS are included in this assessment of coastal condition. This report serves as a useful tool for analyzing the progress of coastal programs implemented since the first Report and as a benchmark for the future and provides trends in condition over time. This report will be followed in subsequent years by reports focusing on continuing assessments of ecological condition, examinations of the trends in coastal condition, and assessments of more specialized coastal issues.

The draft National Coastal Condition Report III will undergo an external peer review conducted by EPA's Office of Research and Development. The peer review plan, including peer review charge questions, is available on EPA's Science Inventory Web site (http://cfpub.epa.gov/si/si_record_view.cfm?dirEntryID=161923). You may view and download the draft Report on EPA's Internet site at the Office of Water homepage at <http://www.epa.gov/owow/oceans/nccr3/index.html> under Recent Additions.

Dated: March 2, 2007.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E7-4294 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8286-5]

Omega Chemical Superfund Site; Notice of Proposed CERCLA Administrative Settlement With Certain Ability To Pay Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Omega Chemical Site in Whittier, Los Angeles County, California with 12 settling ability to pay parties. The settlement is entered into pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), and it requires the settling parties to pay approximately \$111,000 to the United States Environmental Protection Agency (EPA). The settlement includes a covenant not to sue the settling parties, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before April 9, 2007.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Steve Berninger, EPA Region IX, 75 Hawthorne Street, ORC-3, San Francisco, CA 94105, telephone number 415-972-3909. Comments should reference the Omega Chemical Superfund Site, Whittier, California and EPA Docket No. 2006-26, and should be addressed to Steve Berninger at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Berninger, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75

Hawthorne Street, San Francisco, CA 94105; *phone*: (415) 972-3909; *fax*: (415) 947-3570; *e-mail*: berninger.stephen@epa.gov.

Dated: February 28, 2007.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E7-4274 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8286-4]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States, notice is hereby given of a proposed administrative settlement resolving, subject to reservations and limitations, liability that owners of the St. Joe Chat Pile and of the underlying property located in Ottawa County, Oklahoma, might otherwise incur under CERCLA Sections 106 or 107, 42 U.S.C. 9606, or 9607, arising from the sale of chat on the property in question. The settlement is entered into by the United States on behalf of the U.S. Environmental Protection Agency (EPA).

Chat is a gravel-like mine refuse or mine tailings that is generally contaminated with the hazardous substances lead, cadmium and zinc. Approximately 49 million cubic yards of chat, including the St. Joe Pile, pollute the Tar Creek Superfund Site (Site). The Site is located in an approximately 40-square-mile area in northern Ottawa County, Oklahoma. The Site was mined for lead and zinc ore from the late 1800's through the early 1970's, and chat is part of the waste material left behind by the mining and milling activity. EPA has determined that one of the best ways to address contaminated chat piles on the Site is to sell and remove the chat for use in a manner that will not present a threat to human health or to the environment. Sale and removal of the

chat will reduce the costs of additional response actions for the Site. The purpose of this Settlement Agreement is to encourage the sale of the chat in the St. Joe Chat Pile, by resolving certain liabilities of those with interests in the chat or in the property containing the chat, thereby helping free the chat for sale.

Under the settlement, settlors (chat owners and property owners) agree to execute an agreement for the sale of the chat pile (if they own an interest in the chat), to provide access, and to refrain from activities that would inhibit sales. The settlement also includes settlors' agreement not to sue the United States regarding any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund pursuant to Internal Revenue Code, 26 U.S.C. 9507, through CERCLA Sections 106(b)(2), 111, 112, and 113, any claim under CERCLA Sections 107 or 113, or under any citizen suit provision of CERCLA, 42 U.S.C. 9659, the Resource Conservation and Recovery Act, 42 U.S.C. 6972, the Clean Air Act, 42 U.S.C. 7604, the Clean Water Act, 33 U.S.C. 1365, or any other similar statutes or other applicable environmental laws.

In return, subject to reservations and limitations, the United States covenants not to sue or take civil judicial or administrative action against the settlors pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, and 9607, or other applicable law, for liability of response actions and/or claims for natural resource damages arising from the sale of the chat.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733.

DATES: Comments must be submitted on or before April 9, 2007.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733. A copy of the proposed settlement may be obtained from Kenneth Talton (6SF-TE), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-7475. Comments should reference the Tar Creek Superfund Site,

Ottawa County, Oklahoma, EPA Docket Number 06-12-06 and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT:

James Costello (6RC-S), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-8045.

Dated: March 1, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7-4283 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2007-0162; FRL-8118-6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 18, 2006 to February 2, 2007, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before April 9, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0162, by one of the following methods.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001.

• **Hand Delivery:** OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0162. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0162. 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 [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](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 [regulations.gov](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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket's index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then

identify electronically within the disk or CD ROM the specific information that is claimed 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 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 the estimate.
- vi. Provide specific examples to illustrate your concerns, and suggested 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 18, 2006 to February 2, 2007, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you

are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 12/18/06 TO 02/02/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-07-0128	12/11/06	03/10/07	Degussa Corporation	(S) Coil coatings	(G) Polymer of aromatic/cycloaliphatic/aliphatic polycarboxylic acid and aliphatic polyol
P-07-0129	12/11/06	03/10/07	Degussa Corporation	(S) Extrusion of tubing systems; injection molding of special applications	(G) Alkanedicarboxylic acid, polymer with alkanediamine and poly(oxyalkylene)diamine
P-07-0130	12/14/06	03/13/07	Inolex Chemical Company	(S) Lubricant additive for metal working fluids	(S) Hexanedioic acid, polymer with 2,2'-(methylimino)bis[ethanol] and 1,2,3-propanetriol, isooctadecanoate (ester)
P-07-0131	12/14/06	03/13/07	CBI	(G) Contained use in energy production	(G) Polyether polyol polyester polyurethane
P-07-0132	12/18/06	03/17/07	CBI	(G) Multipurpose adhesive, open non dispersive use	(G) Polyurethane prepolymer; polyurethane hot melt adhesive
P-07-0133	12/18/06	03/17/07	DIC International(USA), LLC.	(G) Toner	(G) Polymer with carboxylic acid ester
P-07-0134	12/18/06	03/17/07	DIC International(USA), LLC.	(G) Coating ingredient	(G) Isocyanate compound with polyurethane polyol (provisional)
P-07-0135	12/18/06	03/17/07	DIC International(USA), LLC.	(G) Toner	(G) Polymer with carboxylic acid ester
P-07-0136	12/18/06	03/17/07	DIC International(USA), LLC.	(G) Toner	(G) Polymer with carboxylic acid ester
P-07-0137	12/18/06	03/17/07	DIC International (USA) LLC	(G) Toner	(G) Polymer with carboxylic acid ester
P-07-0138	12/18/06	03/17/07	CBI	(G) Adhesion promoter	(G) Maleic anhydride and acrylics modified polyolefin
P-07-0139	12/20/06	03/19/07	CBI	(S) Ingredient in fragrance compound	(G) Ether alkanol
P-07-0140	12/18/06	03/17/07	CBI	(G) Colorant raw material	(G) Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-ar-[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-, monosodium salt
P-07-0141	12/21/06	03/20/07	CBI	(G) Component in an adhesive formulation for general industrial bonding	(G) Succinoyl phenylhydrazide
P-07-0142	12/21/06	03/20/07	CBI	(G) Curing agent for two-part coating	(G) Amine modified phenol formaldehyde polymer
P-07-0143	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0144	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0145	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0146	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0147	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0148	12/22/06	03/21/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P-07-0149	12/26/06	03/25/07	CBI	(S) Modified resin used as a component in a protective coating	(S) 1,4-cyclohexanedicarboxylic acid, polymer with 1,4-cyclohexanedimethanol and 2,5-furandione, reaction products with glycidyl neodecanoate and polyethylene-polypropylene glycol 2-aminopropyl me ether
P-07-0150	12/26/06	03/25/07	CBI	(S) Binder for wood floor lacquers	(G) Dimer fatty acid based polyester polyurethane
P-07-0151	12/27/06	03/26/07	3M Company	(G) Monomer	(G) Arylacrylate
P-07-0152	12/28/06	03/27/07	Spin Master Ltd	(G) Dye for colored solutions	(G) Alkyl-nitrophenol
P-07-0153	12/28/06	03/27/07	Spin Master Ltd	(G) Dye for colored solutions	(G) 3,3-bis(4-hydroxy-alkoxyphenyl)-1-(3h)-isobenzofuranone
P-07-0154	12/28/06	03/27/07	CBI	(S) Additive in automotive coatings	(G) Carbamated diol
P-07-0155	12/28/06	03/27/07	CBI	(S) Additive in automotive coatings	(G) Carbamated diol
P-07-0156	12/28/06	03/27/07	CBI	(S) Intermediate for a textile finish	(G) Aminomercapto siloxane

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 12/18/06 TO 02/02/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-07-0157	01/03/07	04/02/07	CBI	(G) Component in the manufacture of paper	(G) Vinylamine copolymer
P-07-0159	01/05/07	04/04/07	Shin-etsu Silicones of America, Inc.	(S) Ingredient for glass and/or plastic lens coating agents	(G) Perfluoropolyether compound
P-07-0160	01/05/07	04/04/07	CBI	(G) Processing aid	(G) Organosilane derivative
P-07-0161	01/08/07	04/07/07	CBI	(G) Hardener for epoxy resin	(G) Alkene substituted bis phenol
P-07-0162	01/08/07	04/07/07	Siltech LLC	(G) A foam additive in concentration less than 10%	(S) Siloxanes and silicones, di-me, 3,3,4,4,5,5,6,6,6-nonafluorohexyl
P-07-0163	01/09/07	04/08/07	CBI	(G) Resin	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with bisphenol a, polyalkylene glycol diglycidyl ether and alkylene oxide
P-07-0164	01/08/07	04/07/07	Huntsman International, LLC	(S) Continuous dyeing of cotton fabric	(G) Substituted phenyl amino substituted triazine reaction product with naphthalenesulfonic acid azo substituted phenyl substituted naphthalenesulfonic acid amino compound
P-07-0165	01/09/07	04/08/07	CBI	(G) Resin	(G) Methyl methacrylate, acrylate copolymer
P-07-0166	01/10/07	04/09/07	Cytec Surface Specialties Inc.	(G) Coatings resin	(G) Polyester acrylate resin
P-07-0167	01/10/07	04/09/07	Cytec Industries Inc.	(S) Resin for paints and coatings	(G) Substituted carbomonocycles, polymer with substituted glycols and alkylidic acid
P-07-0168	01/10/07	04/09/07	Cytec Industries Inc.	(S) Ultra violet/eb resin for barrier coatings	(G) Heterocyclic homopolymer, polycyclic substituted ester
P-07-0169	01/11/07	04/10/07	Huntsman Corporation	(S) Intermediate for adhesives	(G) Isocyanate-functional polyurethane
P-07-0170	01/12/07	04/11/07	CBI	(G) Radiation-curable wood, paper and metal coatings, such as wood varnishes, overprint varnishes for paper, and metal coatings.	(G) Polyester polyurethane acrylate oligomer
P-07-0171	01/12/07	04/11/07	CBI	(S) Dispersing agent for crop protection; dispersing agent for home care cleaners	(G) Polyoxyalkylene siloxane
P-07-0172	01/12/07	04/11/07	CBI	(S) Dispersing agent for crop protection; dispersing agent for home care cleaners	(G) Polyoxyalkylene siloxane
P-07-0173	01/12/07	04/11/07	CBI	(S) Dispersing agent for crop protection; dispersing agent for home care cleaners	(G) Polyoxyalkylene siloxane
P-07-0174	01/12/07	04/11/07	CBI	(G) Intermediate (cross-linking agent, chain extender in polymers) in the chemical and polymer industry	(S) Oxazole, 2,2'-(1,3-phenylene)bis(4,5-dihydro-
P-07-0175	01/12/07	04/11/07	Ticona	(S) Fibers	(G) Polyester copolymer based on dmt and alkylene diols
P-07-0176	01/16/07	04/15/07	CBI	(S) (1) Binder for inks, paints and clear coats; (2) Resin modifier or co-resin for coatings systems	(G) Oil/phenolic modified resin
P-07-0177	01/17/07	04/16/07	Clayton Corp.	(S) Polyurethane foam sealant	(G) Mdi based prepolymer
P-07-0178	01/17/07	04/16/07	Clayton Corp.	(S) Polyurethane foam sealant	(G) Mdi based prepolymer
P-07-0179	01/16/07	04/15/07	CBI	(G) Polyurethane foam sealant	(G) Sma ester
P-07-0180	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester
P-07-0181	01/16/07	04/15/07	CBI	(G) Pigment disperant	(G) Sma ester
P-07-0182	01/16/07	04/15/07	CBI	(G) Pigment disperant	(G) Sma ester
P-07-0183	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester
P-07-0184	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester ammonium salt solution
P-07-0185	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester ammonium salt solution
P-07-0186	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester ammonium salt solution
P-07-0187	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester ammonium salt solution
P-07-0188	01/16/07	04/15/07	CBI	(G) Pigment dispersant	(G) Sma ester ammonium salt solution

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 12/18/06 TO 02/02/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-07-0189	01/16/07	04/15/07	CBI	(G) Resin	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with hydroxyalkylsubstituted bisphenol a, 2-ethylhexanoic acid, polyalkylene glycol ether with bisphenol a (2:1), and polyalkylenepolyphenylene isocyanate, reaction products with 2-(alkylamino)ethanol
P-07-0190	01/16/07	04/15/07	CBI	(G) Resin	(G) Methyl methacrylate, acrylate copolymer
P-07-0191	01/16/07	04/15/07	CBI	(G) Resin	(G) Propanoic acid, 2-hydroxy-, ion(1-), salts with hydroxyalkylbisphenol a polymer benzoate 2-ethylhexanoate-2-(dimethylamino)ethanol reaction products
P-07-0192	01/17/07	04/16/07	CBI	(G) Pigment dispersive	(G) Polyethyleneimine polyester copolymer
P-07-0193	01/19/07	04/18/07	Cytec Industries Inc.	(S) Phenolic resin coating	(G) Formaldehyde, polymer with substituted carbomonocycles, alkyl ether
P-07-0194	01/18/07	04/17/07	CBI	(G) Colorant for cleaning products	(G) Polyalkoxylated aromatic colorant
P-07-0195	01/18/07	04/17/07	CBI	(G) Colorant for cleaning products	(G) Polyalkoxylated aromatic colorant
P-07-0196	01/18/07	04/17/07	CBI	(G) Colorant for cleaning products	(G) Polyalkoxylated aromatic colorant
P-07-0197	01/18/07	04/17/07	CBI	(G) Colorant for cleaning products	(G) Polyalkoxylated aromatic colorant
P-07-0198	01/22/07	04/21/07	3M Company	(G) Film coating additive	(G) Surface modified ceramic particles
P-07-0199	01/22/07	04/21/07	Cytec Industries Inc.	(S) Acrylic resin coating for industrial paints	(G) Alkenoic acid alkyl esters, polymer with substituted carbomonocycle, substituted epoxy alkyl ester compound with substituted amine
P-07-0200	01/22/07	04/21/07	Cognis Corporation	(S) Fabric softener/antistat agent in wet fabric cloths for dryer.	(S) Ethanaminium, 2-hydroxy- <i>N,N</i> -bis (2-hydroxyethyl)- <i>N</i> -methyl-, esters with C ₁₂₋₂₀ fatty acids, me sulfates (salts)
P-07-0201	01/23/07	04/22/07	Heraeus Metal Processing Inc.	(S) Platinum catalyst precursor	(S) Platinum(2+), tetraammine-, (sp-4-1)-, dinitrate
P-07-0202	01/24/07	04/23/07	3M Company	(G) Chemical intermediate	(G) Fluorinated alcohol
P-07-0203	01/24/07	04/23/07	3M Company	(G) Chemical intermediate	(G) Fluorinated alkenyl ether
P-07-0204	01/24/07	04/23/07	3M Company	(G) Heat transfer fluid	(G) Hydrofluoroether
P-07-0205	01/25/07	04/24/07	CBI	(G) Oilfield additive	(G) Branched alkylamide, n-ethylhexyl
P-07-0206	01/26/07	04/25/07	CBI	(G) Component of foam	(G) Polymer with aliphatic diol and aromatic diacid
P-07-0207	01/25/07	04/24/07	CBI	(G) Peroxide indicator	(G) Alkylamino-substituted phenothiazine hydrochloride
P-07-0208	01/26/07	04/25/07	CBI	(G) Coating	(G) Acrylic acid polymer with vinylphosphonic acid, maleic anhydride and ethylene glycol acrylate
P-07-0209	01/30/07	04/29/07	Eastman Chemical Company	(S) Plasticizer	(S) 1,3-propanediol, 2-[(benzoyloxy)methyl]-2-ethyl-, dibenzoate
P-07-0210	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene acid haloalkyl sulfo derivative
P-07-0211	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene halo alkyl sulfo derivative
P-07-0212	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene halo alkyl sulfo derivative
P-07-0213	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene halo alkyl sulfo derivative
P-07-0214	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene halo alkyl sulfo derivative
P-07-0215	01/31/07	04/30/07	CBI	(G) Lubricant additive	(G) Modified benzenecarboxylate
P-07-0216	02/01/07	05/01/07	Huntsman International, LLC	(S) Dyeing of cotton fabric	(G) Substituted phenyl amino alkyl sulfonyl reaction product with substituted naphthalenesulfonic acid amino compound
P-07-0217	01/31/07	04/30/07	CBI	(G) Intermediate	(G) Toluene halo alkyl sulfo derivative
P-07-0218	01/31/07	04/30/07	Givaudan Fragrances Corporation	(S) Component of fragrances used for household applications, etc.;	(S) 3-cyclooctene-1-methanol, .alpha.-ethyl-

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 12/18/06 TO 02/02/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-07-0219	01/31/07	04/30/07	Croda Inc.	(S) Solubilizer for semi-polar compounds into non-polar fluids.; glossing agent for inanimate surfaces (wood, metal, plastic, rubber, et al.); shine enhancer for pet shampoo	(G) Ppg-3 benzyl ether myristate
P-07-0220	02/02/07	05/02/07	CBI	(G) Open non dispersive (binder)	(G) Aliphatic polyester- polyether polyurethane resin
P-07-0221	02/06/07	05/06/07	CBI	(G) Chelating agent for petroleum recovery	(G) Aminocarboxylic acid chelating agent
P-07-0222	02/06/07	05/06/07	CBI	(G) Chelating agent for petroleum recovery	(G) Aminocarboxylic acid chelating agent
P-07-0223	02/06/07	05/06/07	CBI	(G) Chelating agent for petroleum recovery	(G) Aminocarboxylic acid chelating agent
P-07-0224	02/06/07	05/06/07	CBI	(G) Chelating agent for petroleum recovery	(G) Aminocarboxylic acid chelating agent
P-07-0225	02/06/07	05/06/07	CBI	(G) Chelating agent for petroleum recovery	(G) Aminocarboxylic acid chelating agent
P-07-0226	02/08/07	05/08/07	The Dow Chemical Company	(G) Dispersion polymer for wood coatings	(G) Mono-me ether blocked methylenediphenyl diisocyanate polyurethane polymer with polyoxypropylene diamine
P-07-0227	02/08/07	05/08/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyethylenegcol diacrylate, modified
P-07-0228	02/08/07	05/08/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polydimethylsiloxane

In Table II of this unit, EPA provides that such information is not claimed as the following information (to the extent CBI) on the TME received:

II. 5 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/18/06 TO 02/02/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T-07-0006	01/10/07	02/23/07	Cytec Surface Specialties Inc.	(G) Coating resin	(G) Polester acrylate resin
T-07-0007	01/10/07	02/23/07	Cytec Surface Specialties Inc.	(S) Resin for paints and coatings	(G) Substituted carbomonocycles, with substituted glycols and alkylidic acid
T-07-0008	01/10/07	02/23/07	Cytec Surface Specialties Inc.	(S) Ultra violet/eb resin for barrier coatings	(G) Hererocyclic homopolymer substituted ester
T-07-0009	01/19/07	03/04/07	Cytec Industries Inc.	(S) Phenolic resin coating	(G) Formaldehyde, polymer with substituted carbomonocycles, alkyl ether
T-07-0010	01/22/07	03/07/07	Cytec Industries Inc.	(S) Acrylic resin coating for industrial paints	(G) Alenoic acid alkyl esters, polymer with substituted carbomonocycle, substituted epoxy alkyl ester compound with substituted amine

In Table III of this unit, EPA provides CBI) on the Notices of Commencement the following information (to the extent to manufacture received: that such information is not claimed as

III. 68 NOTICES OF COMMENCEMENT FROM: 12/18/06 TO 02/02/07

Case No.	Received Date	Commencement Notice End Date	Chemical
P-02-0628	01/16/07	01/09/07	(S) 1,2-propanediol, 2-methyl-3-[(1r,2s,5r)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]-
P-03-0431	01/24/07	12/04/06	(G) Ppdi/polyester prepolymer
P-04-0315	12/26/06	12/10/06	(G) Amine functional epoxy curing agent
P-04-0391	01/16/07	12/18/06	(G) Alkanediol, polymer with alkanedioic anhydride
P-04-0517	01/29/07	01/22/07	(G) Hydroxy-aryl acid, alkyl ester

III. 68 NOTICES OF COMMENCEMENT FROM: 12/18/06 TO 02/02/07—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-04-0728	12/27/06	01/03/05	(S) Butanedioic acid, methylene-, polymer with 2,5-furandione, ammonium salt, hydrogen peroxide-initiated
P-04-0765	01/31/07	11/02/04	(G) Polyether diol, copolymer with toluene diisocyanate, methacrylic acid ester-blocked
P-04-0904	01/16/07	09/29/06	(S) Spiro[5.5]undec-8-en-1-one, 2,2,7,9-tetramethyl-
P-05-0364	01/16/07	12/12/06	(S) 9h-thioxanthanium, 10-[1,1'-biphenyl]-4-yl-2-(1-methylethyl)-9-oxo-, hexafluorophosphate(1-)
P-05-0444	01/16/07	11/10/06	(S) 2-propenoic acid, 2-[1-(3,3-dimethylcyclohexyl)ethoxy]-2-methylpropyl ester
P-06-0033	01/10/07	12/27/06	(S) Phosphoric acid, tin(2+) salt (2:3)
P-06-0184	02/05/07	01/30/07	(G) Styrene-acrylate- methacrylate copolymer.
P-06-0204	12/12/06	11/14/06	(G) Fatty acid, alkyl ester
P-06-0389	12/13/06	11/13/06	(G) Perfluoroalkylethyl methacrylate copolymer
P-06-0420	01/25/07	01/18/07	(S) Butanedioic acid, methylene-, polymer with 2,5-furandione, calcium salt, hydrogen peroxide-initiated
P-06-0436	02/05/07	01/24/07	(G) Fatty acids, C ₁₈ -unsaturated, dimers, hydrogenated, polymers with polypropylene glycol diamine and polyoxyalkylenepolyamine.
P-06-0466	12/14/06	11/20/06	(G) 2-propenoic acid, 2-methyl-, methyl ester, polymer
P-06-0468	02/07/07	01/26/07	(G) Polyalkylenepolyamine-, polymer with 2,2'-[(methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane], reaction products with alkyl and aromatic oxiranes
P-06-0470	12/26/06	12/11/06	(S) 1-propanaminium, N,N,N-trimethyl-3-[(2-methyl-1-oxo-2-propenyl)amino]-, chloride, polymer with N-(1-methylethyl)-2-propenamide, 2-methyl-2-[(1-oxo-2-propenyl)amino]-1-propanesulfonic acid and 2-propenoic acid, sodium salt
P-06-0533	01/08/07	09/17/06	(G) "Ccarbomonocycledicarboxylic acid, polymer with alkenedioic acid, 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, dihydro-3-(tetrapropenyl)-2,5-furandione, .alpha.,.alpha.'-[(1-methylethylidene)dicarbomonocycle] bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and .alpha., .alpha.'-[(1-methylethylidene)dicarbomonocycle]bis[.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)]]"
P-06-0554	12/26/06	12/05/06	(G) Substituted aminotriazolopyrimidine
P-06-0594	12/15/06	11/17/06	(G) Substituted dioxolane
P-06-0595	01/16/07	12/19/06	(S) Phosphonium, [2-(1,3-dioxolane-2-yl)ethyl]triphenyl-, bromide-*
P-06-0601	02/05/07	01/04/07	(G) Substituted benzenedicarboxylic acid, 5,5'-oxybis, polymer with substituted[benzenamine]
P-06-0617	01/16/07	12/15/06	(G) Brominated polyaromatic compound
P-06-0628	01/24/07	01/19/07	(G) Alkyl diisocyanate, homopolymer, substituted alkenoic acid and heteromonocyclic homopolymer and substituted polyethylene glycol
P-06-0630	01/18/07	01/08/07	(G) Mixed metal oxide complex
P-06-0639	12/22/06	11/28/06	(G) Castor oil, dehydrated, polymer with adipic acid, ethylenediamine, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 1,1'-methylenebis[4-isocyanatocyclohexane], neopentyl glycol and polyethylene glycol mono[2,2-bis(hydroxyalkyl)alkyl] ether, compound with triethylamine
P-06-0647	12/20/06	12/09/06	(G) Sulfonated azo-naphthalene derivative, salt
P-06-0663	01/30/07	01/12/07	(G) Aliphatic polyester - polyurethane
P-06-0678	12/11/06	11/20/06	(G) Acrylate copolymer
P-06-0679	12/26/06	12/06/06	(G) 1,3-benzenedisulfonic acid, 4-[[3-methyl-1-(3-sulfobenzoyl)heteropolycycle]amino]-, triammonium salt
P-06-0686	01/16/07	12/19/06	(S) Fatty acids, C ₁₈ -unsaturated, dimers, hydrogenated, polymers with ethylenediamine, piperazine, polypropylene glycol diamine and sebacic acid
P-06-0696	12/28/06	11/28/06	(G) Polymer of styrene, alkyl methacrylates, and substituted methacrylates
P-06-0698	12/15/06	11/22/06	(G) Polymer of acrylic and methacrylic acid derivatives
P-06-0699	01/22/07	01/03/07	(G) Aminoalkyl alcohol, N,N-dialkyl derivatives
P-06-0700	01/12/07	12/13/06	(G) Modified aluminum kelate
P-06-0704	01/30/07	01/09/07	(S) 1-butene, polymer with 1-propene, maleated
P-06-0706	12/22/06	12/17/06	(S) Tetrahydro-3 (phenylmethyl)-2h-pyran
P-06-0709	12/18/06	11/28/06	(G) Maleate mixed esters with straight and branched alkyl alcohols
P-06-0711	12/12/06	11/21/06	(G) Homopolymer of lysine
P-06-0712	12/12/06	11/22/06	(G) Alkyd phthalic polyester
P-06-0714	12/27/06	11/24/06	(G) Polymer-stabilized titania
P-06-0715	12/27/06	11/27/06	(G) Vinyl surface treated carbon black
P-06-0716	12/27/06	12/12/06	(G) Vinylsilane surface treated titania
P-06-0717	12/27/06	11/27/06	(G) Polymer-stabilized copper chromite
P-06-0718	12/27/06	11/27/06	(G) Polymer-stabilized carbon black
P-06-0719	12/27/06	11/23/06	(G) Vinylsilane surface treated copper chromite
P-06-0734	12/11/06	11/27/06	(G) Substituted phenol alkenylester
P-06-0738	12/14/06	12/06/06	(G) Ethanediol tetramethylxylene diisocyanate polymer
P-06-0741	01/30/07	01/05/07	(G) Polyurethane acrylate
P-06-0744	12/14/06	11/26/06	(G) 2-oxepanone, polymer with azirizine and tetrahydro-2h-pyran-2-one, alkanoate, compound with phenyloxirane polymer with oxirane mono(dihydrogen phosphate) alkyl ether
P-06-0748	12/12/06	11/29/06	(G) Polyetheramine

III. 68 NOTICES OF COMMENCEMENT FROM: 12/18/06 TO 02/02/07—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-06-0751	01/30/07	01/25/07	(G) Urethane resin
P-06-0757	02/02/07	01/25/07	(G) Spiro[isobenzofuran-1(3 <i>h</i>), polyheterocycle]-3-one, 3'-chloro-6'-(2,3-dihydro-3,3,5-trimethyl-1 <i>h</i> -indol-1-yl)-4,5,6,7-tetrafluoro-*
P-06-0758	01/30/07	01/08/07	(G) Polyheterocycle, 2,3-dihydro-3,3,5-trimethyl-, hydrochloride
P-06-0759	01/30/07	01/02/07	(G) Acetamide, <i>N</i> -(4-methylphenyl)- <i>N</i> -(alkenyl)-
P-06-0760	01/30/07	01/04/07	(G) Heteropolycycle, 1-acetyl-2,3-dihydro-3,3,5-trimethyl-
P-06-0761	02/02/07	02/01/07	(G) Spiro[isobenzofuran-1(3 <i>h</i>), polyheterocycle]-3-one, 3'-(2,3-dihydro-3,3,5-trimethyl-1 <i>h</i> -indol-1-yl)-6'-[(2,4-dimethylphenyl)amino]-4,5,6,7-tetrafluoro-
P-06-0762	02/02/07	01/19/07	(G) Polyheterocycle, 2,3-dihydro-3,3,5-trimethyl-
P-06-0785	12/27/06	12/05/06	(S) Molybdenum bis(di-C ₁₁₋₁₄ branched and linear carbamodithioato) di- <i>u</i> -oxodioxo-di-,sulfurized
P-06-0789	12/28/06	12/22/06	(S) 2 <i>h</i> -indeno[4,5- <i>b</i>] furan, decahydro-2,2,6,6,7,8,8-heptamethyl Indeno[4,3 <i>a-b</i>] furan, decahydro-2,2,7,7,8,9,9-heptamethyl
P-06-0813	01/31/07	01/22/07	(G) Poly (oxyalkanediyl) „alpha..alpha.,'-carbomonocycledicarbonyl bis (.omega.-alkyloxy-)
P-06-0814	01/31/07	01/22/07	(G) Poly (oxyalkanediyl) „alpha..alpha.,'.alpha.'-carbomonocycletricarbonyl tris (.omega.-alkyloxy-)
P-07-0022	01/30/07	01/11/07	(G) Aqueous polyurethane dispersion
P-07-0035	01/31/07	01/22/07	(G) Methacrylate copolymer
P-07-0036	01/31/07	01/22/07	(G) Methacrylate copolymer
P-99-0026	01/23/07	01/15/07	(S) Cerium, hydroxy oleate propionate complexes

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 1, 2007.

Geraldine Hilton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E7-4171 Filed 3-8-07; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL ELECTION COMMISSION

[Notice 2007-5]

Filing Dates for the Georgia Special Election in the 10th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Georgia has scheduled a special general election on June 19, 2007, to fill the U.S. House of Representatives seat in the Tenth Congressional District held by the late Representative Charlie Norwood. Under Georgia law, a majority winner in a nonpartisan special election is declared elected. Should no candidate achieve a majority vote, a special runoff election will be held on July 17, 2007, between the top two vote-getters.

Committees participating in the Georgia special elections are required to file pre- and post-election reports. Filing

dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:**Principal Campaign Committees**

All principal campaign committees of candidates who participate in the Georgia Special General and Special Runoff Elections shall file a 12-day Pre-General Report on June 7, 2007; a Pre-Runoff Report on July 5, 2007; and a Post-Runoff Report on August 16, 2007. (See chart below for the closing date for each report).

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on June 7, 2007; and a Post-General Report on July 19, 2007. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2007 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Georgia Special General or Special Runoff Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Georgia Special General or Special Runoff Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

Federal Election Commission electioneering communications rules govern television and radio communications that refer to a clearly identified federal candidate and are distributed within 60 days prior to a special general election (including a special general runoff). 11 CFR 100.29. See also 2 U.S.C. 434(f). The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 2 U.S.C. 434(f)(1) and 11 CFR 104.20.

The 60-day electioneering communications period in connection with the Georgia Special General runs from April 20, 2007 through June 19, 2007. The 60-day electioneering communications period in connection with the Georgia Special Runoff runs from May 18, 2007 through July 17, 2007.

Calendar of Reporting Dates for Georgia Special Election

Report	Close of books ¹	Reg./cert. & overnight mailing deadline	Filing deadline
If <i>only</i> the special general is held (06/19/07), quarterly filing committees involved must file:			
Pre-General	05/30/07	06/04/07	06/07/07
July Quarterly .....	.....	waived	.....
Post-General	07/09/07	07/19/07	07/19/07
October Quarterly	09/30/07	10/15/07	10/15/07
If <i>only</i> the special general is held (06/19/07), semiannual filing committees involved must file:			
Pre-General	05/30/07	06/04/07	06/07/07
Post-General & Mid-Year ²	07/09/07	07/19/07	07/19/07
Year-End	12/31/07	01/31/08	01/31/08
If two elections are held, quarterly filing committees involved <i>only</i> in the special general (06/19/07) must file:			
Pre-General	05/30/07	06/04/07	06/07/07
July Quarterly	06/30/07	07/15/07	07/15/07
If two elections are held, semiannual filing committees involved <i>only</i> in the special general (06/19/07) must file:			
Pre-General	05/30/07	06/04/07	06/07/07
Mid-Year	06/30/07	07/31/07	07/31/07
Quarterly filing committees involved in the special general (06/19/07) and special runoff (07/17/07) must file:			
Pre-General	05/30/07	06/04/07	06/07/07
July Quarterly .....	.....	Waived	.....
Pre-Runoff	06/27/07	07/02/07	07/05/07
Post-Runoff	08/06/07	08/16/07	08/16/07
October Quarterly	09/30/07	10/15/07	10/15/07
Semiannual filing committees involved in the special general (06/19/07) and special runoff (07/17/07) must file:			
Pre-General	05/30/07	06/04/07	06/07/07
Pre-Runoff	06/27/07	07/02/07	07/05/07
Mid-Year	06/30/07	07/31/07	07/31/07
Post-Runoff	08/06/07	08/16/07	08/16/07
Year-End	12/31/07	01/31/08	01/31/08
Quarterly filing committees involved <i>only</i> in the special runoff (07/17/07) must file:			
July Quarterly .....	.....	Waived	.....
Pre-Runoff	06/27/07	07/02/07	07/05/07
Post-Runoff	08/06/07	08/16/07	08/16/07
October Quarterly	09/30/07	10/15/07	10/15/07
Semiannual filing committees involved <i>only</i> in the special runoff (07/17/07) must file:			
Pre-Runoff	06/27/07	07/02/07	07/05/07
Mid-Year	06/30/07	07/31/07	07/31/07
Post-Runoff	08/06/07	08/16/07	08/16/07
Year-End	12/31/07	01/31/08	01/31/08

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

² Committees should file a consolidated Post-General and Mid-Year Report by the filing date of the Post-General Report.

³ Notice that this deadline falls on a holiday or a weekend. Filing dates are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's (or for committees supporting only Senate candidates, the Secretary of Senate's) close of business on the last business day before the deadline.

Dated: March 2, 2007.

Robert D. Lenhard,
Chairman, Federal Election Commission.
[FR Doc. E7-4183 Filed 3-8-07; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB)

delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved

collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 8, 2007.

ADDRESSES: You may submit comments, identified by FR TA-1 (OMB No. 7100-00099); FR 4021 (OMB No. 7100-0306); FR 1375 (OMB No. 7100-0307); FR 2060 (OMB No. 7100-0232); FR 4031 (OMB No. 7100-0264); or Reg H-1 (OMB No. 7100-0091) by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov.

Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202-395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

- Report title:* Notification of Nonfinancial Data Processing Activities
Agency form number: FR 4021
OMB control number: 7100-0306
Frequency: On occasion
Reporters: Bank holding companies
Annual reporting hours: 4 hours
Estimated average hours per response: 2 hours
Number of respondents: 2
General description of report: This information collection is required to obtain a benefit. (12 U.S.C. 1843(c)(8), (j) and (k) and may be given confidential

treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: Bank holding companies submit this notification to request permission to administer the 49-percent revenue limit on nonfinancial data processing activities on a business-line or multiple-entity basis. A request may be filed in a letter form; there is no reporting form for this information collection.

2. Report title: Survey of Financial Management Behaviors of Military Personnel

Agency form number: FR 1375
OMB control number: 7100-0307
Frequency: Semi-annually
Reporters: Military personnel
Annual reporting hours: 2,640 hours
Estimated average hours per response: 20 minutes

Number of respondents: 4,000
General description of report: This information collection is voluntary. The statutory basis for collecting this information is section 2A of the Federal Reserve Act [12 U.S.C. § 225a]; the Bank Merger Act [12 U.S.C. § 1828(c)]; and sections 3 and 4 of the Bank Holding Company Act [12 U.S.C. §§ 1842 and 1843 and 12 U.S.C. §§ 353 and 461]. No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents will not be reported to the Board.

Abstract: This survey gathers data from two groups of military personnel: (1) those completing a financial education course as part of their advanced training and (2) those not completing a financial education course. These two groups are surveyed on their financial management behaviors and changes in their financial situations over time. Data from the survey help to determine the effectiveness of financial education for young adults in the military and the durability of the effects as measured by financial status of those receiving financial education early in their military careers.

3. Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases

Agency form number: FR 2060
OMB control number: 7100-0232
Frequency: On occasion
Reporters: Small businesses and consumers
Annual reporting hours: 18 hours
Estimated average hours per response: Small businesses, 10 minutes; Consumers, 6 minutes.

Number of respondents: 25 small businesses and 50 consumers per survey
General description of report: This information collection is voluntary (12 U.S.C. §1817(j), 1828(c), and 1842)) and

is given confidential treatment (5 U.S.C. §§ 552 (b)(4) and (b)(6)).

Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions.

4. Report title: Notice of Branch Closure

Agency form number: FR 4031

OMB control number: 7100-0264

Frequency: On occasion

Reporters: State member banks

Annual burden hours: 422 hours

Estimated average hours per response: Reporting requirements, 2 hours; Disclosure requirements, 1 hour; Recordkeeping requirements, 8 hours.

Number of respondents: 124

General description of report: This information collection is mandatory (12 U.S.C. 1831r-l(a)(1)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

5. Report title: Reports Related to Securities of State Member Banks as Required by Regulation H.

Agency form number: Reg H-1

OMB Control number: 7100-0091

Frequency: Quarterly and on occasion

Reporters: State member banks

Annual reporting hours: 1,477 hours

Estimated average hours per response: 5.11 hours

Number of respondents: 17

General description of report: This information collection is mandatory (15 U.S.C. 781(i)) and is not given confidential treatment.

Abstract: The Federal Reserve(s) Regulation H requires certain state member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.

Board of Governors of the Federal Reserve System, March 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7-4264 Filed 3-8-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *BlackRidge Financial, Inc.*, Fargo, North Dakota, to acquire 100 percent of the voting shares of BlackRidgeBANK, Fargo, North Dakota, a *de novo* bank.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Woodforest Financial Group, Inc.*, The Woodlands, Texas; to acquire 100

percent of the voting shares of Olympic Savings, SSB, Refugio, Texas. Upon consummation, Woodforest Final Group, Inc., will convert Olympic Bank into a federal savings bank and change its name to Woodforest Bank, FSB, Refugio, Texas, and thereby engage in owning and operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-4173 Filed 3-8-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *Chittenden Corporation*, Burlington, Vermont; to acquire 100 percent of the voting shares of, and thereby merge with Merrill Merchants Bancshares, Inc. and thereby indirectly acquire Merrill Merchants Bank, all located in Bangor, Maine.

In connection with this application, Applicant also has applied to acquire at least 5 percent of the voting shares of M&M Consulting Limited Liability Company, Bangor, Maine, and thereby engage in providing internal audits, loan reviews and regulatory compliance consulting services, generally under one to two year contracts, to New England-based financial institutions, pursuant to sections 225.28(b)(2)(vi) and (b)(9)(i)(A)(1) of Regulation Y, and indirectly acquire Profit Protection LLC, and thereby engage in providing anti-money laundering and bank security seminars/training sessions in Florida and across the country and the publication of banking-related training manuals, pamphlets, video tapes and similar materials, pursuant to section 225.28(b)(9)(i)(A)(1) of Regulation Y.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Minier Financial, Inc. Employee Stock Ownership Plan w/401(k) Provisions*, Minier, Illinois; to increase its ownership of Minier Financial, Inc., Minier, Illinois, from 26.12 percent to no more than 51 percent, and thereby increase its indirectly ownership of First Farmers State Bank, Minier, Illinois.

Board of Governors of the Federal Reserve System, March 6, 2007.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E7-4241 Filed 3-8-07; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Notice of Public Input Opportunity

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) announces the following availability of opportunity for the public to provide input regarding the draft document, "Explosion Pressure Design Criteria for New Seals in U.S. Mines."

NIOSH is the Federal agency responsible for conducting research and

making recommendations for the prevention of occupational injuries and illnesses, including those occurring in the mining industry. Federal Mine Safety and Health Act, 30 U.S.C. 951.

Seals are dam-like structures constructed in underground coal mines throughout the U.S. to isolate abandoned mining panels or groups of panels from the active workings. Historically, mining regulations required seals to withstand a 140 kPa (20 psi) explosion pressure; however, the 2006 MINER Act requires MSHA to increase this design standard by the end of 2007. This report provides a sound scientific and engineering justification to recommend a three-tiered explosion pressure design criteria for new seals in coal mines in response to the MINER Act. Much of the information contained in this report also applies to existing seals.

A copy of the draft document can be found at: <http://www.cdc.gov/niosh/review/public/mineseal/>.

Comments should be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C-34, Cincinnati, OH 45226, telephone 513/533-8450, fax 513/533-8285, nioshdocket@cdc.gov. Comments may also be submitted directly through the Web site <http://www.cdc.gov/niosh/review/public/mineseal/comments.html>.

The document will remain available for comment until March 12, 2007. Comments should reference docket number NIOSH-100 in the subject heading.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT:

Jeffery Kohler, PhD, NIOSH Associate Director for Mining and Construction, 626 Cochran Mill Road, Pittsburgh, PA 15236, 412-386-6544.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07-1119 Filed 3-8-07; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-265-94 and CMS-460]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Independent Renal Dialysis Facility Cost Report and supporting regulations 42 CFR 413.20 and 42 CFR 413.24; *Form No.:* CMS-265-94 (OMB# 0938-0236); *Use:* Providers of services participating in the Medicare program are required under sections 1815(a), 1833(e), 1861(v)(1)(A) and 1881(b)(2)(B) of the Social Security Act to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. The Form CMS-265-94 cost report is needed to determine the amount of reasonable cost due to the providers for furnishing medical services to Medicare beneficiaries.

The data collected will be used for the following additional purposes: (a) Determination of reimbursements rates for renal dialysis treatments, self-dialysis training, and other reasonable and medically necessary services rendered in connection with these treatments; (b) justification of requests for adjustments or exceptions in the reimbursements rates; and, (c) accumulation of data for overall evaluation. Worksheet B, Worksheet C

and Worksheet D have been modified to implement provisions of the Medicare Prescription Drug Improvement and Modernization Act of 2003. On Worksheet B, the allocation of Administrative and General cost to Separately Billable Drugs was eliminated. On Worksheet C, two columns were sub-divided to identify services before, on or after 4/1/2005. A line was added to Worksheet D to report bad debts for dual eligible beneficiaries. None of these changes request new information; rather, the changes require reporting of data in greater detail than was previously reported. *Frequency: Reporting—Annually; Affected Public: Business or other for-profit, Not-for-profit institutions; Number of Respondents: 4,885; Total Annual Responses: 4,885; Total Annual Hours: 957,460.*

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Medicare Participating Physician or Supplier Agreement; **Form No.:** CMS-460 (OMB# 0938-0373); **Use:** The CMS-460 is the agreement a physician, supplier or their authorized official signs to participate in Medicare Part B. By signing the agreement to participate in Medicare, the physician, supplier or their authorized official agrees to accept the Medicare-determined payment for Medicare covered services as payment in full and to charge the Medicare Part B beneficiary no more than the applicable deductible or coinsurance for the covered services. For purposes of this explanation, the term a supplier means any person or entity that may bill Medicare for Part B services (e.g. DME supplier, nurse practitioner, supplier of diagnostic tests) except a Medicare provider of services (e.g. hospital), which must participate to be paid by Medicare for covered care.

There are additional benefits associated with payment for services paid under the Medicare fee schedule. Payments made under the Medicare fee schedule for physician services to participating physicians and suppliers are based on 100 percent of the Medicare fee schedule amount, while the Medicare fee schedule payment for physician services by nonparticipating physicians and suppliers is based on 95 percent of the fee schedule amount. Physicians and suppliers who do not participate in Medicare are subject to limits on their actual charges for unassigned claims for physician services. These limits, known as limiting charges, cannot exceed 115 percent of the non-participant fee schedule, which is set at 95 percent of

the full fee schedule amount. In addition, if a physician or supplier does not accept assignment on a claim for Medicare payment, the physician or supplier must collect payment from the beneficiary. If the physician or supplier accepts assignment on the claim, Medicare pays its share of the payment directly to the physician or supplier, resulting in faster and more certain payment. *Frequency: Reporting, Other—when starting a new business; Affected Public: Business or other for-profit; Number of Respondents: 6000; Total Annual Responses: 6000; Total Annual Hours: 1500.*

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on May 8, 2007. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: March 2, 2007.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E7-4235 Filed 3-8-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Mentoring Children of Prisoners (MCP) Program.
OMB No.: New Collection.

Description: The Promoting Safe and Stable Families Amendments, as reauthorized (2006), amended Title IV-B of the Social Security Act (42 U.S.C. 629-629e) providing funding for nonprofit agencies that recruit, screen, train, and support mentors for children with an incarcerated parent or parents. The Family and Youth Services Bureau

(FYSB) of the Administration for Children and Families, United States Department of Health and Human Services, administers the Mentoring Children of Prisoners (MCP) program. The MCP program provides children of prisoners with caring adult mentors, supporting one-to-one mentoring relationships. Research in other populations has shown that such relationships can lead to reductions in risk behaviors and improvements in academic, behavioral and psychological outcomes in children and youth. Although the MCP program was developed based on research documenting the efficacy of mentoring as a general intervention strategy, it is not yet known whether or not this particular intervention yields positive outcomes for the children of prisoners population. Little is known about how mentoring relationships work for these youth, and how effective mentoring relationships for children of prisoners differ from effective mentoring relationships for other youth. In addition, little is known about children of prisoners in general and thus a survey of MCP program youth has the potential to provide important data about this relatively unstudied population.

The evaluation and data collection proposed in this notice are to fulfill the statutory requirement under Section 8, subsection h(1) of the Child and Family Services Improvement Act of 2006, as amended, that the Secretary of the Department of Health and Human Services evaluate outcomes of the MCP program and report to Congress on the findings. The proposed data collections will support a study of the MCP program that measures the program's child outcomes and compares these outcomes in similar programs. The data collection also will provide general information about youth in the program. Finally, the study will include an administrative survey of grantees participating in the study. The proposed study will include baseline and follow-up surveys (to be administered approximately 12 months apart) of youth ages 9-16 in the MCP program and will compare changes in key behaviors for program youth against changes in behaviors of similar youth not enrolled in mentoring programs. By comparing changes for youth in the MCP program against changes for youth not in the program, we will be able to determine if MCP youths' behaviors are closer to the norm for their age group at follow-up than at program intake. If MCP youths' behaviors and outcomes are shown to improve relative to other groups, the MCP program has

demonstrated the potential for positive impacts. The survey also will include some general informational questions about youth in the study so that HHS, policy makers, and practitioners can have a greater understanding of the life circumstances of these youth and of some of the challenges they may face.

The youth surveys will focus on measuring both attitudinal and behavioral changes in areas targeted by the MCP program including attitudes

towards and performance in school; relationships with parents, peers and teachers; self-esteem; and engagement in a variety of risk behaviors, including alcohol and drug use and physical violence. They also will include questions about the living situations of youth in the study, their relationships with both incarcerated and non-incarcerated caregivers, and their relationships with other supportive adults in their communities.

The administrative survey of grantees will include questions about the programmatic structure of each grantee. It will provide information about variations in program administration, mentor activities, and youth served.

Respondents: Mentoring Children of Prisoners (MCP) grantees and non-MCP mentoring organizations.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Student Baseline Survey.	625	1	.5	312.5
Student follow-up Survey.	500	1	.5	250
Grantee Survey	72	1	1	72

Estimated Total Annual Burden Hours: 634.5.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, FAX: 202-395-6974, Attn: Desk Officer for ACF.

Dated: March 5, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-1101 Filed 3-8-07; 8:45 am]

BILLING CODE 4184-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D-0301]

Guidance for Industry: Animal Drug User Fees; Fees Exceed Costs Waiver/Reduction; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance for industry (#183) entitled "Guidance for Industry: Animal Drug User Fees; Fees Exceed Costs Waiver/Reduction." This guidance explains the procedures FDA expects to use to evaluate waiver requests under the fees exceed costs waiver provision of the Animal Drug User Fee Act of 2003 (ADUFA).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV-12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dave Newkirk, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6967, e-mail: david.newkirk@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 17, 2006 (71 FR 47502), FDA published the notice of availability of the draft guidance entitled "Guidance for Industry: Animal Drug User Fees; Fees Exceed Costs Waiver and Reductions" giving interested persons until October 31, 2006, to submit comments. FDA received no comments.

ADUFA (Public Law 108-130) amended the Federal Food, Drug, and Cosmetic Act (the act) and requires the FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from or a reduction of those fees in certain circumstances.

This guidance explains the procedures FDA expects to use to evaluate waiver requests under the fees exceed costs waiver provision of ADUFA. These procedures may be modified in the future as FDA gains more experience with waiver requests.

To qualify for waiver consideration, a written request to the agency for a waiver/reduction, including under the fees exceed costs waiver provision, must be submitted no later than 180 days after the fee is due (section 740(i) of the act (21 U.S.C. 379j-12(i))).

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the topic. The document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative approaches may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in Guidance for Industry #170. These collections of information are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been approved under OMB Control No. 0910–0540.

IV. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either CVM home page (<http://www.fda.gov/cvm>) or the Division of Dockets Management Web site <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: March 1, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–4322 Filed 3–8–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submissions for OMB Review; Comment Request; Evaluation of the Impact of the New Conflicts of Interest Regulations on the National Institutes of Health's Ability to Recruit and Retain Staff

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Human Resources (OHR), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The purpose of this notice is to allow 30 days for public comment. The NIH 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: Evaluation of the Impact of the New Conflicts of Interest regulations on the National Institutes of Health's Ability To Recruit and Retain Staff.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: To assess the impact of new Department of Health and Human Services (HHS) conflicts of interest regulations on the NIH's ability to continue to attract and recruit highly qualified scientific personnel. Gauging both the immediate and long-term impact of these new rules is crucial to

NIH's ability to develop and maintain a world-class staff. This project will produce data that will help NIH and HHS leaders determine the impact of the regulations and how to minimize the effect of the regulations on NIH's ability to recruit and retain staff. NIH intends to survey potential applications for NIH employment from scientific organizations from which NIH has traditionally drawn leading scientific personnel, and those senior scientists and administrators who have voluntarily left NIH since February 2005. This will allow NIH to determine whether the regulations impact individuals' attitudes about employment at NIH and the likelihood of their joining and/or leaving the agency. This proposed one-time survey is part of a larger study that will provide OHR with the high-quality data needed to evaluate the impact of the new rules. Data will be collected on respondents' understanding of the new regulations, how they believe the regulations could impact them, and on their feelings about working at NIH in light of the regulations. Data will also be collected from current NIH employees and the combined data will be used in the review of the rules. The survey is planned to launch in early 2007 and to be in the field for eight weeks.

Frequency of Response: Once.

Affected Public: Individuals or households.

Type of Respondents: Potential applicants for NIH positions and senior scientists and administrators who have voluntarily left NIH since February 2005.

The annual reporting burden is as follows:

Type of respondent	Number of respondents	Frequency of response	Average time per response (minutes)	Estimated total annual hour burden (hours)
Potential Applicants	400	1	15	100
Former NIH Employees	100	1	10	16.67
TOTAL	500	.....	.....	116.67

Total Number of Respondents: 500.

Total Number of Responses: 500.

Total Hours: 116.67 hours.

The annualized cost to respondents is estimated at: \$3,850.

There are no capital costs, operating costs, and/or maintenance costs to report.

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 Comment 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 Mr. Richard M. Taffet, Director, Client Services Division; Office of Human Resources, Office of the Director, National Institutes of Health, Room 2-D234, East Jefferson Street, Bethesda, MD 20892-8503, or call the non-toll-free number 301-402-6627, or e-mail your comments or request, including your address, to: Taffetr@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 this publication.

Dated: February 26, 2007.

Richard M. Taffet,

Director, Client Services Division, OHR, OD, National Institutes of Health.

[FR Doc. 07-1087 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods of Treating Conditions Characterized by Unwanted or Excessive Presynaptic Neuronal Activity or Secretion

Description of Technology: Botulinum toxins are highly potent neurotoxins produced by the spore-forming bacterium, *Clostridium botulinum*. Poisoning by any of the seven known botulinum toxin serotypes, designated A to G, results in impaired communication between nerve and muscle that causes paralysis in patients and possible death by respiratory failure. Injections of botulinum toxins A and B have been approved for treating disorders associated with uncontrollable muscle contractions. However, the use of approved botulinum toxins is limited by their temporary duration of action, the development of neutralizing antibodies after repeated injections, and cross-reactivity with autonomic neurons. Thus, an interest exists in finding new ways to achieve longer-lasting effects using botulinum toxins.

This technology describes a novel method for treating diseases by combining two botulinum toxins, botulinum toxin A and B. Researchers at the FDA have shown that the combination of the A and B toxins is synergistic, improves muscle paralysis characteristics compared to individually administered serotypes, and produces a longer duration of action and a faster onset of paralysis. The synergistic effect allows lower doses compared to single use of either toxin and should help reduce resistance after repeated use. This technology is beneficial for the treatment of diseases already known to be treatable with botulinum toxins, such as facial wrinkles, headaches, muscle spasms, and cervical dystonia. This technology is also suitable to treat other diseases, such as strabismus, hemifacial spasms, facial nerve damage, and hyperhidrosis (excessive sweating).

Available for licensing are methods and pharmaceutical compositions for administering a combination of botulinum toxin A and B to treat unwanted or excessive presynaptic neuronal activity or secretion.

Application: Alternative therapy for diseases treatable with individual botulinum toxins; such therapies include Botox®, Botox Cosmetic®, and Myobloc®.

Market: Patients who are currently prescribed individual toxins for treatment of diseases such as strabismus, blepharospasm, cervical dystonia, and cosmetic wrinkle reduction.

Development Status: Pre-clinical data is available.

Inventors: James E. Keller (CBER/FDA).

Publications: JE Keller. Recovery from botulinum neurotoxin poisoning in vivo. *Neuroscience* 2006 May 12;139(2):629-637.

Patent Status: U.S. Provisional Application No. 60/773,412 filed 15 Feb 2006 (HHS Reference No. E-172-2005/0-US-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Norbert Pontzer, PhD, J.D.; 301/435-5502; pontzern@mail.nih.gov.

Collaborative Research Opportunity: The FDA Center for Biologics Evaluation and Research, Laboratory of Respiratory and Special Pathogens, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact James E. Keller, PhD, at 301/ for more information.

Synergistic Effect of TGF-Beta Blockade and Immunogenic Agents on Tumors

Description of Technology:

Overcoming immune suppression in cancer patients is a major challenge for the success of cancer immunotherapy. TGF-β and its receptors are expressed in essentially all tissues, and they have been found to be important in many cellular processes including cell growth inhibition. The inhibition of TGF-β signaling has been shown to have an inhibitory effect on tumor growth. However, TGF-β also has immunosuppressive properties.

Cancer vaccines are one of many therapies available for treatment and prevention. In particular, vaccines that elicit immune responses have been used to treat or control tumor growth that has evaded immunosurveillance. However, these vaccines have demonstrated limited success.

Available for licensing is a method for synergistically affecting tumor growth involving the administration of an agent that blocks the TGF-β signaling pathway, in combination with an immunogenic agent. The agent that blocks the TGF-β signaling pathway may inhibit the immunosuppressive effects of TGF-β, while the immunogenic agent is believed to enhance an immune response. Surprisingly, the combination of such elements produces a synergistic effect. The administration of the 1D11.16 anti-TGF-β antibody in combination with the human papilloma virus E7(49-57) peptide enhances tumor regression in an animal model. The administration of the 1D11.16 anti-TGF-β antibody in

combination with irradiated CT26 cells enhances tumor regression in another mouse model. The investigators found that administering the combination of agents is more effective than the sum of their individual effects.

Applications: A method of cancer combination therapy based on immunotherapeutics.

Development Status: The invention is in the clinical stages of development.

Inventors: Masaki Terabe (NCI) et al.

Publications:

1. PCT patent publication WO 2006/089251, August 24, 2006.

2. M Terabe et al. Transforming growth factor-beta production and myeloid cells are an effector mechanism through which CD1d-restricted T cells block cytotoxic T lymphocyte-mediated tumor immunosurveillance: abrogation prevents tumor recurrence. *J Exp Med.* 2003 Dec 1;198(11):1741-1752.

Patent Status: U.S. Provisional Application No. 60/654,329 filed 17 Feb 2005 (HHS Reference No. E-019-2005/0-US-01); PCT Application No. PCT/US2006/005888 filed 16 Feb 2006 (HHS Reference No. E-019-2005/0-PCT-02).

Licensing Availability: Available for exclusive and non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435-4633; wongje@mail.nih.gov

Arylthioindole Tubulin Polymerization Inhibitors and Methods of Treating or Preventing Cancer Using Same

Description of Technology:

Microtubules are involved in a variety of cellular functions including motility, division, shape maintenance, and intracellular transport. Tubulin is the major protein component in microtubules, and interference with microtubule assembly leads to an increase of cells in metaphase arrest. Inhibition of microtubule function using tubulin targeted agents are widely used in the treatment of cancer.

This invention describes novel arylthioindole derivatives, 3-arylthioindole-2-carboxylic acid esters derivatives, having excellent affinity for tubulin and excellent efficacy as inhibitors of the growth of MCF-7 breast cancer cells. These new chemical compounds have the potential to result in more effective therapeutics for the treatment of neoplastic diseases.

Applications: Therapeutic for proliferative diseases such as cancer.

Market: 600,000 deaths from cancer related diseases estimated in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Ernest Hamel (NCI) et al.

Publications:

1. G De Martino, MC Edler, G La Regina, A Coluccia, MC Barbera, D

Barrow, RI Nicholson, G Chiosis, A Brancale, E Hamel, M Artico, R Silvestri. New arylthioindoles: potent inhibitors of tubulin polymerization. 2. Structure-activity relationship and molecular modeling studies. *J Med Chem.* 2006 Feb 9;49(3):947-954.

2. G De Martino, G La Regina, A Coluccia, MC Edler, MC Barbera, A Brancale, E Wilcox, E Hamel, M Artico, R Silvestri. Arylthioindoles, potent inhibitors of tubulin polymerization. *J Med Chem.* 2004 Dec 2;47(25):6120-6123.

Patent Status: PCT Application No. PCT/US2005/035896 filed 05 Oct 2005 (HHS Reference No. E-323-2004/0-PCT-02).

Licensing Availability: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435-4633; wongje@mail.nih.gov.

Dated: March 2, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7-4182 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: March 23, 2007.

Time: 10 a.m. to 2 p.m.

Agenda: To discuss progress of activities related to research opportunities, training, planning and funding in the NIH intramural clinical research program.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4-2551, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6-2551, Bethesda, MD 20892, 301/496-2897.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statements to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1099 Filed 3-8-07; 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 President's Cancer Panel, February 12, 2007, 8 a.m. to February 12, 2007, 6 p.m., University of Mississippi, Medical Center, 2500 North State Street, Jackson, MS 39216 which was published in the **Federal Register** on January 11, 2007, 72 FR 1335.

Due to inclement weather, this meeting is amended to reschedule the closed session on February 12, 2007, 4 p.m.-6 p.m. to March 8, 2007, 11 a.m.-1 p.m. as a telephone conference. The meeting is closed to the public.

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1109 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Cancer Institute Special Emphasis Panel, Development of Molecular Pharmacodynamic Assays for Targeted Therapies.

Date: March 16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892-8329, 301-496-7421, kerwinm@mail.nih.gov.

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. 93.392, 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: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1123 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

The National Cancer Advisory Board's Breast Cancer Prevention Trial P-4 Working Group will meet to discuss the P-4 trial which is designed to perform a 10-year study in risk-eligible, postmenopausal women to determine whether letrozole is more effective than raloxifene in reducing the incidence of invasive breast cancer in this otherwise healthy population. The meeting will be closed to the public.

The thoughts and input from this meeting will be summarized in a report

that will be presented to the National Cancer Advisory Board in open session at an upcoming meeting.

Name of Work Group: National Cancer Advisory Board, Breast Cancer Prevention Trial P-4 Working Group.

Closed: March 23, 2007, 8:30 a.m. to 4:30 p.m.

Agenda: The purpose of the work Group will be to ensure that funds are invested optimally to achieve outcomes that utilize the best of clinical and molecular sciences to answer key scientific questions, produce extremely valuable data sets for the community, and, in this instance, provide maximal benefit to breast cancer patients.

Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

SUPPLEMENTARY INFORMATION:

Background

Over the past several years the National Cancer Institute has performed a series of important prevention clinical trials to study the effect(s) of tamoxifen, raloxifene (Selective Estrogen Receptor Modulators—SERMS) and, subsequently, aromatase inhibitors such as letrozole on reducing the incidence of invasive breast cancer in defined populations of postmenopausal women. As follow-on to this series of breast cancer prevention trials, a new trial in the sequence, the P-4 trial, has been proposed and peer-reviewed. The P-4 trial is designed to perform a 10-year study in risk-eligible, post menopausal women to determine whether letrozole is more effective than raloxifene in reducing the incidence of invasive breast cancer in this otherwise healthy population. The trial will accrue 12,800 patients over 4 years. The primary endpoint for this trial will be the first occurrence of invasive breast cancer. Secondary endpoints will include DCSI; LCIA, ischemic heart disease; fracture of the wrist, hip, and spine; DVTs; PEs; TIAs and stroke; death; other invasive cancers; and quality of life.

The P-4 trial is a significant financial commitment on the part of the National Cancer Institute and of the cancer research community. Additionally, the outcome of this trial will require more than 10 years of study. Given the magnitude of this investment, the rapid acceleration of progress is molecular genetics and molecular biology, and the disparate range of views on the trial, the National Cancer Advisory Board is convening a group of experts to provide feedback to the National Cancer Advisory Board.

Any interested person may file written comments with the work group by forwarding the statement to the Contact Person listed in this notice. This statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1126 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, GEI Genotyping and Coordinating Centers.

Date: March 30, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301-402-0838. (Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1112 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 15, 2007, 7 p.m. to March 16, 2007, 6 p.m., The Radisson Governor's Inn, I-40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709 which was published in the **Federal Register** on February 13, 2007, fr13fe07-60.

The meeting will be held 8 a.m. to 5 p.m. on both days. The meeting is closed to the public.

Dated: March 1, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1088 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Review of Pathway to Independence Application (Career Development).

Date: March 21, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-1307.

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 Environmental Health Sciences Special Emphasis Panel, Review of Biological Response Indicators of Environmental Stress Centers (U54) and Biomarkers (U01).

Date: March 29-31, 2007.

Time: 1 p.m. to 1 p.m.

Agenda: The review and evaluate grant applications.

Place: Marriott, Charlotte, NC.

Contact Person: Linda K Bass, PhD, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: March 1, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1089 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Drug Studies.

Date: March 6, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892, (301) 496-7705, hsul@exmur.nia.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 on Aging Special Emphasis Panel, Modeling the Decision to Retire.

Date: March 16, 2007.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, haddenw@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Elder Mistreatment 2007 RFA Meeting.

Date: March 26-27, 2007.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814, (301) 402-7703, rolfj@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Foundations of Economic Behavior.

Date: March 26-27, 2007.

Time: 4 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Marriott, 7335 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, haddenw@mail.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Beeson Review Meeting.

Date: March 27–28, 2007.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: William Cruce, PhD, Health Science Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, crucew@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Immunology RFA.

Date: March 28–29, 2007.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bitu Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, nakhaib@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 1, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1090 Filed 3–8–07; 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 Special Emphasis Panel, Fellowship Review Meeting.

Date: March 21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, mcconnej@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Pathogenesis of Muscular Dystrophy.

Date: March 27, 2007.

Time: 8 a.m. to 6 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, NIH/NINDS/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 Special Emphasis Panel, K99 Review Meeting.

Date: March 27, 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: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, mcconnej@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, MR of Neuronal Development.

Date: March 27, 2007.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

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, 301–594–0635, rc218u@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NIH Blueprint-Biomarkers of Neurodegeneration.

Date: April 3–4, 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: 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, benzingw@mail.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Stroke Recovery Trial.

Date: April 3, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

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, 301–594–0635, rc218u@nih.gov.

(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: March 1, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1091 Filed 3–8–07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Institute of Neurological Disorders and Stroke Special Emphasis Panel, Clinical Research Data Management.

Date: March 19, 2007.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892-9529, (301) 496-5388, wiethorp@ninds.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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 1, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1092 Filed 3-8-07; 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 Special Emphasis Panel, NSD-C Epilepsy Conflict SEP.

Date: March 13, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

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, benzingw@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, SMA Review.

Date: March 16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435-6033, rajarams@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 1, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1093 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel, Translational Research in Integrative Behavioral Science.

Date: March 27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Adult Interventions Conflicts.

Date: April 4, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301-443-1959, csarampo@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1094 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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 Arthritis and Musculoskeletal and Skin

Diseases Special Emphasis Panel; Women's Health and Osteoporosis.

Date: March 13, 2007.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles H. Washabaugh, PhD., Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892, 301-594-1501, washabac@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clinical Trial Planning.

Date: March 26, 2007.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kan Ma, PhD., Scientific Review Administrator, NIH/NIAMS, EP Review Branch, One Democracy Plaza, Suite 800, Bethesda, MD 20892-4872, 301-594-4952, mak2@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Orthopedic Clinical Trial.

Date: March 27, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael L. Bloom, PhD., Scientific Review Administrator, EP Review Branch, NIH-NIAMS Institute, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892-4872, 301-594-4953, Michael_Bloom@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS.)

Dated: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1095 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: March 7-8, 2007.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd, Suite 800, Plaza One, Bethesda, MD 20817, 301-594-4952, linh1@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1096 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute 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 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 person privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Partnerships with Public-Private Partnerships.

Date: April 2-3, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thames E. Pickett, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-496-2550, pickett@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01 Immune Deficiency in HIV Infection.

Date: April 4, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3129, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301-435-3564, ec17w@niaid.nih.gov.

(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: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1097 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Alcohol and Acid Related Gastro Intestinal Disorders.

Date: March 19, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4719, guox@extra.niddk.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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Neuromuscular Gastrointestinal Program Projects.

Date: March 26, 2007.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7799, ls38oz@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Chronic Kidney Diseases Ancillary Studies.

Date: April 11, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, rw175w@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Mentored Clinical Scientist Award to Promote Diversity.

Date: April 11, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594-8898, barnardm@extra.niddk.nih.gov.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, The Neighborhood Environment and Diabetes Ancillary Studies.

Date: April 12, 2007.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594-8898, barnardm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1098 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Development and Differentiation Within the Reproductive Axis.

Date: April 12, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn/Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6680, skandasa@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1111 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with

the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, SIS Multicenter Study of Duration of Antibiotics for Intraabdominal Infection.

Date: March 22, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Room 3AN-18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN-18, Bethesda, MD 20892, 301-594-3907, pikbr@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1113 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 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 Child Health and Human Development Special Emphasis Panel, CTSA Supplemental Review.

Date: March 27, 2007.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, Washington, DC 20006.

Contact Person: Robin L. Strickland, Extramural Support Assistant, Extramural Support Assistant, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892, 301-435-6915, stricklandr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1114 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, February 21, 2007, 1 p.m. to February 21, 2007, 4 p.m. National Institutes of Health, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852 which was published in the **Federal Register** on February 12, 2007, 72 FR 7897.

The meeting will be held March 15, 2007 from 1 p.m. to 4 p.m. The meeting is closed to the public.

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1115 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, January 5, 2007, 2 p.m. to March 9, 2007, 4 p.m. National Institutes of Health, 6100 Executive Blvd., 5th Floor Conference Room, Rockville, MD 20852 which was published in the **Federal Register** on February 1, 2007, 72 FR 5983.

The meeting will be held March 19, 2007 from 4 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1116 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Maternal-Fetal Adaptations to Hypoxemia.

Date: March 29, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National

Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435-6889, bhatnagg@mail.nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1117 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Mentored Specialized Clinical Investigator Development.

Date: March 16, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892, (301) 496-1487, anandr@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, The Global

Partnerships for Social Science AIDS Research.

Date: March 21-22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435-6898, walls@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1118 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Fellowships.

Date: May 24, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1120 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, R13 Buckman.

Date: April 13, 2007.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R13 Bucholz.

Date: April 18, 2007.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R13 Kovacs.

Time: 2 p.m. to 3 p.m.

Date: April 18, 2007.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Program; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1121 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Program Projects for Basic Research on hESCs.

Date: March 25-27, 2007.

Time: 8 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301-594-2771, johnsonrh@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1122 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, R13 Krystal.

Date: March 20, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator,

National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R13 Nurnberger.

Date: March 20, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzera@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1124 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Dissertation Research.

Date: March 27, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-1225, aschulte@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1125 Filed 3-8-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: N-300, Application to File Declaration of Intention; OMB Control No. 1615-0078.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 8, 2007.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC

20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail please add the OMB Control Number 1615-0078 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-300. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529; Telephone No. 202-272-8377.

Dated: March 5, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7-4184 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N-426, Request for Certification of Military or Naval Service; OMB Control No. 1615-0053.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 8, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW, 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail please add the OMB Control Number 1615-0053 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-426. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by USCIS to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW, 3rd Floor, Suite 3008, Washington, DC 20529; Telephone number 202-272-8377.

Dated: March 6, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7-4280 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5125-N-10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* March 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, NW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 1, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07-1002 Filed 3-8-07; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Environmental Impact Statement/Environmental Impact Report for the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan and Receipt of Application for an Incidental Take Permit From the Contra Costa County Flood Control and Water District, Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the receipt of an application from the Contra Costa County Flood Control and Water District (Flood Control District) and the availability of the final Environmental Impact Statement/Environmental Impact Report (EIS/EIR), East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (Plan), and Implementing Agreement (IA) for public review and comment. A notice of availability of the draft EIS/EIR was published in the **Federal Register** on September 2, 2005. The application described in that notice did not include the Flood Control District, which has since been added to the list of proposed permittees. The Fish and Wildlife Service (Service) is considering the proposed action of issuing a 30-year incidental take permit for 28 species in response to the application. The proposed permittees are: Contra Costa County (County); the cities of Brentwood, Clayton, Oakley, and Pittsburg (cities); the Flood Control District; East Bay Regional Park District; and an Implementing Entity to be formed by the County and the cities to implement certain aspects of the Plan. The proposed permit would authorize the incidental take of individual members of species listed under the ESA. The permit is needed because take of species could occur during proposed urban development activities, rural infrastructure projects, and preserve management activities within a 174,018-acre planning area located in eastern Contra Costa County, California.

DATES: The 30-day waiting period will end on April 9, 2007. Written comments should be received on or before this date.

ADDRESSES: Send comments by mail or facsimile to: (1) Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-

2605, Sacramento, California 95825; facsimile 916-414-6713; and/or (2) John Kopchik, Principal Planner, Contra Costa County Community Development Department, 651 Pine Street, Fourth Floor Northwest, Martinez, CA 94553; facsimile 925-335-1299.

FOR FURTHER INFORMATION CONTACT: (1) Sheila Larsen, Wildlife Biologist, or Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, telephone 916-414-6600; or (2) John Kopchik, Principal Planner, Contra Costa County Community Development Department, telephone 925-335-1227.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Plan, IA and Final EIS/EIR are available for public review from 9 a.m. to 5 p.m., at the Contra Costa County Community Development Department (see **ADDRESSES**). These documents also are available on the Association's Web site: <http://www.cocohcp.org>.

In addition, copies of all documents are also available at the following local agency offices:

- (1) City of Brentwood, Community Development Dept., 104 Oak Street, Brentwood, CA 94513.
 - (2) City of Clayton, Community Development Department, 6000 Heritage Trail, Clayton, CA 94517.
 - (3) City of Oakley, Community Development Department, 3231 Main Street, Oakley, CA 94561.
 - (4) City of Pittsburg, Planning Department, 65 Civic Drive, Pittsburg, CA 94565.
 - (5) East Bay Regional Park District, 2950 Peralta Oaks Court, Oakland, CA 94605.
- The documents are also available at the following Contra Costa Library locations:
- (6) 751 Third Street, Brentwood, CA.
 - (7) 6125 Clayton Road, Clayton, CA.
 - (8) Freedom High School, 1050 Neroly Road, Oakley, CA.
 - (9) 80 Power Avenue, Pittsburg, CA.
 - (10) Riverview Middle School, 205 Pacifica Avenue, Bay Point, CA.

You also may obtain copies of these documents for review by contacting Sheila Larsen [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

Background Information

Section 9 of the ESA and Federal regulations prohibit the take of fish and wildlife species listed as endangered or

threatened (16 U.S.C. 1538). The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, the Service may issue permits to authorize incidental take of listed fish or wildlife; i.e., take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Although take of listed plant species is not prohibited under the ESA, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Services "No Surprises" regulation [50 CFR 17.22(b)(5) and 17.32(b)(5)].

In response to the proposed permittees' application, the Service proposes to issue an incidental take permit to the following local agencies: Contra Costa County (County); the cities of Brentwood, Clayton, Oakley, and Pittsburg (cities); Flood Control District; and East Bay Regional Park District. An incidental take permit is also proposed to be issued to an Implementing Entity to be formed by the County and cities to implement certain aspects of the Plan. The local agencies and the Implementing Entity are collectively referred to as the "permittees". The Association has prepared the Plan on behalf of the permittees to satisfy the application requirements for a section 10(a)(1)(B) incidental take permit under the ESA and a section 2835 permit under the California Natural Community Conservation Planning Act of 2003 (NCCPA). Thus, the Plan constitutes a Habitat Conservation Plan pursuant to the ESA, and a Natural Community Conservation Plan (NCCP) pursuant to the California NCCPA.

The permittees seek a 30-year incidental take permit for covered activities within a proposed 174,018-acre planning area, located entirely in eastern Contra Costa County, California. They are requesting a permit for 28 species, 8 of which are currently listed as threatened or endangered under the ESA. Of these 28 species, the Association requests a permit and

assurances for 17 animal species and assurances for 11 plant species. Proposed covered species include 3 wildlife species, currently listed as endangered under the ESA [San Joaquin kit fox (*Vulpes macrotus mutica*), longhorn fairy shrimp (*Brachinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardii*)] and 5 wildlife species currently listed as threatened under the Federal ESA [Alameda whipsnake (*Masticophis lateralis euryxanthus*), giant garter snake (*Thamnophis gigas*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), and vernal pool fairy shrimp (*Brachinecta lynchi*)]. The proposed covered species also include 9 wildlife species and 11 plant species that are not currently listed under the ESA: Townsend's western big-eared bat (*Corynorhinus townsendii townsendii*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cunicularia hypugea*), Swainson's hawk (*Buteo swainsonii*), silvery legless lizard (*Anniella pulchra pulchra*), western pond turtle (*Clemmys marmorata*), foothill yellow-legged frog (*Rana boylei*), midvalley fairy shrimp (*Brachinecta mesoallensis*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joaquiniana*), big tarplant (*Blepharizonia plumosa* ssp. *plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), round-leaved filaree (*Erodium macrophyllum*), Diablo helianthella (*Helianthella castanea*), Brewer's dwarf flax (*Hesperolinon breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis* ssp. *nigelliformis*).

If the proposed Plan is approved and the permit issued, take authorization of covered listed wildlife species would be effective at the time of permit issuance. Take of the currently non-listed covered wildlife species would be authorized concurrent with the species' listing under the ESA, should they be listed during the duration of the permit. Collectively, the 28 listed and unlisted species are referred to as the "covered species" in the Plan.

The applicants propose to minimize and mitigate the effects to covered species associated with the covered activities by participating in the Plan. The proposed Plan is intended to be a comprehensive and multi-jurisdictional document, providing for regional species conservation and habitat planning, while allowing the prospective permittees to better manage

anticipated growth and development. The proposed Plan also is intended to provide a coordinated process for permitting and mitigating the take of covered species as an alternative to the current project-by-project approach.

In order to define a reasonable range of expected growth, the proposed Plan defines two permit areas: the initial urban development area and the maximum urban development area. Although the initial and maximum urban development areas bound the range of the proposed permit area, the final permit area may lie somewhere in between, depending on local land use decisions that occur during the proposed 30-year permit term. The proposed Plan, therefore, encompasses a range of alternative permit areas. Both the initial and maximum urban development areas are based on current general plans of the local jurisdictions.

The proposed initial urban development area is defined by: (1) The Urban Limit Line (ULL) of Contra Costa County and the city limits of the participating cities (Pittsburg, Clayton, Oakley, and Brentwood), whichever is largest; (2) the footprint of specific rural infrastructure projects outside the ULL and the city limits of participating cities; and (3) the boundary of any land acquired in fee title or conservation easement and managed under the Plan.

Up to 8,670 acres of ground-disturbing urban development activities within the ULL are proposed to be permitted under the initial urban development. The proposed maximum urban development area is the largest extent to which urban development could expand under the terms of the proposed Plan. Under this scenario, up to 11,853 acres of ground-disturbing urban development activities within the permit area could be allowed, as long as the conditions of the Plan are met. With either urban development area, an additional 1,126 acres of impact are expected from rural infrastructure projects and activities within the Plan's preserves. Thus, total impacts allowed under the Plan, are 9,796 acres and 13,029 acres with the initial and maximum urban development areas, respectively.

The conservation strategy was designed to minimize and mitigate the impacts of covered activities, contribute to the recovery of listed covered species, and protect and enhance populations of non-listed covered species, as proposed. The proposed conservation strategy provides for the establishment, enhancement, and long-term management of the preserves for the benefit of covered vegetation communities, covered species, and

overall biodiversity and ecosystem functions. The proposed preserves would also serve to achieve other complementary goals such as recreation, grazing, and crop production, as long as the primary biological goals of the Plan are met and not compromised. The system of new preserves would likely be linked to existing protected lands to form a network of protected areas outside the area where new urban growth is proposed to be permitted under the Plan.

On September 2, 2005, a notice was published in the **Federal Register** (70 FR 52434) announcing that the Service had received an application for an incidental take permit from the Association and the availability of the draft EIS/EIR. The draft EIS/EIR analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take associated with implementation of the Plan and the identified alternatives. We received a total of 18 comment letters on the draft EIS/EIR. A response to each comment received has been included in the final EIS/EIR.

Alternatives

The draft EIS/EIR analyzed three alternatives in addition to the proposed Plan described above. The proposed Plan was identified as Alternative 1 (also referred to as Conservation Strategy A). The three other alternatives are described below.

Alternative 2 (also referred to as Conservation Strategy B) would provide for the same size planning area, located entirely in eastern Contra Costa County, with the same preserve size as the proposed Plan, except that the location of the preserve would be modified. Modification of the preserve locations would result in increased protection of chaparral and cultivated agriculture and decreased protection of grassland. This alternative would also involve less riparian restoration than the proposed Plan. Other elements of the proposed Plan would remain the same, including species and communities covered, conservation measures, monitoring and adaptive management, and implementation approach.

Compared to the Proposed Plan, Alternative 3 (the Reduced Development Area Alternative) would provide for a reduced level of take due to a reduced permit area. Existing open space or agricultural lands within the ULL that are not currently designated for development would be conserved. Under this alternative, the permit area would be 6,991 acres. Other elements of the proposed Plan would remain the same including the species and

communities covered, conservation measures, monitoring and adaptive management, and implementation approach.

Under the Alternative 4 (the No-Action/No-Project alternative), the proposed Plan would not be adopted, and permits pursuant to Section 10(a)(1)(B) of the Act and Section 2835 of the NCCPA would not be issued by the Service and California Department of Fish and Game, respectively. Compliance with the ESA would continue to be addressed on a case-by-case basis.

National Environmental Policy Act

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Accordingly, a joint final NEPA/CEQA document has been prepared. The Service is the Lead Agency responsible for compliance under NEPA, and the Association is the Lead Agency with responsibility for compliance with CEQA. As NEPA Lead Agency, the Service is providing notice of the availability of the final EIS/EIR and is making available for public review the responses to comments on the draft EIS/EIR.

Public Review

The Service and Association invite the public to review the final Plan, final EIS/EIR, and final IA during a 30-day public waiting period [see **DATES**]. Any comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Our practice is to make comments, including names, home addresses, home telephone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations and businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

The Service will evaluate the application, associated documents, and comments submitted to them to prepare a Record of Decision. A permit decision will be made no sooner than 30 days after the publication of the final EIS/EIR and completion of the Record of Decision.

This notice is provided pursuant to section 10(a) of the ESA and Service regulations for implementing NEPA, as amended (40 CFR 1506.6). We provide this notice in order to allow the public, agencies, or other organizations to review these documents.

Dated: March 5, 2007.

Polly Wheeler,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. E7-4252 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-210-07-1220-DA-241A]

Notice of Public Meetings for Route Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting, off-road vehicle route designations.

SUMMARY: To comply with CFR 8340, Off-Road Vehicles, and land use planning for the Bureau of Land Management, Phoenix District, Hassayampa Field Office, Arizona, three route designation public meetings will be held. The purpose of these meetings is to inform the public of the process that will be used, the type of input from the public that would be helpful, and the general schedule leading to final route designations. Maps will be available. Input from the public regarding route connectivity, existing conflicts, and current or desired access will be taken.

DATES: Meetings will be held beginning at 6:30 p.m. and conclude at 8 p.m. as follows: April 24, 2007, at Deer Valley Senior Center, 2001 West Wahalla Lane, Phoenix, Arizona; April 25, 2007, at Morristown Elementary School, 25950 Rockaway Hills Drive, Morristown, Arizona; and April 26, 2007, at Albins

Civic Center, 19005 East K-Mine Road Center, Black Canyon City, Arizona.

FOR FURTHER INFORMATION CONTACT: Rich Hanson, Bureau of Land Management, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623-580-5500.

Clay Templin,

Field Manager.

[FR Doc. E7-4245 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-936-1430-FQ; HAG-07-0073; OR-20301 et al]

Public Land Order No. 7616; Partial Revocation of 7 Secretarial Orders; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the Public Land Order No. 7616, 69 FR 59951-59953, published October 6, 2004, as FR Doc. 04 22391, make the following corrections:

On page 59951, in the Title, and in the Summary, "7 Secretarial Orders", should read "5 Secretarial Orders". In the Summary, "17,789.94 acres", and "7,975.30 acres", should read "17,769.94 acres", and "7,955.30 acres", respectively. In paragraph 2 of the Order, delete "September 2, 1914, November 4, 1914.". On page 59952, column 1, in T. 20 S., R. 46 E., delete "Sec. 20, S¹/₂SW¹/₄NE¹/₄". In column 3, "7,975.30 acres", should read "7,955.30 acres".

Dated: March 5, 2007.

Fred O'Ferrall,

Chief, Branch of Land and Mineral Resources.

[FR Doc. E7-4253 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents; prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, *Attention:* Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394, or by calling 1-800-200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Apache Corporation, Structure Removal SEA ES/SR 06-120.	Ship Shoal, Block 292, Lease OCS-G 12000, located 55 miles from the nearest Louisiana shoreline.	8/23/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06-131.	Galveston, Block 273, Lease OCS-G 09037, located 12 miles from the nearest Texas shoreline.	10/4/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06-133, 06-134.	Galveston, Block 363, Lease OCS-G 06113, located 13 and 15 miles, respectively, from the nearest Texas shoreline.	10/5/2006

Activity/operator	Location	Date
CGG Americas, Inc., Geological & Geophysical Exploration for Mineral Resources SEA L06-44.	Located in the central Gulf of Mexico south of Cocodrie, Louisiana	10/10/2006
Veritas DGC Corporation, Geological & Geophysical Exploration for Mineral Resources SEA L06-46.	Located in the central Gulf of Mexico south of Grand Isle, Louisiana	10/10/2006
Mariner Energy, Inc., Structure Removal SEA ES/SR 06-039.	South Marsh Island (South), Block 76, Lease OCS-G 01208, located 60 miles from the nearest Louisiana shoreline.	10/17/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 05-121.	Vermilion, Block 355, Lease OCS-G 12876, located 92 miles from the nearest Louisiana shoreline.	10/18/2006
Apache Corporation, Structure Removal SEA ES/SR 06-135.	West Delta, Block 40, Lease OCS-G 01072, located 15 miles from the nearest Louisiana shoreline.	10/20/2006
W & T Offshore, Inc., Structure Removal SEA ES/SR 06-137.	Ship Shoal, Block 177, Lease OCS 00590, located 42 miles from the nearest Louisiana shoreline.	10/23/2006
Newfield Exploration Company, Structure Removal SEA ES/SR 06-019.	West Cameron (South), Block 601, Lease OCS-G 03386, located 100 miles from the nearest Louisiana shoreline.	11/3/2006
GOM Shelf, LLC, Structure Removal SEA ES/SR 06-140.	Eugene Island, Block 142, Lease OCS-G 10726, located 24 miles from the nearest Louisiana shoreline.	11/6/2006
Devon Energy Production Company, L.P., Structure Removal SEA ES/SR 06-144.	Eugene Island, Block 330, Lease OCS-G 02115, located 82 miles from the nearest Louisiana shoreline.	11/8/2006
Fugro Multiclient Services, Inc., Geological & Geophysical Exploration for Fugro Geoteam, AS SEA L06-49.	Located in the central Gulf of Mexico south of Mobile, Alabama	11/8/2006
Union Oil Company of California, Structure Removal SEA ES/SR 06-143.	Eugene Island, Block 33, Lease OCS-G 03560, located 6 miles from the nearest Louisiana shoreline.	11/14/2006
Remington Oil and Gas Corporation, Structure Removal SEA ES/SR 06-139.	West Cameron, Block 428, Lease OCS-G 22554, located 70 miles from the nearest Louisiana shoreline.	11/16/2006
Apache Corporation, Structure Removal SEA ES/SR 06-150.	South Marsh Island, Block 95, Lease OCS-00790, located 99 miles from the nearest Louisiana shoreline.	11/27/2006
Apache Corporation, Structure Removal SEA ES/SR 06-118.	East Cameron, Block 353, Lease OCS-G 02264, located 108 miles from the nearest Louisiana shoreline.	11/28/2006
Western Geco, Geological & Geophysical Exploration for Mineral Resources SEA L06-54.	Located in the central Gulf of Mexico south of Gulfport, Mississippi	11/29/2006
Apache Corporation, Structure Removal SEA ES/SR 06-141, 06-145, 06-146.	East Cameron, Block 48, Lease OCS-G 00768, located 18 miles from the nearest Louisiana shoreline.	11/30/2006
TGS-Nopec Geophysical Company ASA, Geological & Geophysical Prospecting for Mineral Resources SEA L06-53.	Located in the central Gulf of Mexico south of Pascagoula, Mississippi	12/11/2006
Stone Energy Corporation, Structure Removal SEA ES/SR 06-156.	East Cameron, Block 220, Lease OCS-G 03323, located 69 miles from the nearest Louisiana shoreline.	12/13/2006
ATP Oil & Gas Corporation, Structure Removal SEA ES/SR 06-157.	South Marsh Island, Block 7, Lease OCS-G 13896, located 42 miles from the nearest Louisiana shoreline.	12/13/2006
Union Oil Company of California, Structure Removal SEA ES/SR 06-159, 06-160, 06-161, 06-162.	Eugene Island, Block 33, Lease OCS-G 03560, located 9 miles from the nearest Louisiana shoreline.	12/14/2006
BP Exploration & Production, Inc., Geological & Geophysical Prospecting for Mineral Resources SEA T06-36.	Located in the western Gulf of Mexico south of Galveston, Texas	12/19/2006
Apache Corporation, Structure Removal SEA ES/SR 06-149.	Ship Shoal, Block 204, Lease OCS-G 01520, located 43 miles from the nearest Louisiana shoreline.	12/19/2006
Apache Corporation, Structure Removal SEA ES/SR 06-151, 06-152.	West Delta, Block 75, Lease OCS-G 01085, located 17 miles from the nearest Louisiana shoreline.	12/27/2006

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: January 19, 2007.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E7-4310 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

New Melones Lake Project Resource Management Plan/Environmental Impact Statement (RMP/EIS), Calaveras and Tuolumne Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of the scoping period for the New Melones RMP/EIS.

SUMMARY: The Bureau of Reclamation is extending the scoping period for the

RMP/EIS to March 19, 2007. The notice of intent for the RMP/EIS was published in the **Federal Register** on December 18, 2006 (71 FR 75769). The scoping period was originally to end on February 16, 2007.

During the scoping process, several individuals and organizations have indicated that submission of scoping comments by the February 16, 2007 would be a difficult deadline to meet. To encourage additional public input, the public comment period has been extended.

DATES: Written comments on the scope of the proposed RMP/EIS should be

received by close of business March 19, 2007.

ADDRESSES: Send your comments to Ms. Elizabeth Vasquez, Natural Resource Specialist, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630, or e-mail to evasquez@mp.usbr.gov

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Vasquez at 916-988-1707.

SUPPLEMENTARY INFORMATION: Comments received in response to this notice will become part of the administrative record and are subject to public inspection. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 12, 2007.

John Fields,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E7-4250 Filed 3-8-07; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Interstate firearms shipment report of theft/loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval

in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 3, pages 580-581 on January 5, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 9, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6.

Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* **Primary:** Business or other for-profit. **Other:** None. **Abstract:** The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 550 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 182 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 5, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-4229 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0065]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Requisition for forms or publications and requisition for firearms/explosives forms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**

Volume 72, Number 3, page 581, on January 5, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 9, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition For Forms or Publications and Requisition For Firearms/Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Abstract: The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 30,000 respondents, who will complete each form within approximately 3 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 5, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-4231 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0088]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 3, pages 581-582 on January 5, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 9, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: None. *Abstract:* The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to

their jobs. The Kirkpatrick 4–Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 354 respondents, who will complete the survey within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 71 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 5, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–4232 Filed 3–8–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Julian A. Abbey, M.D.; Revocation of Registration

On April 17, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Julian A. Abbey, M.D., (Respondent) of Saugus, Massachusetts. The Show Cause Order proposed to revoke Respondent's DEA Certificate of Registration, BA4361426, as a practitioner on two grounds.

First, the Show Cause Order alleged that Respondent had entered into a voluntary agreement with the Massachusetts Board of Registration in Medicine in which he agreed to cease the practice of medicine in that State effective July 30, 2004. Show Cause Order at 1. The Show Cause Order further alleged that the agreement constituted a disciplinary action against Respondent's state license. *Id.*

Second, the Show Cause Order alleged that on August 4, 2004, Respondent had submitted an on-line renewal application for his DEA registration in which he falsely indicated that he “had not been the subject of any State disciplinary or licensing action.” *Id.* at 2. The Show Cause Order further alleged that based on Respondent's misrepresentation, DEA renewed his registration. *Id.*

On April 21, 2006, the Government attempted to serve the Show Cause Order, which also notified Respondent of his right to request a hearing, by Certified Mail, Return Receipt Requested. However, the mailing was returned unclaimed. Thereafter, on May 18, 2006, the Government served the Show Cause Order by First Class Mail to the address of Respondent's registered location. Since that time, neither Respondent, nor any one purporting to represent him, has responded. Because (1) more than thirty days have passed since service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. *See* 21 CFR 1301.43(d). I therefore enter this final order without a hearing based on relevant material found in the investigative file and make the following findings.

Findings

Respondent holds DEA Certificate of Registration, BA4361426, which was initially issued to him on March 15, 1995. On August 3, 2004, Respondent renewed his registration using the DEA Internet site. Respondent's registration does not expire until June 30, 2007.

On June 25, 2004, Respondent entered into a “Voluntary Agreement Not To Practice Medicine” with the Massachusetts Board of Registration in Medicine (Board); on July 30, 2004, the Board accepted the agreement. Under the agreement, Respondent agreed to immediately cease practicing medicine in Massachusetts. Moreover, Respondent acknowledged that the agreement constituted “a voluntary restriction of my license to practice medicine and is considered to be a disciplinary action that is reportable to any national data reporting system” pursuant to Massachusetts law. Agreement at 1. Respondent also agreed that “[a]ny violation of this Agreement shall be prima facie evidence for immediate summary suspension of my license to practice medicine.” *Id.* Furthermore, according to the Board, “as a consequence of such an agreement, a physician may not prescribe controlled substances.” Massachusetts Board of Registration in Medicine, Press Release (Nov. 9, 2005).

According to the investigative file, on October 28, 2005, Respondent was arrested in Lynnfield, Massachusetts, and charged under state law with the illegal possession of a class C substance (hydrocodone bitartrate) with intent to distribute. According to the file, during the period following Respondent's entering into the voluntary agreement

and his arrest, Respondent obtained approximately 37,500 tablets of hydrocodone bitartrate 10mg/650mg.

Thereafter, on November 9, 2005, the Board summarily suspended Respondent's state medical license on the ground that he posed an immediate threat to the public safety, health and welfare. According to online records of the Board, Respondent's medical license remains suspended. *See* Massachusetts Board of Registration in Medicine Physician Profile, Julian Abbey, M.D.

Under Massachusetts law, a physician must also hold a registration to handle a controlled substance; the registration is issued by the State's Commissioner of Public Health. *See* Mass. Gen. Laws ch. 94C, § 7(a). On December 1, 2005, the Massachusetts Department of Public Health sent a letter to Respondent notifying him that he was “no longer authorized as a registrant under [Massachusetts law] to prescribe, distribute, possess, dispense or administer controlled substances in the Commonwealth.” Letter from Adele D. Audet, Assistant Director, Drug Control Program, Massachusetts Department of Public Health, to Respondent (Dec. 1, 2005). The letter further advised Respondent that his state controlled substances registration would be terminated unless Respondent produced evidence of his authority to practice medicine in the State within thirty days of his receipt of the letter. A March 28, 2006 letter from the Department of Public Health to Respondent confirms that he no longer holds authority under Massachusetts law to handle controlled substances. Letter from Patricia Calvagna-Lusk, Administrative Coordinator, Massachusetts Department of Public Health, to Respondent (Mar. 28, 2006).

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in “the jurisdiction in which he practices” in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice”). *See also Id.* § 823(f) (“The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.”). DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner

whose state controlled substances authority has been suspended or revoked. *See Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration "upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances").

As found above, the letters from the State Department of Health establish that Respondent no longer has authority to handle controlled substances in Massachusetts, the State in which he holds his DEA registration. Therefore, Respondent is no longer entitled to maintain his DEA registration.

Furthermore, based on the evidence in the investigative file which shows that Respondent obtained 37,500 dosage units of hydrocodone bitartrate notwithstanding that he no longer had authority to practice medicine, I conclude that Respondent was engaged in the diversion of substantial quantities of controlled substances. Therefore, while this conduct was not alleged as grounds for the revocation of Respondent's registration, I conclude that the public interest requires that Respondent's registration be revoked effective immediately.¹ *See* 21 CFR 1316.67.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, BA4361426, issued to Julian A. Abbey, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective immediately.

Dated: February 28, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7-4237 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0009]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-day notice of information collection under review: Revision of a currently approved collection; Analysis of Law Enforcement Officers Killed and Assaulted.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on January 5, 2007, Volume 72, Number 3, Pages 582-583, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 9, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625-3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Analysis of Law Enforcement Officers Killed and Assaulted.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 1-701; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal and tribal law enforcement agencies. This report will gather specific incident data obtained from law enforcement agencies in which an officer was feloniously or accidentally killed in the line of duty; information is also collected on this form when any officer sustains injury from a firearm or knife or other cutting instrument. Officer killed data are published annually in the publication Law Enforcement Officers Killed and Assaulted. Serious assault data are presented as separate topic papers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 275 law enforcement agency respondents; calculated estimates indicate 1 hour per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 275 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 5, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-4233 Filed 3-8-07; 8:45 am]

BILLING CODE 4410-02-P

¹ While the Show Cause Order also alleged that Respondent materially falsified his application, the investigative file does not contain any probative evidence on this issue.

DEPARTMENT OF LABOR**Bureau of International Labor Affairs,
Office of Trade and Labor Affairs:
Extension of Deadline for Solicitation
for Cooperative Agreement Application
(SGA) 07-04 Strengthening Career
Civil Service Systems of Labor
Inspectorates in Central America**

AGENCY: Bureau of International Labor Affairs, Office of Trade and Labor Affairs, Department of Labor.

ACTION: Notice.

SUMMARY: This notice extends the closing date for SGA 07-04 until April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Procurement Services Center, Room S-4307, 200 Constitution Ave., NW., Washington DC 20210, Telephone (202) 693-4592, e-mail: Harvey-lisa@dol.gov.

Signed this 5th day of March 2007.

Lisa Harvey,
Grant Officer.

[FR Doc. E7-4181 Filed 3-8-07; 8:45 am]

BILLING CODE 4510-28-P

**NATIONAL CREDIT UNION
ADMINISTRATION****Agency Information Collection
Activities: Submission to OMB for
Review; Comment Request**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 9, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below: Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, E-mail: OCIOmail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Federal Credit Union (FCU) Recordkeeping of Meeting Minutes and Other Documents.

OMB Number: 3133-0057.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection.

Description: The Federal Credit Union (FCU) Act and NCUA's FCU Bylaws require each FCU to prepare and maintain minutes of its board and member meetings and copies of other documents and election results. Additionally, the board's secretary must inform the NCUA Board of any address change of a Federal credit union.

Respondents: Federal credit unions.

Estimated No. of Respondents/

Recordkeepers: 5,189.

Estimated Burden Hours per

Response: 3.25 hours.

Frequency of Response:

Recordkeeping and reporting on occasion and annually.

Estimated Total Annual Burden

Hours: 17,902.05 hours.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on March 2, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7-4203 Filed 3-8-07; 8:45 am]

BILLING CODE 7535-01-P

**NATIONAL CREDIT UNION
ADMINISTRATION****Agency Information Collection
Activities: Submission to OMB for
Review; Comment Request**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 9, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, Fax No. 703-837-2861, E-mail: mcnamara@ncua.gov.

OMB Desk Officer: NCUA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725-17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0168.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Maximum Borrowing Authority, 12 CFR 741.2.

Description: The collection of information requirement is for those federally insured state-chartered credit unions seeking a waiver from the maximum borrowing limitation of 50% of paid-in and unimpaired capital and surplus.

Respondents: Credit unions.

Estimated No. of Respondents/Record keepers: 2.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Reporting, and on occasion.

Estimated Total Annual Burden Hours: 16 hours.

Estimated Total Annual Cost: \$0.00.

By the National Credit Union Administration Board on March 2, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7-4207 Filed 3-8-07; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF THE INTERIOR**National Indian Gaming Commission****Notice of Availability of a Draft
Environmental Impact Statement and a
Draft Conformity Determination and a
proposed Federated Indians of the
Graton Rancheria Casino and Hotel
Project, Sonoma, CA**

AGENCY: National Indian Gaming Commission (NIGC), Interior.

ACTION: Notice of Availability (NOA).

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, the NIGC, in cooperation with the Federated Indians of the Graton

Rancheria (the "Graton Rancheria"), has prepared a Draft Environmental Impact Statement (DEIS) for a proposed casino and hotel project/action to be located in Sonoma, California. The purpose of the proposed project/action is to help address the socio-economic needs of the Graton Rancheria. The DEIS documents the existing condition of environmental resources in and around the areas considered for development and the potential impacts on those resources as a result of implementing each of the alternatives. The alternatives considered in detail are: a casino/hotel project on the "Wilfred Site" (the proposed project/action), a casino/hotel project on the "Stony Point Site," a casino/hotel project on the "Lakeville Site," a reduced intensity casino/hotel project on the "Stony Point" site, an alternate use project on the "Stony Point" site, and a no proposed project/action alternative.

In accordance with Section 176 of the Clean Air Act 42 U.S.C. 7506, and the U.S. Environmental Protection Agency's (EPA) general conformity regulations 40 CFR Part 93, Subpart B, a Draft Conformity Determination (DCD) has been prepared for the proposed project. The DCD is contained within Appendix W of the DEIS.

DATES: A public information workshop will be held at the Spreckels Performing Arts Center, Nellie W. Coddington Theatre, 5409 Snyder Lane, Rohnert Park, CA 94928 on April 4, 2007 from 4 p.m. to 6 p.m. Following the public information workshop, the NIGC will hold a public hearing from 6:30 p.m. to 10 p.m. (or until all comments have been recorded) to provide the public an opportunity to comment on the DEIS and/or the DCD. A second public information workshop will be held at the Wells Fargo Center for the Arts (formerly the Luther Burbank Center), Ruth Finley Person Theatre, 50 Mark West Springs Road, Santa Rosa, CA 95403 on April 5, 2007 from 4 p.m. to 6 p.m. Following the public information workshop, the NIGC will hold a public hearing from 6:30 p.m. to 10 p.m. (or until all comments have been recorded) to provide the public an opportunity to comment on the DEIS and/or the DCD. The NIGC will also be accepting written comments. Written comments on the DEIS and/or the DCD must be postmarked by May 14, 2007, and sent to the addressed listed below.

ADDRESSES: Written comments on the DEIS and/or the DCD should be addressed to: Brad Mehaffy, NEPA Compliance Officer, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100 Washington DC 20005

(or) fax to: Brad Mehaffy at 202-632-7066 (or) e-mailed to: graton_eis@nigc.gov.

Please include your name, return address, and the caption: "DEIS Comments, Graton Rancheria Casino and Hotel Project", on the first page of your written comments. The public information workshops and public hearings will be hosted by the NIGC at the Spreckels Performing Arts Center, Nellie W. Coddington Theatre, 5409 Snyder Lane, Rohnert Park, CA 94928 and the Wells Fargo Center for the Arts (formerly the Luther Burbank Center), Ruth Finley Person Theatre, 50 Mark West Springs Road, Santa Rosa, CA 95403.

FOR FURTHER INFORMATION CONTACT: For general information on the NEPA review procedures, the status of the NEPA review, or the general conformity requirements, contact Brad Mehaffy, NIGC NEPA Compliance Officer, 202-632-7003. Additional information (e.g. public notices, scoping reports, and contact information) can also be obtained at the following Web site: (<http://www.gratoneis.com/>). The DEIS is available for review at the Rohnert Park—Cotati Regional Library and Santa Rosa Central Library. General information, including directions and office hours, is available online at: <http://www.sonoma.lib.ca.us/branches/> or by calling (707) 584-9121 for the Rohnert Park—Cotati Regional Library or (707) 545-0831 for the Santa Rosa Central Library.

SUPPLEMENTARY INFORMATION: The proposed federal action is the NIGC's approval of a gaming management contract between the Graton Rancheria and SC Sonoma Management LLC. The approval of the gaming management contract would result in the development of a resort hotel, casino, and supporting facilities. The facility will be managed by SC Sonoma Management LLC on behalf of the Graton Rancheria, pursuant to the terms of a gaming management contract.

The NIGC published a Notice of Intent (NOI) in the **Federal Register** on February 12, 2004, briefly describing the proposed project/action and announcing the NIGC's intent to prepare an EIS. The Council of Environmental Quality ("CEQ") regulations for implementing NEPA require a process, referred to as "scoping," for determining the range of environmental issues to be addressed during the environmental review of a proposed project/action (40 CFR 1501.7). The scoping process entails a determination of environmental issues to be studied and documented in the

EIS by soliciting comments from agencies, organizations and individuals.

During the scoping process, the NIGC solicited comments from the general public (providing a 50-day comment period and including a public hearing) and offered Cooperating Agency status to both Federal and non-Federal agencies, including the Bureau of Indian Affairs (BIA), U.S. Environmental Protection Agency (USEPA), the U.S. Army Corps of Engineers (USACE), the California Department of Transportation (Caltrans), the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG) and the County of Sonoma. An EIS Scoping Report was published in August 2004, which summarized public scoping comments and identified the BIA, USACE, Caltrans, and Sonoma County as cooperating agencies.

Since the release of the August 2004 Scoping Report the location for the proposed casino-hotel project has changed. A supplemental scoping process was initiated to address this change and allow an opportunity for the general public and agencies to comment on the scope of analysis for the new proposed location. A supplemental NOI was published in the **Federal Register** on September 29, 2005 and a second public comment period and public hearing were provided. A second, updated EIS Scoping Report was published in January 2006.

The DEIS has been prepared which has incorporated the issues and concerns summarized within the scoping reports, to the extent required by NEPA. Seven alternatives are evaluated in detail in the DEIS, including development on one of three alternatives sites and a no action alternative. The proposed project/action (Alternative A) includes a casino/hotel resort on a site west of Rohnert Park (the Wilfred site). The casino/hotel resort would include restaurants, a hotel, an entertainment venue, gaming space, banquet/meeting space, and a pool and spa. In addition to the casino/hotel facility, the proposed development would also include on-site parking and possibly an on-site tertiary wastewater treatment plant.

Alternative B consists of the development of a casino/hotel resort nearly identical to that proposed under Alternative A, but located on the northwest corner of an adjacent site, slightly further west of Rohnert Park (the Stony Point site). Alternative C also consists of the development of a casino/hotel resort nearly identical to that proposed under Alternative A. However, the Alternative C casino/hotel resort would be located on the northeast

corner of the Stony Point site. Alternative D consists of a smaller-scale version of Alternative B. Alternative E consists of a business park development located on the northwest corner of the Stony Point site. Alternative F consists of the development of a casino/hotel resort nearly identical to that proposed under Alternative A but located on a different site in southern Sonoma County near the intersection of State Route 37 and the Lakeville Highway (the Lakeville site). Finally, Alternative G is the no project/action alternative, under which the NIGC would not approve the management contract.

The Clean Air Act requires Federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The NIGC has prepared a DCD for the proposed action/project described above. The DCD is including in Appendix W of the DEIS.

Public Comment And Solicitation: Written comments on the DEIS and/or DCD must be postmarked by May 14, 2007. Comments received (written, orally during the public hearing, or via U.S. mail/fax/e-mail) will be considered during the preparation of the Final Environmental Impact Statement (FEIS) and the Final Conformity Determination (FCD). At this time, there is no planned publication or distribution date for the FEIS or FCD.

Commenting individuals may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. Anonymous comments will not, however, be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available to public in their entirety.

Authority: This notice is published in accordance with Sections 1506.6 of the CEQ regulations 40 CFR, Parts 1500 through 1508 implementing the procedural requirements of the NEPA of 1969, as amended 42 U.S.C. 4371 *et seq.* This notice is also published in accordance with 40 CFR 93.155, which provides reporting requirements for conformity determinations.

Dated: March 2, 2007.

Philip N. Hogen,
Chairman.

[FR Doc. E7-4087 Filed 3-8-07; 8:45 am]

BILLING CODE 7565-01-P

NATIONAL SCIENCE FOUNDATION

Mathematical and Physical Sciences Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Mathematical and Physical Sciences Advisory Committee (66).

Date/Time: April 6, 2007; 9 a.m.–12 p.m.

Place: Teleconference, National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson Boulevard, Arlington, VA 22230; (703) 292-8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Budget and Planning, Report of the Committee of Visitors for the Division of Chemistry, Report of the Committee of Visitors for the Division of Mathematical Sciences.

Summary Minutes: May be obtained from the contact person listed above.

Dated: March 6, 2007.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E7-4227 Filed 3-8-07; 8:45 am]

BILLING CODE 7555-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request; copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rules 7a-15 thru 7a-37; OMB

Control No. 3235-0132; SEC File No. 270-115.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rules 7a-15 through 7a-37 (17 CFR 260.7a-15—7a-37) under the Trust Indenture Act of 1939 set forth the general requirements relating to applications, statements and reports that must be filed under the Act by issuers and trustees qualifying indentures under that Act for offerings of debt securities. The respondents are persons and entities subject to the Trust Indenture Act requirements. Rules 7a-15 through 7a-37 are disclosure guidelines and do not directly result in any collection of information. The Rules are assigned only one burden hour for administrative convenience.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: March 2, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4219 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55378; File No. SR-Amex-2007-17]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Revising the AEMI and AEMI-One Rules Relating to Portfolio Depositary Receipts and Index Fund Shares

March 1, 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 February 5, 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 the Amex. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On February 22, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. 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 revise two of its AEMI rules and two of its AEMI-One rules, relating in each case to portfolio depositary receipts ("PDRs") and index fund shares ("IFSs") that trade on the Amex, in order to conform these rules to changes previously approved by the Commission to the corresponding legacy rules for these securities. Among other things, these proposed changes include generic listing standards for series of PDRs and IFSs that are based on international or global indexes or on indexes previously approved by the Commission for the trading of PDRs, IFSs, options or other specified index-based securities. The proposed conforming rule changes would not make any changes to the manner in which PDRs and IFSs trade on the AEMI platform, but are concerned primarily with eligibility

criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share value. 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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMISM (the "Auction and Electronic Market Integration" platform). The initial version of AEMI is referred to as "AEMI-One" and is currently operational on a pilot basis⁵ through the day prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS⁶ (the latter date being referred to as the "Trading Phase Date").⁷ On the Trading Phase Date, the regular AEMI rules will become effective⁸ and the AEMI-One rules will

cease to be operative. As each security is migrated from the legacy platform to the AEMI platform during the AEMI-One pilot, any legacy rule for which there is a corresponding AEMI-One rule will cease to be applicable and the AEMI-One rule will then become the applicable rule for that security (e.g., Rule 1000 will cease to apply and Rule 1000-AEMI-One will become applicable). Other legacy rules with respect to PDRs and IFSs without corresponding AEMI-One or AEMI counterpart rules (e.g., Rule 1001 or Rule 1001A) will continue to be applicable to AEMI and the AEMI-One pilot.

The Exchange proposes to revise Rules 1000-AEMI-One and 1000-AEMI (relating to PDRs) and Rules 1000A-AEMI-One 1000A-AEMI (relating to IFSs) in order to conform these rules to changes previously approved by the Commission to the corresponding legacy rules for these securities. In particular, the Exchange is proposing to make the same changes to these AEMI-One and AEMI rules that were approved by the Commission for legacy Rules 1000 and 1000A in Securities Exchange Act Release Nos. 54739 and 55018.⁹ Among other things, these proposed changes include generic listing standards for series of PDRs and IFSs that are based on international or global indexes or on indexes previously approved by the Commission for the trading of PDRs, IFSs, options or other specified index-based securities. The proposed conforming rule changes would not make any changes to the manner in which PDRs and IFSs trade on the AEMI platform, but are concerned primarily with eligibility criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share value. The Exchange states that the proposed rule text is substantially identical to the

⁵ See Securities Exchange Act Release No. 54709 (Nov. 3, 2006), 71 FR 65847 (Nov. 9, 2006) (SR-Amex-2006-72) (Order Approving a Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds).

⁶ 17 CFR 242.611. The Order Protection Rule 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 certain exceptions.

⁷ The Trading Phase Date is currently established as March 5, 2007.

⁸ See Securities Exchange Act Release No. 54552 (Sept. 29, 2006), 71 FR 59546 (Oct. 10, 2006) (SR-Amex-2005-104) (Order Approving a Proposed

Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, To Establish a New Hybrid Trading System Known as AEMI).

⁹ See Securities Exchange Act Release No. 54739 (Nov. 9, 2006), 71 FR 66993 (Nov. 17, 2006) (SR-Amex-2006-78) (Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes); see also Securities Exchange Act Release No. 55018 (Dec. 28, 2006), 72 FR 1040 (Jan. 9, 2007) (SR-Amex-2006-109) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares).

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).

text of the existing legacy rules mentioned above.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and 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 proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received 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 if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. 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. 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 Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay because all of the securities trading on the Exchange are trading on the AEMI platform under the AEMI-One pilot and subject to the AEMI-One rules (rather than the legacy rules), which will be replaced by the AEMI rules on the Trading Phase Date.¹⁵ In addition, recently, the Exchange submitted another proposed rule change that would revise legacy Rules 1000 and 1000A.¹⁶ The Exchange states that, upon approval, those rules will require another rule filing to provide for changes to the corresponding AEMI-One and AEMI rules, and believes that there is likely to be less confusion regarding the latter filing if the changes proposed in the instant rule filing are approved and become operative first.

The Commission has determined to waive the five-day pre-filing notice requirement. In addition, 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 a smoother transition to the AEMI-One and AEMI rules. The Commission notes that the proposed rule text is substantially identical to the text of CBOE's existing legacy rules.¹⁷ For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.¹⁸

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.¹⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2007-17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ *Id.*

¹⁵ The Exchange notes that, in contrast to the Exchange's AEMI-One rules, its AEMI rules (and any changes thereto) will not actually become effective and operative (as provided in Rule 1A-AEMI) until the Trading Phase Date, currently scheduled for March 5, 2007. That date is within the 30-day delay period, so a waiver is needed.

¹⁶ See Securities Exchange Act Release No. 55240 (Feb. 5, 2007), 72 FR 6624 (SR-Amex-2007-07) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Amending Existing Rules for Portfolio Depository Receipts and Index Fund Shares).

¹⁷ See Securities Exchange Act Release Nos. 54739 and 55018, *supra* note 9. The same standards previously approved by the Commission (eligibility criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share values) that are already in place with respect to securities trading on the legacy platform will, as a result of this proposed rule change, merely continue to apply to those same securities once they are migrated to the AEMI platform.

¹⁸ 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).

¹⁹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on February 22, 2007, the date on which the Exchange filed Amendment No. 1.

Number SR-Amex-2007-17 and should be submitted on or before March 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4190 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55381; File No. SR-CBOE-2007-18]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Request Permanent Approval of a Pilot Program Relating to Market-Makers Quoting Remotely

March 1, 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 February 22, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.3 to request permanent approval of a pilot program relating to Market-Makers quoting away from CBOE's trading floor. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.org/Legal>), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of an existing Pilot Program that allows a CBOE Market-Maker to submit electronic quotations away from CBOE's trading floor in his/her appointed Hybrid Classes and Hybrid 2.0 Classes. In March 2005, CBOE amended its rules relating to Market-Maker appointments and quoting obligations.⁵ Among other changes, CBOE amended Rule 8.3 to provide that a Market-Maker may submit electronic quotations from a location outside of his/her appointed trading station.⁶ Previously, Market-Makers were only permitted to stream electronic quotations in their appointed Hybrid and Hybrid 2.0 classes when they were physically present in the trading crowd. In making this change, CBOE determined to request that it only be approved on a pilot basis to give CBOE the ability to evaluate the effectiveness of allowing Market-Makers to quote remotely. CBOE extended the Pilot Program for an additional year last March 2006.⁷ The current Pilot Program is scheduled to expire on March 24, 2007.

CBOE believes that the Pilot Program has been successful, in that it allows Market-Makers to choose how they

would like to participate in CBOE's Hybrid Trading System, *i.e.*, electronically, in open outcry, or both. Although not all Market-Makers have chosen to quote electronically away from CBOE's trading floor in their appointed Hybrid Classes and Hybrid 2.0 Classes, those Market-Makers that have availed themselves of this Pilot Program continue to provide liquidity and increased competition in their appointed option classes when they quote remotely. CBOE has not experienced any negative effects of allowing Market-Makers to quote from a location away from CBOE's trading floor. Thus, CBOE believes it would be appropriate and beneficial to permanently approve the Pilot Program, and permit Market-Makers to continue to have the option to quote electronically away from CBOE's trading floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4¹¹

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (approving SR-CBOE-2004-58).

⁶ Last year, CBOE amended its rules to allow Market-Makers to create a "Virtual Trading Crowd" appointment, and also modified the language in Rule 8.3(c) such that it states a Market-Maker can quote electronically away from CBOE's trading floor pursuant to the Pilot Program. (See Securities Exchange Act Release No. 54182 (July 20, 2006), 71 FR 42692 (July 20, 2006) (approving SR-CBOE-2006-51).)

⁷ See Securities Exchange Act Release No. 53410 (March 3, 2006), 71 FR 12747 (March 13, 2006) (granting immediate effectiveness to SR-CBOE-2006-24).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Section, 100 F Street, NE., Washington, DC 20549. Copies of such 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-2007-18 and should be submitted on or before March 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4191 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55390; File No. SR-DTC-2007-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to New York Governing Law

March 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 8, 2007, The Depository Trust Company ("DTC") 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 substantially by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act² and Rule 19b-4(f)(1)³ thereunder so that the proposal was 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

DTC is adding a new Section 4 to Rule 1 (Definitions) to clarify that the By-Laws, Rules, and Procedures are governed by New York state law.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(i).

³ 17 CFR 240.19b-4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC is adding a new Section 4 to Rule 1 to clarify that the By-Laws, Rules, and Procedures are governed by New York state law. DTC's participant's and pledgee's agreements currently specify this choice of law, but DTC wishes to add such language explicitly to its rules for transparency purposes and to harmonize DTC's rules with those of its clearing agency affiliates, the Fixed Income Clearing Corporation and the National Securities Clearing Corporation.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to DTC because the proposed change is a clarification that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not adversely affect the respective rights or obligations of the clearing agency or its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

⁴ 15 U.S.C. 78q-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1)⁶ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of DTC. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-DTC-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 No. SR-DTC-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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR-DTC-2007-03 and should be submitted on or before March 30, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4188 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55388; File No. SR-NASDAQ-2006-067]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Retroactively Reduce Fees for Nasdaq's Risk Management Service

March 2, 2007.

On December 29, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 make retroactive to November 1, 2006, certain reductions in fees charged for the Nasdaq Risk Management Service ("Service"). In SR-NASDAQ-2006-066,³ Nasdaq reduced the per trade fee for the Service to \$0.025, and capped the per month total Service fee per clearing firm at \$7,500. The instant proposed rule change would make those same fee and cap reductions retroactive to November 1, 2006. Nasdaq believes that these fee reductions will ensure that Nasdaq's charges for risk management services remain competitive with those of providers of similar services. The proposed rule change was published for notice and

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55131 (January 19, 2007), 72 FR 3891 (January 26, 2007) (SR-NASDAQ-2006-066).

comment in the **Federal Register** on January 26, 2007.⁴ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6(b)(4) of the Act,⁶ which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and that it not unfairly discriminate between customers, issuers, brokers or dealers. The Commission believes that the proposed rule change is consistent with these statutory standards. The Commission believes that reduction of the fee and cap for the Service retroactive to November 1, 2006 will enhance competition among providers of similar services.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change (SR-NASDAQ-2006-067) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4187 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55385; File No. SR-NASDAQ-2007-018]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade iShares Silver Trust Pursuant to Unlisted Trading Privileges

March 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁴ See Securities Exchange Act Release No. 55130 (January 19, 2007), 72 FR 3892.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. This order provides notice of the proposed rule change and approves it on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to trade shares ("Shares") of the iShares Silver Trust ("Trust") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available from Nasdaq's Web site at <http://www.nasdaq.complinet.com>, at Nasdaq'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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade the Shares on a UTP basis. Nasdaq is submitting this filing because its current listing standards do not extend to the Shares. However, systems operated by Nasdaq and its affiliates currently trade the Shares on an over-the-counter basis as facilities of NASD. This filing will allow Nasdaq to trade the Shares as an exchange.

The Shares represent beneficial ownership interests in the net assets of the Trust, consisting primarily of silver bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of silver, less the Trust's expenses. The Trust is not an investment company under the Investment Company Act of 1940.

The Commission previously approved the listing and trading of the Shares on

the American Stock Exchange LLC ("Amex").³ Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630.⁴ The primary trading hours for the Shares on Nasdaq would be 9:30 a.m. to 4 p.m. ET.

Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof ("Baskets" or "Basket Aggregations"). The Trust issues and redeems the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant").⁵ Baskets are issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the "Basket Silver Amount") is determined on each business day by Bank of New York, as trustee for the Trust ("Trustee").⁶ Authorized Participants are the only persons that may place orders to create and redeem Baskets. An Authorized Participant purchasing a Basket is able to separate it into individual Shares for resale.

When calculating the net asset value ("NAV") per Share, the Trustee values the silver held by the Trust on the basis of the day's announced London silver fix price. The calculation methodology for the NAV is described in more detail in the Amex Order. After the NAV is determined, at or about 4 p.m. ET each business day, the Trustee then determines the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. ET that day. The Trustee at the same time determines an "Indicative Basket Silver Amount" that Authorized Participants can use as an indicative amount of

silver to be deposited for issuance of the Shares on the next business day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. ET or shortly thereafter.

After 4 p.m. ET each business day, the Trustee and the sponsor of the Trust disseminate the NAV for the Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. ET during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by the Trustee to all Authorized Participants via facsimile or electronic mail and on the Trust's Web Site at <http://www.iShares.com> (to which Nasdaq will link from its Web site at <http://www.nasdaq.com>).

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System. The Web site for the Trust, which is publicly accessible at no charge, contains the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (g) the Prospectus; and (h) other applicable quantitative information, such as expense ratios, trading volumes, and the total returns of the Shares.

The Trust's Web site also provides at no charge continuously updated bids and offers indicative of the spot price of silver.⁷ Complete real-time data for silver futures contracts and options prices traded on the COMEX, a division of the New York Mercantile Exchange, Inc. ("NYMEX"), is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or online

³ See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-AMEX-2005-072) ("Amex Order").

⁴ On November 16, 2006, the Commission approved a filing by Nasdaq to adopt Rule 4630, which governs the trading of and surveillance procedures applicable to Commodity-Based Trust Shares. Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-NASDAQ-2006-009). Because silver is included within the rule's definition of a commodity, Rule 4630 is applicable to the Shares.

⁵ An "Authorized Participant" is a person, who at the time of submitting to the trustee of the Trust an order to create or redeem one or more Baskets: (a) Is a registered broker-dealer; (b) is a Depository Trust Company Participant or Indirect Participant; and (c) has in effect a valid Authorized Participant Agreement.

⁶ On each business day, the Trustee makes available, immediately prior to the opening of trading on Amex, the Indicative Basket Silver Amount for the creation of a Basket. The sponsor of the Trust also makes the next day's Indicative Basket Silver Amount available on the Trust's Web site at <http://www.iShares.com> shortly after 4 p.m. ET each business day.

⁷ The Trust's Web site's silver spot price is provided by The Bullion Desk (<http://thebulliondesk.com>), which is not affiliated with Amex, the Trust, the Trustee, or the sponsor of the Trust.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

information services such as Bloomberg or Reuters.

According to the Amex Order, Amex also disseminates for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value ("ITV") for the Trust. The ITV is disseminated on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The ITV is calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver.

Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Indicative Trust Value (which is comparable to the IIV or IOPV of an ETF) or the value of the spot price of silver. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through NASD facilities operated by Nasdaq is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Shares as an exchange, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Shares. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.⁸ In addition, Nasdaq has entered into an information sharing agreement with NYMEX for the purpose of providing information in connection with trading

in or related to COMEX silver futures contracts.

In connection with the trading of the Shares, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the ITV is disseminated; (d) the requirement that members deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction; and (e) trading information. Nasdaq notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a Basket or to be delivered upon redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of silver due to the sale of the Trust's silver to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last-sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts. The Information Circular will also discuss any relief granted by the Commission or the staff from any rules under the Act.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act⁹ in general and Section 6(b)(5) of the Act¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In

addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹¹ because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-018 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-NASDAQ-2007-018. 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

⁸ Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of the Shares, is currently being conducted by NASD. After Nasdaq begins to trade the Shares as an exchange, NASD will continue to surveil trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 240.12f-5.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-018 and should be submitted on or before March 30, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁴ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁵ The Commission notes that it previously approved the listing and trading of the Shares on Amex.¹⁶ The Commission also finds that the proposal is consistent with Rule

12f-5 under the Act,¹⁷ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Nasdaq has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630 which governs the trading of and surveillance procedures applicable to Commodity-based trust shares such as the Shares.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁸ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System. Furthermore, an ITV for each Trust on a per-Share basis is disseminated by Amex through the CTA/CQ High Speed Lines at least every 15-seconds during Nasdaq's regular trading hours. In addition, the Trustee disseminates the Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV to all Authorized Participants via facsimile or e-mail. This information—as well as additional trading data such as the prior business day's NAV and reported closing price, the Bid-Ask Price and updated bids and offers indicative of the spot price of silver—is also available on the Trust's Web site to which Nasdaq's Web site will link. Furthermore, complete real-time data for silver future contracts and option prices traded on COMEX is available by subscription from Bloomberg and Reuters and also on a delayed basis free of charge on NYMEX's Web site. The London silver fix price is readily available from the LBMA Web site, automated quotation systems, published or other public sources, or on-line information services. If the listing market halts trading in the Shares, or if the ITV or the value of the spot price of silver is not being calculated or disseminated, Nasdaq would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, Nasdaq would no longer have

authority to trade the Shares pursuant to this order.

In support of this proposal, Nasdaq has made the following representations:

(1) Nasdaq's surveillance procedures are adequate to address any concerns associated with the trading of the Shares on Nasdaq.

(2) Nasdaq has entered into an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts.

(3) Nasdaq would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including procedures for purchases and redemptions of Shares, suitability recommendation requirements, dissemination of the ITV, and trading information.

(4) Nasdaq would require its members to deliver a prospectus to investors purchasing Shares prior to or concurrently with a transaction in such Shares and will note this prospectus delivery requirement in the Information Circular.

This approval order is conditioned on Nasdaq's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on Nasdaq pursuant to UTP. Furthermore, accelerated approval of this proposal will facilitate Nasdaq's ability to continue trading these securities as Nasdaq becomes an exchange with respect to non-Nasdaq-listed securities, where there appears to be no regulatory concerns about such trading. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁹ that the proposed rule change (SR-NASDAQ-2007-018), be, and it hereby is, approved on an accelerated basis.

¹² In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78l(f).

¹⁵ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹⁶ See *supra* note 3.

¹⁷ 17 CFR 240.12f-5.

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁹ *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4192 Filed 3-8-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55386; File No. SR-NASDAQ-2007-016]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of 16 Commodity-Related Securities Pursuant to Unlisted Trading Privileges on a Pilot Basis

March 2, 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 March 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq" 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 the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 4630 to govern trading in any Commodity-Related Security (as defined below) and to make conforming amendments to Rule 4120. Pursuant to the amended rule and in accordance with the terms and conditions specified in this filing, Nasdaq also proposes to trade, pursuant to unlisted trading privileges, the 16 Commodity-Related Securities described below.

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.complinet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to trade the following securities pursuant to UTP for a pilot period of three months beginning on March 5, 2007: (1) Shares of the PowerShares DB Commodity Index Tracking Fund, (2) shares of the PowerShares DB G10 Currency Harvest Fund, (3) shares of the PowerShares DB Agricultural Fund, (4) shares of the PowerShares DB Oil Fund, (5) shares of the PowerShares DB Base Metals Fund, (6) shares of the PowerShares DB Energy Fund, (7) shares of the PowerShares DB Silver Fund, (8) shares of the PowerShares DB Gold Fund, (9) shares of the PowerShares DB Precious Metals Fund, (10) iPath Dow Jones-AIG Commodity Index Total Return Exchange-Traded Notes, (11) iPath GSCI Total Return Index Exchange-Traded Notes, (12) iPath Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes, (13) shares of the iShares GSCI Commodity-Indexed Trust, (14) units of the United States Oil Fund, LP, (15) Claymore MACROShares Oil Up Tradeable Shares, and (16) Claymore MACROShares Oil Down Tradeable Shares (collectively, the "Covered Securities"). The Commission previously approved the original listing and trading of each of the Covered Securities by the New York Stock Exchange ("NYSE") or the American Stock Exchange ("Amex").³ Since the

time of their listing on NYSE or Amex, the Covered Securities have traded on an over-the-counter ("OTC") basis on systems operated as facilities of NASD by Nasdaq and its affiliates. Specifically, the products are currently traded on the ITS/CAES System, which Nasdaq operates for NASD pursuant to a Transitional System and Regulatory Services Agreement (the "Transitional Agreement").

Under Rule 602 of Regulation NMS (the "Quote Rule"),⁴ NASD is required to collect the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each NASD member acting in the capacity of an "OTC market maker" for any "NMS stock,"⁵ unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security (the "1% Rule").⁶

Nasdaq has operated ITS/CAES under the Transitional Agreement in order to allow NASD to fulfill its Quote Rule obligation to provide a quotation facility for non-Nasdaq exchange-listed securities ("CQS Securities"). On March 5, 2007, NASD expects to begin to fulfill its obligation to provide a quotation facility for CQS Securities without Nasdaq's assistance through its Alternative Display Facility (the "ADF").⁷ Also at that time, Nasdaq expects to stop operating the ITS/CAES System.

On July 28, 2006, the Commission granted NASD a limited exemption⁸

Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (United States Oil Fund, LP); Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (MACROShares Oil Up and Oil Down Tradeable Shares).

⁴ 17 CFR 242.602.

⁵ "OTC market maker" means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size. See 17 CFR 242.600(b)(52). "NMS stock" means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 CFR 242.600(b)(47).

⁶ OTC market makers that are not subject to the 1% Rule may nevertheless elect to communicate quotations in exchange-listed securities to NASD, in which case NASD must disseminate such quotations.

⁷ NASD already uses the ADF to fulfill its obligations under the Quote Rule with respect to Nasdaq-listed securities.

⁸ See Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation,

Continued

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (PowerShares DB Commodity Index Tracking Fund); Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245 (August 29, 2006) (SR-Amex-2006-44) (PowerShares DB G10 Currency Harvest Fund); Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (seven PowerShares DB commodity funds); Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (iPath Dow-Jones AIG Commodity Index Total Return Exchange-Traded Notes); Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (iPath GSCI Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR-NYSE-2006-19) (iPath

from the Quote Rule and granted OTC market makers a limited exemption from the 1% Rule by providing that an OTC market maker is not required to provide quotations to NASD, and NASD is not required to collect and disseminate such quotations, if the OTC market maker provides its quotations to a national securities exchange that in turn disseminates the quotations of each such OTC market maker, even if such quotations do not reflect the exchange's best bid and offer. Thus, because Nasdaq disseminates depth-of-book information reflecting the quotations of each of its market makers, an OTC market maker may satisfy its 1% Rule obligations by quoting on Nasdaq.

The Covered Securities have been eligible to trade on ITS/CAES because the Quote Rule requires NASD, as a national securities association, to provide a means for its members to post quotes for all NMS stocks. As an exchange, however, Nasdaq may not trade securities on a UTP basis unless Nasdaq "has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges,"⁹ and, in the case of "new derivatives securities products" within the meaning of SEC Rule 19b-4(e),¹⁰ it either has generic listing standards applicable to the product in question or receives Commission approval for a rule filing under Section 19 of the Act¹¹ to allow trading of the product. The Covered Securities are new derivative securities products for which Nasdaq does not have generic listing standards, and therefore Nasdaq must obtain Commission approval of a filing before trading them as an exchange.

It had been Nasdaq's expectation that it would not trade all of the Covered Securities as of March 5, 2007, in light of low trading volumes of some of the Covered Securities and the administrative requirements associated with product-specific filings. Based on input from its members and NASD, however, Nasdaq has concluded that there are OTC market makers in each of the Covered Securities that may be subject to the 1% Rule, based on recent trading volumes. Moreover, although the ADF is scheduled to become

operational for CQS Securities on March 5, 2007, an NASD member that is not already an ADF participant might not have sufficient time to move its quotations in the Covered Securities to the ADF by March 5. Accordingly, Nasdaq believes that it must begin trading the Covered Securities by March 5 in order to prevent disruptions in the markets for the Covered Securities and forestall regulatory compliance issues for OTC market makers subject to the 1% Rule in the Covered Securities.

It does not appear that there would be sufficient time between now and March 5 for Nasdaq and Commission staff to process a detailed filing regarding each of the Covered Securities. Moreover, in cases where Covered Securities are issued by pooled investment vehicles that invest in commodity futures that are traded on futures exchanges that are not members of the Intermarket Surveillance Group ("ISG"), securities exchanges trading the Covered Securities have entered into regulatory information-sharing agreements with such futures exchanges. At this time, Nasdaq is in the process of entering into such agreements with ICE Futures and the Kansas Board of Trade, and is in the process of amending its existing agreement with the New York Mercantile Exchange ("NYMEX") to cover additional commodities. Nasdaq has just completed an agreement with the London Metals Exchange, and expects to complete the remaining agreements in the near future, but not by March 5, 2007.

In light of all of these considerations, Nasdaq is seeking Commission approval for a proposal to trade the Covered Securities for a three-month pilot period. During the pilot period, Nasdaq will complete all required regulatory information sharing agreements and will submit detailed product-specific filings covering each of the Covered Securities.

Nasdaq deems the Covered Securities to be equity securities, thus rendering trading in the Covered Securities subject to its existing rules governing the trading of equity securities. During the period while a Covered Security is trading under this pilot filing, its trading hours will be 9:30 a.m. to 4 p.m., Eastern Time ("ET"). Nasdaq may, however, propose longer trading hours for some of the Covered Securities in a subsequent product-specific filing, depending on the extent of dissemination of intraday values and index values related to the Covered Security.

Nasdaq will halt trading in a Covered Security under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a

regulatory halt by the listing market. UTP trading in the Covered Securities will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security.¹² Additionally, Nasdaq may cease trading a Covered Security if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading a Covered Security if the listing market delists it.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Covered Securities on Nasdaq. Trading of the Covered Securities through ITS/CAES is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Covered Securities as an exchange, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Covered Securities. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Covered Securities.¹³

Nasdaq is able to obtain information regarding trading in the Covered Securities and the underlying futures through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including the Chicago Board

¹² Nasdaq is amending Rule 4120 to make it applicable to any Commodity-Related Security (as defined below) and to include the term "commodity-related value" in the definition of a Required Value that must be disseminated under the conditions described in the rule. Thus, for example, the term "commodity-related value" would include the price of crude oil futures contracts on which the United States Oil Fund is based.

¹³ Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of the Covered Securities, is currently being conducted by NASD. After Nasdaq begins to trade the Covered Securities as an exchange, NASD will continue to surveil trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (July 28, 2006).

⁹ 17 CFR 240.12f-5.

¹⁰ "New Derivative Security Product" is defined as any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 240.19b-4(e).

¹¹ 15 U.S.C. 78s.

of Trade. In addition, Nasdaq has a regulatory information sharing agreement with NYMEX covering gold and silver futures, and is in the process of amending the agreement to cover crude oil, heating oil, natural gas, copper, and unleaded gasoline. Nasdaq has also just entered into a regulatory sharing agreement with the London Metals Exchange related to aluminum, copper, lead, nickel, tin, and zinc. Nasdaq is also in the process of entering into information-sharing agreements with ICE Futures related to crude oil and gas oil, and with the Kansas Board of Trade related to wheat.

Nasdaq will inform its members in Information Circulars of the special characteristics and risks associated with trading the Covered Securities. Specifically, the Information Circulars will discuss the following: (a) Applicable procedures for purchases and redemptions of Covered Securities; (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Covered Securities to customers; (c) how information regarding applicable intraday values is disseminated; (d) prospectus delivery requirements; and (e) trading information.

In addition, the Information Circulars will reference that the Covered Securities are subject to various fees and expenses described in their applicable Registration Statements. The Information Circulars will also reference the fact that there is no regulated source of last-sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn, and wheat, or the futures contracts on which the value of the certain Covered Securities are based. The Information Circulars will describe the public availability of information about the Covered Securities and underlying indexes or prices. The Information Circular will also discuss any relief granted by the Commission or the staff from any rules under the Act.

In November 2006, the Commission approved Nasdaq Rule 4630 to govern the trading of Commodity-Based Trust Shares.¹⁴ Commodity-Based Trust Shares were defined as trust-issued receipts based on the value of an underlying commodity or index of commodities held by a trust. Nasdaq is now proposing to amend the rule to make it apply broadly to trading in any

security issued by any trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives (a "Commodity-Related Security").¹⁵ All of the Covered Securities under this filing are Commodity-Related Securities and therefore governed by the amended rule. Under the amended rule:

- A member acting as a registered market maker in a Commodity-Related Security will be obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. For purposes of a Commodity-Related Security, "inter-departmental communications" are defined to include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

- A member acting as a registered market maker in a Commodity-Related Security must file with Nasdaq Regulation in a manner prescribed by Nasdaq Regulation and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, that the market maker may have or over which it may exercise investment discretion.

- A member acting as a registered market maker in a Commodity-Related Security shall make available to Nasdaq Regulation such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward

contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by Nasdaq Regulation.

- In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

The amended rule also requires members to provide a prospectus to all purchasers of a newly issued Commodity-Related Security. Finally, the amended rule stipulates that Nasdaq will file proposals under Section 19(b) of the Act before trading separate and distinct Commodity-Based Securities designated on different underlying commodity-related investments, and that the proposal filed with respect to particular Commodity-Related Security will specify the applicable trading hours for such Commodity-Related Security.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁶ in general and Section 6(b)(5) of the Act¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹⁸ because it deems the Covered Securities to be an equity securities, thus rendering trading in the Covered Securities subject to Nasdaq's existing rules governing the trading of equity securities.

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

¹⁴ Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-NASDAQ-2006-009).

¹⁵ The amended rule is thus intended to apply to instruments that have been defined as "investment shares," "commodity-based trust shares," "currency trust shares," "commodity index trust shares," or "partnership units" under the rules of Amex and NYSE Arca. The amended rule is also intended to apply to securities that have been defined as "paired trust shares" under such rules, with a reference price that is related to commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 240.12f-5.

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-016 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-NASDAQ-2007-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-016 and

should be submitted on or before March 30, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Covered Securities.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,²¹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²² The Commission notes that it previously approved the listing and trading of each of the Covered Securities on either NYSE or Amex.²³ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁴ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Covered Securities to be equity securities, thus rendering trading in the Covered Securities subject to the Exchange's existing rules governing the trading of equity securities.

¹⁹ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78l(f).

²² Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²³ See *supra* note 3.

²⁴ 17 CFR 240.12f-5.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁵ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Covered Securities are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security, is calculated by the original listing market and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the Covered Securities. In addition, if the listing market halts trading when either (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security, is not being calculated or disseminated, the Exchange would halt trading in such Covered Security.

The Commission notes that, if a Covered Security should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Covered Security pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Covered Securities.

2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Covered Securities.

3. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin the requirement that members deliver a prospectus to investors purchasing newly issued Covered Securities prior to or concurrently with the confirmation of a transaction.

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

This approval order is conditioned on the Exchange's adherence to these representations.

Exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying commodities. The Commission notes that the Exchange has indicated that it currently is in the process of entering into information-sharing agreements with the ICE Futures and the Kansas Board of Trade, as well as amending its current information sharing agreement with NYMEX. Although the Exchange has not finalized these agreements, the Commission believes nevertheless that the Exchange's proposal to trade the Covered Securities on a pilot basis is consistent with the Act in view of (1) the limited duration of the pilot period (three months), (2) the Exchange's representation that these information-sharing agreements would be complete "in the near future," and (3) the fact that the Exchange must submit a proposed rule change addressing each Covered Security, to continue trading the securities after the expiration of the pilot period.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of each of the Covered Securities by either NYSE or Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the trading of the Covered Securities on the Exchange pursuant to UTP. Furthermore, accelerated approval of this proposal is necessary to facilitate compliance by certain OTC market makers with the 1% Rule. Market disruption could result if these OTC market makers have no venue where they can publish their quotations in the Covered Securities. For these reasons, the Commission finds good cause to approve the amended proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2007-016), be and it hereby is, approved on an accelerated basis for a three-month pilot period which will commence on March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4193 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55393; File No. SR-NASD-2007-016]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rules 4632C and 4632D To Reflect "As/Of" Trade Reporting and the Automated Reporting of Trade Cancellations to the NASD/NSX and NASD/BSE Trade Reporting Facilities

March 2, 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 February 27, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the NASD. The NASD has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ 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 NASD proposes to amend NASD Rules 4632C, "Transaction Reporting," and 4632D, "Transaction Reporting," to reflect "as/of" (T+1) trade reporting and the automated reporting of trade cancellations to the NASD/NSX Trade Reporting Facility (the "NASD/NSX TRF") and the NASD/BSE Trade Reporting Facility (the "NASD/BSE TRF"), respectively. The proposed amendments are substantially identical

to the current language of NASD Rule 4632, "Transaction Reporting," relating to the NASD/Nasdaq Trade Reporting Facility ("NASD/Nasdaq TRF"), which the Commission approved on June 30, 2006.⁶ The text of the proposed rule change is available at the NASD, in the Commission's Public Reference Room, and at <http://www.nasd.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, the NASD 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 NASD 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 Commission approved the establishment of the NASD/NSX TRF⁷ and the NASD/BSE TRF⁸ on November 6, 2006, and December 13, 2006, respectively. The NASD/NSX TRF and NASD/BSE TRF provide members with additional mechanisms for reporting locked-in trades in exchange-listed securities executed otherwise than on an exchange.

Currently, the NASD/NSX TRF does not accept reports of trades on an "as/of" or next day (T+1) basis and the NASD/BSE TRF rules also do not contemplate the submission of "as/of" trade reports. The rules relating to the NASD/NSX TRF and the NASD/BSE TRF expressly provide that members must use an alternative electronic

⁶ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR-NASD-2005-087).

⁷ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR-NASD-2006-108). The NASD/NSX TRF commenced operation for the reporting of over-the-counter ("OTC") trades in Nasdaq-listed securities on November 27, 2006, and began accepting reports of OTC trades in non-Nasdaq exchange-listed securities on February 20, 2007.

⁸ See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. SR-NASD-2006-115). The NASD/BSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NASD has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

²⁶ 15 U.S.C. 78s(b)(2).

mechanism to report “as/of” trades to the NASD.⁹

In addition, members can only electronically report trade cancellations to the NASD/NSX TRF on trade date; members cannot electronically report cancellations on an “as/of” basis. The rules require that for trades that are cancelled after the day of the execution of the trade, members must contact NASD/NSX TRF Operations to report the trade cancellation.¹⁰ With respect to the NASD/BSE TRF, members cannot electronically report any trade cancellations, irrespective of whether they occur on or after the trade date. The NASD/BSE TRF rules require members to contact NASD/BSE TRF Operations to report any cancellation of a trade previously submitted to the NASD/BSE TRF.¹¹

The NASD proposes to amend NASD Rules 4632C and 4632D to reflect a change in the functionality of the NASD/NSX TRF and NASD/BSE TRF, respectively, to support the reporting of trades on an “as/of” (T+1) basis and the automated reporting of trade cancellations. The NASD believes that by providing for the reporting of “as/of” trades, the proposed rule change will enhance transparency and the integrity of the audit trail. Additionally, the NASD believes that by automating the reporting of trade cancellations, the proposed rule change will facilitate and streamline the correction of trades, as necessary.

The NASD anticipates that system testing and certification will be completed before the end of the first quarter of 2007. The NASD will announce the date that the system changes will be implemented on its Web site.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that the NASD’s rules 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 NASD believes that the proposed rule change will enhance investor protection

by increasing transparency and the integrity of the audit trail.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),¹³ the NASD provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b–4(f)(6) thereunder.¹⁵

Pursuant to Rule 19b–4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day operative delay to allow the proposed rule changes to be operative when the system changes for “as/of” trade reporting and the automated reporting of trade cancellations have been completed. The NASD believes that these system changes may be completed prior to the end of the 30-day operative delay period, and that it is crucial for a complete and accurate audit trail and market transparency that the NASD/NSX TRF and the NASD/BSE TRF be

able to process and report trade corrections as quickly as possible. The NASD believes that a delay in the implementation of this functionality would not be in the interests of investors.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes could enhance the accuracy and integrity of the audit trail and facilitate the reporting of “as/of” trades and trade cancellations.¹⁶ The Commission also notes that the proposed changes are substantially identical to the current language of NASD Rule 4632 relating to the NASD/Nasdaq TRF, which was subject to notice and comment.¹⁷ Accordingly, the Commission waives the 30-day operative delay and designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NASD–2007–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2007–016. 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

⁹ See NASD Rule 4632C(a)(2)(B) and (D), relating to the NASD/NSX TRF, and NASD Rule 4632D(a)(2)(B) and (D), relating to the NASD/BSE TRF.

¹⁰ See NASD Rule 4632C(f)(2)(B), (C), (E), and (F).

¹¹ See NASD Rule 4632D(g)(2)(A), (B), (C), (D), (E), and (F).

¹² 15 U.S.C. 78o–3(b)(6).

¹³ 17 CFR 240.19b–4(f)(6)(iii).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b–4(f)(6).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ See *supra* note 6.

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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 File No. SR-NASD-2007-016 and should be submitted on or before March 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4185 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55391; File No. SR-NSCC-2007-04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Collateral Management Service

March 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on February 22, 2007, the National Securities Clearing Corporation ("NSCC") 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 substantially by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that

the proposal was 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

Under the proposed rule change, NSCC will eliminate references to the Collateral Management Service ("CMS") in its rules and procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC has offered CMS to its members since 1995.⁴ CMS was created to provide NSCC members with access on a daily basis to information regarding their clearing fund, margin, and other similar requirements and deposits ("CMS data") at NSCC, other participating clearing agencies registered with the Commission, and clearing organizations recognized by the Commodity Futures Trading Commission (collectively, "Participating Clearing Entities"⁵). The information included such things as excess or deficit amounts and data on underlying collateral. The CMS service also permitted Participating Clearing Entities to receive CMS data with respect to their participants.

However, few NSCC members elected to use CMS because they can obtain access to CMS data by other means

provided by NSCC. In addition, by the end of 2004, the Participating Clearing Entities had long ceased transmitting CMS data to NSCC, and the service had become dormant. Accordingly, NSCC will delete Rule 53 and Procedure XVI (Collateral Management Service), will delete all references to CMS from Rule 4, Section 9 (Clearing Fund), and will amend Rule 49 (Release of Clearing Data) to preserve NSCC's right to share clearing fund data with appropriate regulatory and self-regulatory organizations.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act⁶ and the rules and regulations thereunder because by eliminating rules pertaining to an obsolete and dormant service, while preserving its right to share clearing fund data with appropriate regulatory bodies, NSCC's rules will more accurately reflect the services it provides to its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has discussed the proposed rule change with Participating Clearing Entities but has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(4)⁸ thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

⁴ Securities Exchange Act Release No. 36091 (Aug. 10, 1995), 60 FR 42931 (Aug. 17, 1995) [File No. SR-NSCC-95-6]. See also Securities Exchange Act Release Nos. 38283 (Feb. 13, 1997), 62 FR 38283 (Feb. 21, 1997) [File No. SR-NSCC-96-19], and 40740 (Dec. 3, 1998), 63 FR 67962 (Dec. 9, 1998) [File No. SR-NSCC-98-10].

⁵ The original Participating Clearing Entities were: Participants Trust Company, Philadelphia Depository Trust Company, Stock Clearing Corporation of Philadelphia, Boston Stock Exchange Clearing Corporation, The Depository Trust Company, The Options Clearing Corporation, MBS Clearing Corporation, and Government Securities Clearing Corporation.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(4).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NSCC-2007-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NSCC-2007-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at <http://www.nsccl.com/legal/index.html>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR-NSCC-2007-04 and should be submitted on or before March 30, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4189 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55387; File No. SR-NYSE-2007-23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 15A.50 Clarifying the Circumstances Under Which the Exchange Will Automatically Route Orders to Other Market Centers to Prevent Trade-Throughs, and Rename Rule 15A

March 2, 2007.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on March 1, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The 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 is proposing to amend Rule 15A.50 to describe how trade-throughs will be prevented on the Exchange in conformance with the Order Protection Rule ("OPR")⁴ of Regulation National Market System ("Reg. NMS")⁵ beginning on the Trading Phase Date of Reg. NMS,⁶ and to rename Rule 15A the "Order Protection Rule."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to amend Rule 15A.50 to reflect the circumstances under which the Exchange will automatically route orders to other market centers to prevent trade-throughs⁷ on its market, beginning on the Trading Phase Date of Reg. NMS. The avoidance of trade-throughs on the Exchange has been governed by Section 8(d)(i) (Order Protection—Trade Throughs; Locked Markets) and the related provisions of Section B of the ITS Plan, and NYSE Rule 15A (ITS "Trade-Throughs" And "Locked Markets"), implemented as a function of the Exchange's participation in the ITS Plan. Presently, NYSE Rule 15A.50 describes the circumstances under which the Exchange will route orders to other market centers to avoid trade-throughs according to parameters established by the ITS Plan. However, it is expected that the termination of the ITS Plan will coincide with the Trading Phase Date. More significantly, the Exchange is required to fully operate a Reg. NMS-compliant trading system, which includes compliance with Rule 611 of Reg. NMS,⁸ no later than the Trading Phase Date in order to qualify NYSE quotations for trade-through protection beginning with the Pilot Stocks Phase and beyond.⁹

The Exchange notes that it completed Phase IV of the Hybrid MarketSM rollout on February 28, 2007.

The rule amendment proposed herein is intended to conform Rule 15A.50 in recognition of certain Phase IV changes that were made to Exchange trading systems to be consistent with the requirements of Rule 611 of Reg. NMS,¹⁰ as well as the elimination of the ITS Plan. Specifically, the amendment seeks to update NYSE Rule 15A.50 to describe the conditions under which the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 242.611.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁶ The Trading Phase Date is currently March 5, 2007.

⁷ As defined in Reg. NMS, a "trade-through" is the "purchase or sale of an NMS stock during the regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer." 17 CFR 242.600(b)(77).

⁸ 17 CFR 242.611.

⁹ The Pilot Stocks Phase is currently set to begin on July 9, 2007.

¹⁰ 17 CFR 242.611.

Exchange will automatically route orders to other markets to prevent trade-throughs beginning on the Trading Phase Date. Further, the filing seeks to rename NYSE Rule 15A from "ITS 'Trade-Throughs' And 'Locked Markets'" to "Order Protection Rule."¹¹

In addition, the NYSE has requested from the Commission limited no-action relief with respect to the Exchange's obligation to route orders, in accordance with amended Rule 15A.50, proposed herein, to protected quotations, as defined in Rule 600(b)(57) under the Act,¹² of NASD ADF participants and the International Stock Exchange, LLC beginning on Reg. NMS's Trading Phase Date until April 5, 2007.¹³

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁴ that an Exchange have rules that are 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder¹⁶ because the proposal 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.¹⁷ NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change will allow the Exchange to implement, without delay, its amended Rule 15A.50 to specify the circumstances under which the Exchange will automatically route orders to other market centers to prevent trade-throughs on its market beginning on March 5, 2007, which marks the Trading Phase Date of Regulation NMS and the expected termination of the ITS Plan. Accordingly, the Commission hereby designates the proposed rule change to be operative on March 5, 2007.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

¹⁷ Rule 19b-4(f)(6)(iii) under the Act 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. NYSE has satisfied the pre-filing requirement.

¹⁸ For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ See 15 U.S.C. 78s(b)(3)(C).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-23 and should be submitted on or before March 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,²⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4186 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice: 5717]

60-Day Notice of Proposed Information Collection: DS-2031, Shrimp Exporter's/Importer's Declaration, OMB Control Number 1405-0095

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

²⁰ 17 CFR 200.30-3(a)(12).

¹¹ NYSE Rule 19 governs locking or crossing protected quotations in NMS stocks. Additionally, a forthcoming filing will propose conforming changes to NYSE rules to reflect the elimination of the ITS Plan.

¹² 17 CFR 242.600(b)(57).

¹³ See Letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated March 1, 2007.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Shrimp Exporter's/Importer's Declaration.

OMB Control Number: 1405-0095.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).

Form Number: DS-2031.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses: 10,000.

Average Hours per Response: 10 min.

Total Estimated Burden: 1,666.

Frequency: On Occasion.

Obligation to Respond: Mandatory Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from March 9, 2007.

ADDRESSES: You may submit comments by mail to the Office of Marine Conservation (OES/OMC), 2201 C Street, NW., Room 2758, Washington, DC 20520, or by facsimile at 202-736-7350.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Clayton Stanger, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520-7818; telephone: 202-647-2335.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Form DS-2031 is necessary to document imports of shrimp pursuant to the State Department's implementation of Section

609 of Public Law 101-162, which prohibits the entry into the United States of shrimp harvested in ways which are harmful to sea turtles. Respondents are shrimp exporters and government officials in countries which export shrimp to the United States. The DS-2031 Form is to be retained by the importer for a period of three years subsequent to entry, and during that time is to be made available to U.S. Customs and Border Protection of the Department of State upon request.

Methodology: The DS-2031 Form is completed by the exporter, the importer, and under certain conditions a government official of the exporting country. The DS-2031 Form accompanies shipment of shrimp and shrimp products to the United States and is to be made available to U.S. Customs and Border Protection at the time of entry.

Dated: February 27, 2007.

Margaret F. Hayes,

Acting, Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. E7-4320 Filed 3-8-07; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF STATE

[Public Notice: 5716]

Title: 60-Day Notice of Proposed Information Collection: Forms DS-2053, DS-3024, DS-3025, and DS-3026; Medical Examination for Immigrant or Refugee Applicant; OMB Control Number 1405-0113

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Medical Examination for Immigrant or Refugee Applicant.

OMB Control Number: 1405-0113.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Visa Services (CA/VO).

Form Number: DS-2053, DS-3024, DS-3025, DS-3026.

Respondents: Immigrant visa and refugee applicants.

Estimated Number of Respondents: 630,000 per year.

Estimated Number of Responses: 630,000 per year.

Average Hours per Response: 1 hour.
Total Estimated Burden: 630,000 hours annually.

Frequency: Once per application.

Obligation to Respond: Required to Obtain Benefit.

DATES: The Department will accept comments from the public up to 60 days from March 9, 2007.

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

- *E-mail:* VisaRegs@state.gov (Subject line must read OMB 1405-0113 Reauthorization).

- *Mail (paper, disk, or CD-ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—OMB 1405-0113 Reauthorization, 2401 E Street, NW., Washington DC 20520-30106.

- *Fax:* (202) 663-3898

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L-603, Washington, DC 20522, who may be reached at (202) 663-1221 or lageab@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: INA Section 221(d) requires that prior to the issuance of an immigrant visa the applicant undergo a physical and mental examination. The results of the medical examination are used to determine the alien's eligibility for such a visa under INA 212(a)(1). INA Section 412(b)(4)(B) requires that the United States Government "provide for the identification of refugees who have been determined to have medical conditions

affecting the public health and requiring treatment." Form DS-2053, Medical Examination for Immigrant or Refugee Applicant; Form DS-3024, Chest X-Ray and Classification Worksheet; Form DS-3025, Vaccination Documentation Worksheet; and Form DS-3026, Medical History and Physical Examination Worksheet, are designed to record the results of the medical examination. The panel physician performs the medical examination of the applicant and completes the forms.

Methodology: The medical forms are sent to the applicant in the applicant's package. The applicant takes the forms to the panel physician to use during the medical examination. The panel physician completes the medical examination and fills out the forms. The forms are then submitted in hard copy to the consular officer for processing.

Dated: February 21, 2007.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7-4321 Filed 3-8-07; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE

[Public Notice 5682]

U.S. Department of State Advisory Committee on Private International Law: Study Group on Consumer Protection

One of the goals of the Organization of American States is to harmonize private international law through Inter-American Specialized Conferences on Private International Law (CIDIP). The OAS has hosted these conferences every four to six years. Currently states are drafting instruments for "CIDIP-VII," which will focus inter alia on consumer protection. States are currently reviewing a draft Brazilian treaty on choice of law, a Canadian draft model law on choice of law and jurisdiction, and a U.S. proposal for a model law on the availability of consumer dispute resolution and redress. OAS member states discussed the three proposals at an initial meeting held in Porto Alegre, Brazil in December. No dates have been set for future meetings, but the views of participating states have been requested.

The Department of State Advisory Committee on Private International Law (ACPIL) will hold a public meeting to review the results of the Porto Alegre meeting and to obtain views on the three proposals with regard to consumer protection.

Time: The public meeting will take place at the Federal Trade Commission,

600 Pennsylvania Ave., NW., Room H-481, Washington, DC on March 22, 2007 from 10 a.m. EST to 12 p.m. EST. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Trisha Smeltzer to receive the conference call in number and the relevant materials.

Public Participation: Advisory Committee Study Group meetings are open to the public. Persons wishing to attend should contact Trisha Smeltzer at smeltzertk@state.gov or at 202-776-8423 and provide your name, e-mail address, and affiliation(s). Additional meeting information can also be obtained from Ms. Smeltzer. Persons who cannot attend but who wish to comment on any of the proposals are welcome to do so by e-mail to Michael Dennis at DennisMJ@state.gov.

Dated: March 2, 2007.

Michael Dennis,

Attorney-Adviser, Office of the Legal Advisor, Office of Private International Law, Department of State.

[FR Doc. E7-4319 Filed 3-8-07; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2007-27487]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 8, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA-2007-27487 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 20590-0001.

- **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.

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 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: For information regarding the Eisenhower Transportation Fellowship Program, contact Gwen Sutton, 703-235-0535, Office of Professional and Corporate Development, Federal Highway Administration, Department of Transportation, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22203. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays. For information regarding the National Highway Institute, contact Ann Gretter, 703-235-1260 or Heather Shelsta, 703-934-3436, National Highway Institute, Federal Highway Administration, Department of Transportation, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22202. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Education and Training Program.

Background: The Education and Training Program is comprised of two programs, the Eisenhower Transportation Fellowship and the National Highway Institute (NHI). The Eisenhower Transportation Fellowship is currently authorized by Public Law 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU). The purpose of the fellowship is to advance transportation education and research, and attract qualified students to the field of transportation. The Eisenhower Transportation Fellowship allows for the collection and analysis of vital program information from student transportation education programs, also serving as a management tool to measure program performance and evaluate effectiveness in meeting federal intent and workforce development common goals and objectives. An application form is used to collect basic information from the student to determine eligibility and qualifications for fellowship. The NHI is authorized under Section 5204 of the Safe, Accountable, Flexible, Efficient

Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU) which calls for the development and delivery of courses for the transportation community and requires the involvement and satisfaction measurement of transportation partners. One vital component involved in reaching those goals is providing training pertaining to highway activities, making sure that professionals and members of the public have access to the best, most accurate information. Towards this goal, the NHI develops and implements applicable training programs. To manage this increasingly complex task and to make the training process more accessible and useful, NHI is currently planning an automated online training management tool—the NHI Web Portal. The training evaluation and registration forms collect basic participant data for recordkeeping and basic course and instructor evaluation information for customer feedback about what NHI is doing well and what we need to improve.

Respondents: Approximately 200 students submit applications for the Eisenhower Transportation Fellowship and approximately 20,000 students for the NHI.

Frequency: The Eisenhower Transportation Fellowship frequency is annually. The NHI is by learning session.

Estimated Average Burden per Response: The estimated burden to complete the application for the Eisenhower Transportation Fellowship is 3 hours. The estimated burden to complete each training evaluation and registration for the NHI form is 3 minutes.

Estimated Total Annual Burden Hours: Approximately 1,600 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 2, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

FR Doc. E7-4216 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Safe Routes to School Task Force to the Secretary of Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting of advisory committee.

SUMMARY: This document announces a meeting of the National Safe Routes to School Task Force to the Secretary of Transportation. This is the second meeting of the Task Force. The purpose of the Task Force is to advise the Secretary of Transportation, through the Federal Highway Administration (FHWA) Office of Safety, on strategies to advance Safe Routes to School (SRTS) Programs nationwide and to encourage children, including those with disabilities, to walk and bicycle to school pursuant to Section 1404(h) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, Aug. 10, 2005). This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Task Force.

DATES: The second meeting of the Task Force is scheduled for April 19, 2007, from 8:30 a.m. to 5 p.m., e.t.

ADDRESSES: The meeting will be held at The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Arnade, the Designated Federal Official, Safe Routes to School Program Manager, FHWA Office of Safety Programs, (202) 366-2205 (*Tim.Arnade@dot.gov*); Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 1404 of SAFETEA-LU required the Secretary of Transportation to establish a Safe Routes to School (SRTS) Program. The purpose of the program is to enable and encourage children, including those with disabilities, to walk and bicycle to school and to make bicycling and walking to school a safer and more

appealing transportation alternative. Section 1404(h) requires the establishment of a National SRTS Task Force. This is the second meeting of the Task Force. The first meeting was held on January 11, 2007, in Washington, DC. All 17 members of the Task Force attended the first meeting. Complete meeting minutes from the first meeting are posted on the Web site listed below.

The agenda for the second meeting will include discussion of strategies to advance SRTS programs nationwide and discussion of a draft outline for a report to the Secretary of Transportation. Public comments will be taken at approximately 2:45 p.m. e.t. Further information about the Task Force can be found at http://www.saferoutesinfo.org/task_force/. Once a detailed agenda is developed, it will be posted on this Web site. Please note, agenda items are subject to change as priorities dictate.

Conclusion

The second meeting of the National Safe Routes to School Task Force will be held on April 19, 2007, at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024, from 8:30 a.m. to 5 p.m., e.t.

(Authority: Section 1404(h), Pub. L. 109-59; 5 U.S.C., App. II § 1)

Issued on: March 2, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7-4210 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These new ICRs pertain to 49 CFR Parts 213, 216, 217, 222, 227, 229, and 238. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to Parts 207, 209, 210, 214, 215, 217, 218, 223, 225, 228, 232, 233, 234, 235, and 236. The OMB approval numbers, titles, and expiration dates are

included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Gina Christodoulou, Office of Support Staff, RAD-43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved within the past twelve months: (1) OMB No. 2130-0010, Track Safety Standards (Continuous Welded Rail) (49 CFR 213) (Final Rule) (Form FRA F 6180.124). The expiration date for this information collection is January 31, 2010. (2) OMB No. 2130-0035, Railroad Operating Rules (49 CFR 217) (NPRM). The expiration date for this information collection is December 31, 2009. (3) OMB No. 2130-0544, Passenger Equipment Safety Standards (49 CFR 216, 229, and 238) (Final Rule). The expiration date for this information collection is December 31, 2009. (4) OMB No. 2130-0560, Use of Locomotive Horns at Highway-Rail Grade Crossings (49 CFR Parts 222 and 229) (Amendments to Final Rule). The expiration date for this information collection is October 31, 2009. (5) OMB No. 2130-0564, Locomotive Crashworthiness (49 CFR 238) (Final Rule). The expiration date for this information collection is May 31, 2008. (6) OMB No. 2130-0571, Occupational Noise Exposure for Railroad Operating Employees (49 CFR 227 and 229). The expiration date for this information collection is January 31, 2009.

The following information collections were re-approved within the past year: (1) OMB No. 2130-0005, Hours of Service Regulations (49 CFR 228) (Form FRA F 6180.3). The new expiration date for this information collection is November 30, 2009. (2) OMB No. 2130-0006, Railroad Signal System Requirements (49 CFR 233, 235, 236) (Forms FRA F 6180.14; FRA F 6180.47). The new expiration date for this information collection is August 31,

2009. (3) OMB No. 2130-0008, Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (49 CFR 232). The new expiration date for this information collection is January 31, 2010. (4) OMB No. 2130-0017, U.S. DOT Crossing Inventory Form (Form FRA F 6180.71). The new expiration date for this information collection is August 31, 2009. (5) OMB No. 2130-0035, Railroad Operating Rules (49 CFR 217). The new expiration date for this information collection is September 30, 2009. (6) OMB No. 2130-0502, Filing of Dedicated Cars (49 CFR 225). The new expiration date for this information collection is September 30, 2009. (7) OMB No. 2130-0506, Identification of Cars Moved in Accordance with Order 13528 (49 CFR 232). The new expiration date for this information collection is March 31, 2009. (8) OMB No. 2130-0509, State Safety Participation Regulations and Remedial Actions (49 CFR 209) (Forms FRA F 619.33/61/67/96/96a/109/110/111/112). The new expiration date for this information collection is November 30, 2009. (9) OMB No. 2130-0516, Remotely Controlled Switch Operations (49 CFR 218). The new expiration date for this information collection is September 30, 2009. (10) OMB No. 2130-0519, Bad Order and Home Shop Card (49 CFR 225). The new expiration date for this information collection is September 30, 2009. (11) OMB No. 2130-0520, Stenciling Reporting Mark on Freight Cars (49 CFR 215). The new expiration date for this information collection is September 30, 2009. (12) OMB No. 2130-0523, Rear-End Marking Devices (49 CFR 223). The new expiration date for this information collection is September 30, 2009. (13) OMB No. 2130-0525, Certification of Glazing Materials (49 CFR 223). The new expiration date for this information collection is February 28, 2010. (14) OMB No. 2130-0527, Locomotive Certification (Noise Compliance Regulations) (49 CFR 210). The new expiration date for this information collection is September 30, 2009. (15) OMB No. 2130-0529, Disqualification Proceedings (49 CFR Part 209). The new expiration date for this information collection is February 28, 2010. (16) OMB No. 2130-0534, Grade Crossing Signal System Safety (49 CFR Part 234) (Form FRA F 6180.83). The new expiration date for this information collection is September 30, 2009. (17) OMB No. 2130-0535, Bridge Worker Safety Rules (49 CFR Part 214). The new expiration date for this information collection is September 30, 2009. (18)

OMB No. 2130-0537, Railroad Police Officers (49 CFR Part 207). The new expiration date for this information collection is September 30, 2009. (19) OMB No. 2130-0568, FRA Emergency Order No. 24. The new expiration date for this information collection is August 31, 2009.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited regulations and forms.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on March 5, 2007.

D.J. Stadler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7-4213 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2007-27422]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MYSTIQUE.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2007-27422 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an

unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2007-27422. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 7th Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MYSTIQUE is:

Intended Use: "Sailing tours on San Francisco Bay of up to 12 paying passengers, operating with a licensed Captain; literature given from agencies such as Calif. Conservation Society giving info on ecology & conservation of area navigated & marine life, oceans & wet lands. We plan to burn bio-diesel in our engine to be part of an awareness of emission standards sharing this with passengers, also demonstrating solar, wind & alternative power resources, saltwater conversion to freshwater; bio-degradable products as applied to our vessel & our mission statement. Open & private charters avail. Networking with conservation groups, educating ourselves & the public on bay trips, demonstrating how a sailboat built in 1986 can also upgrade to newer conservation & emission standards all while enjoying the wind power of sailing on the San Francisco Bay. We would like to have "theme" trips targeting specifics in above information, as well as private wedding parties,

Historical information also from the working people on the Bay, Bar Pilots, tug boat operators, ship's captains, women maritime sailors—some live some audio."

Geographic Region: San Francisco Bay, around Alcatraz Island, Angel Island, off city front of San Francisco, viewing the Golden Gate Bridge, Richardson Bay off Sausalito, CA. Picking up at South Beach harbor in San Francisco. Day tours with tourists & local groups wishing to view & learn about the ecology & conservation of our delicate marine life & environment in the bay & oceans & how we all play a part in that ecosystem.

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>.

Dated: February 28, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7-4212 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2007-27421]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RENDEZVOUS.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2007-27421 at <http://dms.dot.gov>. Interested parties may comment on the effect this

action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2007-27421. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RENDEZVOUS is:

Intended Use: "Crewed passenger charter."

Geographic Region: Waters of Washington State and Alaska (excluding Southeast Alaska).

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>.

Dated: February 28, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7-4211 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Sixteenth Public Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Sixteenth Public Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at eight Level 1 Trauma Centers across the United States linked by a computer network. Researchers can review data and share expertise, which may lead to a better understanding of crash injury mechanisms and the design of safer vehicles. Eight presentations on current research based on CIREN cases will be presented. The agenda will be posted to the CIREN Web site <http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html> three weeks prior to the meeting.

DATE AND TIME: The meeting is scheduled from 8:30 a.m. to 4 p.m. on Wednesday, March 28, 2007.

ADDRESSES: The meeting will be held at: Department of Transportation, 400 Seventh Street, SW., Room 6200, Washington, DC 20590.

To Register for This Event: If you do not have a Federal Government identification card, it is suggested that you notify us in advance in order to put your name on the security list. This will expedite your admission to the building. You may still attend the public hearing but there could be a delay in granting you access. Please e-mail your name, affiliation, phone number and e-mail address to Tasha.Allen@dot.gov by March 23, 2007, in order to get on the pre-registration list.

For General Information: Mark Scarboro (202) 366-5078 or Cathy McCullough (202) 366-4734.

SUPPLEMENTARY INFORMATION: CIREN cases may be viewed from the NHTSA/CIREN Web site at: <http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html>. NHTSA has held three Annual Conferences where CIREN

research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA has held public meetings on a regular basis since 2000. Presentations from these meetings are available through the NHTSA Web site. NHTSA plans to continue holding CIREN meetings on a regular basis to disseminate CIREN information to interested parties. This is the sixteenth such meeting. The CIREN Centers will be presenting papers on the side impacts in pediatric cases, injuries involving far side occupants, diffuse axonal brain injuries, seat angle and injury, brain injury and impact angle, analytic techniques for using CIREN data, and elderly data analysis including the use of Digital Imaging and Communications in Medicine (DICOMS).

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on CIREN's Web site <http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html>. If you do not have access to the Web site, you may call or e-mail the contacts listed in this announcement and leave your telephone number or e-mail address. You will be contacted only if the meeting is postponed or canceled.

Issued on: March 5, 2007.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. E7-4209 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition DP06-003) submitted on August 24, 2006 by Mr. William B. Jeffers III of Garner, North Carolina to NHTSA's Office of Defects Investigation (ODI), requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in model year (MY) 2002 to 2006 Toyota Camry and Camry Solara vehicles (the "subject vehicles") for

incidents relating to vehicle engine surging.

After reviewing the concerns raised by the Petitioner and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition is not warranted. The agency, accordingly, has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Yon, Vehicle Control Division, Office of Defects Investigation, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone 202-366-0139.

SUPPLEMENTARY INFORMATION: The Petitioner owns a MY 2006 Toyota Camry with a 4-cylinder engine that was purchased new in January 2006. The Petitioner also previously owned a MY 2005¹ Camry. He alleges that both vehicles exhibited vehicle engine surging, which he described as a short duration (1 to 2 second) increase in engine speed occurring while the accelerator pedal is not depressed. In an initial interview, the Petitioner estimated that 6 to 8 surge incidents, of varying severity, occurred in the MY 2006 vehicle over the course of 10,000 miles and 7 months of ownership. The Petitioner reports that the brake system is effective at overcoming the surge. However, he is concerned about reports filed with NHTSA alleging uncontrolled surging in MY 2002 to 2006 Camry vehicles bringing those vehicles to a high rate of speed (in some cases, purportedly, with the brakes applied).

In September 2006, the Petitioner's MY 2006 vehicle was serviced by a Toyota dealership. The dealership determined that two diagnostic trouble codes (P-codes) related to the operation of the throttle actuator,² P2103 and P2111, were stored in the engine control unit's memory.³ The dealership ordered a new replacement throttle actuator, which was installed on the vehicle in October 2006. Thereafter, in November 2006, the Petitioner reported that another surge event occurred, more severe than his prior occurrences. The Petitioner stated that after startup, the vehicle moved forward rapidly when the throttle pedal was touched lightly. The Petitioner reports that the tires

¹ The open resume for DP06-003 incorrectly identified the Petitioner's previous vehicle as a MY 2003.

² The throttle actuator is the device that controls air flow into the engine and hence power production. On the subject vehicles the actuator is controlled electronically, as opposed to mechanically (via a cable).

³ The Petitioner does not recall seeing any warning indications on the instrument panel nor does he report any operational malfunctions, either of which would be expected when the stored P-codes were detected.

screeched from over-acceleration and the vehicle moved 3 or 4 car lengths before he was able to stop the vehicle with the brake. The Petitioner noted that the malfunction indication lamp (MIL) was illuminated during and after this incident. The vehicle was returned to the Toyota dealership, which discovered that P-codes P2111, P2112, and P2119 were stored in memory.⁴ These diagnostic codes also relate to throttle actuator operation. The invoice for this service visit indicates that an electrical connector for the newly installed throttle actuator was "adjusted" and the ground circuits were checked. No crash, injury or property damage incidents are alleged to have occurred with regard to either of the Petitioner's vehicles.

On October 3, 2006 ODI personnel met with the Petitioner in Raleigh, NC to assess his current vehicle.⁵ The assessment involved a visual inspection, as well as photographing the exterior, interior, and under hood areas of the vehicle. ODI test drove the vehicle to make an operational assessment of the braking, throttle control, cruise control and shift interlock systems. A brake override test was performed⁶ confirming that the brake system would stop and restrain the vehicle under full engine power.⁷ No anomalies were noted with the vehicle or its operation during ODI's test drive. ODI confirmed its understanding of the Petitioner's concerns and, through discussion and demonstration, attempted to evaluate the magnitude and duration of the surge events he had experienced.

During the October 2006 meeting, ODI and the Petitioner discussed the Toyota dealership's determination that his throttle actuator should be replaced. An agreement was made to schedule the next service visit so that the removed (suspect) throttle actuator could be retained for further analysis. After the repair, ODI arranged with Toyota to have the suspect throttle actuator sent to a facility owned by the component supplier, Aisan Industry Co., Ltd. An analysis was conducted which included

a physical inspection (including X-ray), mechanical testing, electrical testing, environmental testing, and destructive tear down. Aisan's final investigation report,⁸ submitted to NHTSA under request for confidentiality by Toyota, concluded that there was no problem associated with the component.

In late October 2006, ODI issued an Information Request (IR) letter⁹ to Toyota requesting subject vehicle production data, and warranty claim/parts sales data for the throttle actuator. ODI's review found that the overall warranty claim rate for throttle actuators is unremarkable.¹⁰ The primary reasons for warranty replacement of this component were: (1) Hesitation/poor acceleration; (2) MIL illumination; (3) stalling; and (4) poor/no starting. These reasons do not appear to be related to engine surging. No trends are observed when warranty claim rates are analyzed on production date, MY or time-in-service basis. Parts sales, a possible indication of the scope or a component problem, are also unremarkable.¹¹

Toyota's IR response¹² included technical information for the P-codes stored on the Petitioner's vehicle. The documents describe the condition(s) under which the stored P-codes would be set¹³ and the resultant effects on vehicle operation. For the codes stored, fault detection occurs when parameter thresholds are exceeded for a maximum of one second. Where an event lasts more than one second, the codes also result in a "fail safe" mode of operation during which the throttle actuator is de-powered and the throttle blade is mechanically fixed to a near-closed position.¹⁴ With this functionality, any engine surge occurring due to a throttle actuator failure should not last longer than one second, after which the MIL would be illuminated and engine power would be significantly reduced.

ODI attempted but was unable to conduct an interview with the current

owner of the Petitioner's MY 2005 Camry to determine if the surging happened again. However, that vehicle (which we know by its vehicle identification number) does not appear in Toyota's warranty claim data or in NHTSA's Vehicle Owner Questionnaire complaint database.

The electronic throttle control (ETC) system of Toyota vehicles in model years immediately prior to that of the Petitioner's current vehicle has been the subject of earlier agency investigations and petitions. Preliminary Evaluation PE04-021 (prompted by DP04-003), which ODI closed without identification of a defect trend, involved allegations that the ETC system failed to properly control engine speed resulting in vehicle surge.¹⁵ Unlike DP06-002, no allegations of MIL or component replacement in connection with a surge incident were received during PE04-021. Defect Petition DP05-003, which the agency denied, involved allegations of interrelated brake and acceleration problems that allegedly resulted in inappropriate and uncontrollable vehicle accelerations in ETC-equipped MY 2002 to 2005 Toyota and Lexus vehicles. During DP05-002, ODI reviewed a comprehensive listing of reports submitted to the agency by vehicle owners alleging uncontrollable engine surging. This review included examination of the types of reports about which the Petitioner has expressed concern. ODI's assessment of the reports, as well as a discussion of the report rates and their relative comparison to other throttle investigations, can be found in NHTSA's petition denial notice published in the **Federal Register** on January 3, 2006. Therefore, in addition to its recent careful examination of Petitioner's allegations concerning his vehicle, ODI has also thoroughly studied all related reports that have been submitted to it alleging similar problems in the subject vehicles.

In summary, after review and analysis of the available information, ODI has not identified a vehicle-based defect that would have produced the alleged engine surge in the Petitioner's vehicle, nor was it able to witness such an event when road testing the Petitioner's vehicle.¹⁶ Evaluation of a suspect

⁸ The report was submitted in response to NHTSA's Information Request letter of October 30, 2006.

⁹ A copy of the letter is available at <http://www-odi.nhtsa.dot.gov> under Defect Investigation DP06-003.

¹⁰ The warranty claim rate for subject vehicle throttle actuator replacement was less than 0.18%.

¹¹ Parts sales were approximately 5,300 units on a population of some 1.9M vehicles, ~0.3%.

¹² Non-confidential portions of the response are available at <http://www-odi.nhtsa.dot.gov> under DP06-003.

¹³ These documents describe the parameters that are monitored and the range and time thresholds that when exceeded result in the detection of a fault and the setting of a P-code.

¹⁴ The vehicle is incapable of making significant power in this state since air flow to the engine is reduced; however, the vehicle can still be driven at low speed to a safe location for parking and occupant departure.

¹⁵ The closing report for PE04-021 discusses technical and operational aspects of ETC including the specific countermeasures the system can implement when a fault is detected. The report, and non-confidential portions of Toyota's response, are available at <http://www-odi.nhtsa.dot.gov> under PE04-021.

¹⁶ ODI notes that a surge event may not represent a significant safety risk if it is of small magnitude and short duration.

⁴ ODI notes that 'Freeze Frame' data, which is stored information recording vehicle parameters such as vehicle speed, gear status, air mass flow, and other conditions present when P-codes are detected, were also collected at this time.

⁵ This meeting took place before the original equipment throttle actuator had been replaced.

⁶ The vehicle could be maintained at rest during wide open throttle with 25 to 30 lbs. brake force. The maximum engine speed under these conditions was approximately 2,200 RPMs.

⁷ This situation was demonstrated to the Petitioner since he raised concerns regarding reports submitted to NHTSA alleging that vehicles accelerated to high speed even when the brakes were fully applied.

throttle actuator removed from the Petitioner's vehicle did not reveal a component problem. Warranty and parts sales of the actuator are unremarkable. These data do not support the existence of a wide-spread defect or ongoing concern. The fault detection and reaction strategy described in Toyota's technical documents indicates that a loss of throttle control due to a component or system failure would be detected within a one second period after which engine power would be limited. The Petitioner's MY 2006 vehicle brake system overcomes full

engine power at easily achievable brake pedal forces. This in no way implies that we doubt the Petitioner's reported experiences with his vehicle. Rather, the agency simply lacks evidence of a safety related defect in his vehicle or a trend of such defects in the subject vehicles.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect as alleged by the Petitioner in the subject vehicles at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's

limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: March 5, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7-4214 Filed 3-8-07; 8:45 am]

BILLING CODE 4910-59-P



Federal Register

**Friday,
March 9, 2007**

Part II

Department of Homeland Security

6 CFR Part 37

**Minimum Standards for Driver's Licenses
and Identification Cards Acceptable by
Federal Agencies for Official Purposes;
Proposed Rule**

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS-2006-0030]

RIN 1601-AA37

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is proposing to establish minimum standards for State-issued driver's licenses and identification cards that Federal agencies would accept for official purposes after May 11, 2008, in accordance with the REAL ID Act of 2005. This rule proposes standards to meet the minimum requirements of the REAL ID Act of 2005, including: information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for locations where driver's licenses and applicable identification cards are issued.

DATES: Submit comments by May 8, 2007.

ADDRESSES: You may submit comments, identified by the DHS docket number DHS-2006-0030 that corresponds to this rulemaking, using any one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 866-466-5370.
- Mail: Paper, disk or CD-ROM submissions can be mailed to the Department of Homeland Security, Attn: NAC 1-12037, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Darrell Williams, REAL ID Program Office, Department of Homeland Security, Washington, DC 20528 (202) 282-9829.

SUPPLEMENTARY INFORMATION:

Public Participation

The Department of Homeland Security (DHS) invites interested persons to participate in this rulemaking by submitting written comments or data, and has requested comments on specific portions of this rulemaking as described in section VI below. We also invite comments relating to the economic,

environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, by fax, or by mail as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want DHS to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

DHS will file in the public docket all comments received by DHS, except for comments containing confidential information and sensitive security information (SSI).¹ DHS will consider all comments received on or before the closing date for comments. The docket is available for public inspection.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, DHS will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. DHS will hold them in a separate file to which the

¹“Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

public does not have access, and place a note in the public docket that DHS has received such materials from the commenter. If DHS receives a request to examine or copy this information, DHS will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulations found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that 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 the applicable Privacy Act Statement published at www.regulations.gov. You may also review the comments in the public docket on the Internet at <http://www.regulations.gov>.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

- (1) Searching on www.regulations.gov by docket number or title, or
- (2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators
 CAC—Department of Defense Common Access Card
 CBP—Customs and Border Protection
 CDLIS—Commercial Driver's License Information System
 CHRC—Criminal History Records Check
 CRBA—Consular Report of Birth Abroad
 DHS—Department of Homeland Security
 DMV—Department of Motor Vehicles
 DOS—Department of State
 DOT—Department of Transportation
 EAD—Employment Authorization Document
 EVVE—Electronic Verification of Vital Events
 HHS—Department of Health and Human Services
 IAFIS—Integrated Automated Fingerprint Identification
 ICAO—International Civil Aviation Organization
 ID—Identification Card
 LPR—Lawful Permanent Resident
 MRT—Machine Readable Technology

MRZ—Machine Readable Zone
 NCSL—National Conference of State Legislatures
 NCIC—National Crime Information Center
 NGA—National Governors Association
 NPRM—Notice of Proposed Rulemaking
 PDPS—Problem Driver Pointer System
 SAVE—Systematic Alien Verification for Entitlements
 SEVIS—Student and Exchange Visitor Information System
 SSA—Social Security Administration
 SSI—Sensitive Security Information
 SSN—Social Security Number
 SSOLV—Social Security On-Line Verification
 TIF—Tagged Image Format
 TSA—Transportation Security Administration
 TWIC—Transportation Worker Identification Credential
 USCIS—U.S. Citizenship and Immigration Services
 VWP—Visa Waiver Program
 WHTI—Western Hemisphere Travel Initiative

Table of Contents

- I. Background
 - A. Statutory Authority
 - B. Consultation With States, Non-Governmental Organizations, and the Department of Transportation
 - C. Summary of the Proposed Rule
- II. Analysis of this Proposed Rule
 - A. Scope and Applicability
 - 1. Definition of “Official Purpose”
 - 2. Definition of “REAL ID driver’s license or identification card”
 - 3. Definition of “Identification Card”
 - B. Compliance Period
 - C. Privacy Considerations
 - D. Document Standards for Issuing a REAL ID Driver’s License or Identification Card
 - 1. Documents Required for Proving Identity
 - 2. Additional Documents Considered and Rejected for Proof of Identity
 - 3. Other Documentation Requirements
 - E. Verification of Information Presented
 - 1. Verification of “Address of Principal Residence”
 - 2. Verification of Identity Information
 - 3. Verification of Lawful Status
 - 4. Verification of Date of Birth
 - 5. Verification of Social Security Account Number or Ineligibility
 - 6. Connectivity to Systems and Databases Required for Verification
 - F. Exceptions Processing for Extraordinary Circumstances
 - G. Temporary Driver’s Licenses and Identification Cards
 - H. Minimum Driver’s License or Identification Card Data Element Requirements
 - 1. Full Legal Name
 - 2. Driver’s License or Identification Card Number
 - 3. Digital Photograph
 - 4. Address of Principal Residence
 - 5. Signature
 - 6. Physical Security Features

- 7. Privacy of the Information Stored on the Driver’s License or Identification Card
- 8. Machine-Readable Technology (MRT)
- 9. Encryption
- I. Validity Period and Renewals of Driver’s Licenses and Identification Cards
 - 1. Remote/Non-In-Person Renewals
 - 2. In-Person Renewals
- J. Source Document Retention
- K. Security of DMV Facilities Where Driver’s Licenses and Identification Cards are Manufactured and Produced; Facility Security Plans
 - 1. Background Checks for Certain Employees
 - 2. Physical/Logical Security
 - 3. Document Security Features on Driver’s Licenses and Identification Cards
 - 4. Security of Information Stored in the DMV Database
 - 5. Security of Personal Data and Documents Collected and Managed Under the Act
- III. State Certification Process
- IV. Driver’s Licenses and Identification Cards That Do Not Meet the Standards of Subparts A and B of These Regulations
- V. Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004
- VI. Solicitation of Comments
- VII. Regulatory Analyses

I. Background

A. Statutory Authority

The REAL ID Act of 2005² (the Act) prohibits Federal agencies, effective May 11, 2008, from accepting a driver’s license or DMV-issued personal identification card issued by a State for an official purpose unless the issuing State is meeting the requirements of the Act. The Act requires DHS to determine whether a State is meeting the Act’s requirements based upon certifications submitted by each State in a manner prescribed by DHS. The Secretary of Homeland Security is authorized under section 203 of the Act to issue regulations as necessary to set the standards required under the Act. This rule proposes implementation standards for States to meet the Act’s requirements for issuance of driver’s licenses and identification cards intended for acceptance by Federal agencies for official purposes.

The Act sets forth minimum document requirements, minimum driver’s license and identification card issuance standards, and other requirements, including the following—

- Information and features that must appear on the face of the driver’s license or identification card, and inclusion of a common machine-readable portion of a driver’s license or identification card;

² Division B—REAL ID Act of 2005, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. 109–13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. 30301 note).

- Presentation and verification of information an applicant must provide before a driver’s license or identification card may be issued, including evidence that the applicant is a U.S. citizen or has lawful status in the United States;

- Physical security of locations where driver’s licenses and identification cards are produced, the security of document materials and papers from which driver’s licenses and identification cards are produced, and the background check of certain employees involved in the manufacture and production of licenses, and;

- Physical security of the driver’s licenses and identification cards to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose.

The Act also permits a State otherwise in compliance with the Act to issue driver’s licenses and identification cards that do not conform to the Act’s requirements. Such driver’s licenses and identification cards, however, cannot be used for an official purpose and must clearly state on the face of the card that a Federal agency may not use it for an official purpose. The State also must use a unique design or color indicator so that it is readily apparent to Federal agency personnel that the card is not to be accepted for an official purpose.

Section 203 of the Act amends 18 U.S.C. 1028(a) to establish a Federal criminal penalty for persons who knowingly traffic in actual authentication features for use in fraudulent identification cards.

B. Consultation With the States, Non-Governmental Organizations, and the Department of Transportation

Section 205(a) of the Act requires that any regulations, standards, or grants under the Act be carried out in consultation with the Secretary of Transportation and the States. DHS has met and consulted with the Department of Transportation (DOT), and formed an interagency work group to develop these proposed regulations. DOT and other Federal agencies with an interest in this rulemaking participated actively in the work group.

DHS has also consulted with State officials and State representative associations in the development of this proposed rule through meetings and conference calls in 2005 and 2006. Many States and State representative associations participated in these events and submitted written comments for consideration in the development of this proposed rule. These are available for inspection in the public docket.

In particular, DHS received comments from the National Governors

Association (NGA), the National Conference of State Legislatures (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA), which aggregated responses from 48 jurisdictions impacted by REAL ID, including 46 States, American Samoa, and the District of Columbia. DHS also met with various non-governmental organizations (NGOs), particularly civil rights, privacy and religious groups. The States and NGOs raised a series of concerns about the requirements mandated under the Act. A summary of these concerns is outlined below. DHS addresses each of these concerns in the discussion of the proposed requirements under this rule in section II.

One of the first issues of concern to the States was the brief period for compliance. There was concern that DHS would interpret the Act in such a way as to require that all driver's licenses and identification cards nationally be brought into compliance with the Act by May 2008, an impossible task according to the States. The States instead suggested a "date forward" approach, which we have proposed to adopt as a phase-in period through May 2013.

The detailed requirements of the Act, particularly requirements for original documents and proof of principal residence, also raised State concerns that individuals, through no fault of their own, might not be able to meet certain requirements of the Act. The States advocated for an exceptions process to accommodate certain circumstances (victims of natural disasters such as Hurricanes Katrina and Rita who no longer have certain documents, or elderly individuals with no birth certificate, for example). We understand these concerns and therefore propose that the States adopt an exceptions process in their Departments of Motor Vehicles (DMVs) that will be monitored by the State and included as part of the State's certification process to DHS. This exception process would include any difficulties arising from attempts to verify birth information for individuals born before 1935, who, due to various considerations, may not have been issued birth certificates.

The Act requires States to subject certain individuals involved in the manufacture and production of driver's licenses and identification cards to appropriate background checks. The States have suggested to DHS that, due to the unique structure of each State's DMV system, the identification of positions that should be subject to this requirement be left up to the States. DHS agrees with this proposal. The States have also proposed that new hires

be allowed to begin work at the DMVs while their background check is pending. DHS understands that the States must have flexibility in their hiring, and therefore proposes that States place new employees in positions that are not subject to the background check until the check is complete and satisfaction of employment conditions for the covered position is determined.

The States have indicated to DHS that the Act will lead to an increase in the number of required in-person visits to DMVs. Generally speaking, the States have sought to utilize alternate service channels (particularly the internet and services by mail) to reduce the required number of in-person visits to DMVs, as a means of reducing State costs and improving service to customers. The States have, therefore, expressed particular concerns with the renewal process under REAL ID. DHS understands these concerns and is therefore proposing that States continue their remote renewal procedures, as long as they establish a procedure to verify the identity of individuals applying for renewal remotely, maintain images of the source documents the individual used to obtain a REAL ID driver's license or identification card, and establish a procedure to re-verify the information on the source documents retained by the State. DHS proposes, however, that individuals with temporary REAL ID driver's licenses or temporary identification cards renew their documents in person, in order to present evidence of continued lawful status.

C. Summary of the Proposed Rule

DHS proposes to issue REAL ID regulations that create minimum standards for State driver's licenses and identification cards that Federal agencies can accept for official purposes on or after May 11, 2008. Under this proposal, States must certify that they are in compliance with these requirements, and DHS must concur, before the driver's licenses and identification cards that the States issue may be accepted by Federal agencies for official purposes on or after May 11, 2008. Because DHS recognizes that not all driver's licenses and identification cards can be reissued by May 11, 2008, the proposal provides a five-year phase-in period for driver's license or identification card renewals. All driver's licenses and identification cards that are intended to be accepted for official purposes as defined in these regulations must be REAL ID licenses and identification cards by May 11, 2013.

Key features of the proposal include:

- *Applicant documentation.* States would require individuals obtaining driver's licenses or personal identification cards to present documentation to establish identity; U.S. citizenship or lawful immigration status as defined by the Act; date of birth; social security number (SSN) or ineligibility for SSN; and principal residence. States may establish an exceptions process for the documentation requirement, provided that each such exception is fully detailed in the applicant's motor vehicle record.

- *Verification requirements.* States would verify the issuance, validity, and completeness of a document presented. This proposal specifies electronic verification methods depending on the category of the documents.

- *Information on driver's licenses and identification cards.* The following information would be required to appear on State-issued driver's licenses and identification cards: full legal name, date of birth, gender, a unique driver's license or identification card number (not the SSN), a full facial digital photograph, address of principal residence (with certain exceptions), issue and expiration dates, signature, physical security features and a common machine-readable technology (MRT).

- *Security features on the card.* The proposal contains standards for physical security features on the card designed to prevent tampering, counterfeiting or duplication for a fraudulent purpose, and a common MRT with defined data elements.

- *Physical security/security plans.* Each State must prepare a comprehensive security plan for all State DMV offices and driver's license/identification card storage and production facilities, databases and systems and submit these plans to DHS as part of its certification package.

- *Employee background checks.* States would conduct name-based and fingerprint-based criminal history records checks against State criminal records and the FBI's NCIC and IAFIS, respectively, on certain employees working in State DMVs who have the ability to affect the identity information that appears on the driver's license or identification card, who have access to the production process, or who are involved in the manufacture of the driver's licenses and identification cards. States would pay a fee to FBI to cover the cost of this check. States would also conduct a financial history check on these employees.

- *State certification process.* Similar to DOT regulations governing State

administration of commercial driver's licenses (49 CFR part 383), States will be required to submit a certification and specified documents to DHS to demonstrate compliance with these regulations and demonstrate continued compliance annually.

- *Database connectivity.* States would be required to provide electronic access to specific information contained in the motor vehicle database of the State to all other States.

II. Analysis of This Proposed Rule

A. Scope and Applicability

The Act does not require any State to issue REAL ID driver's licenses and identification cards. States may choose to issue driver's licenses and identification cards that cannot be accepted by Federal agencies for official purposes (referred to in this document as "non-REAL ID driver's licenses and identification cards"). This proposed rule would apply to States and territories that choose to issue driver's licenses and identification cards that Federal agencies can accept for official purposes. Consistent with section 202(d)(11) of the Act, this rule also proposes requirements for issuance of non-REAL ID driver's licenses (as well as non-REAL ID identification cards) by States in compliance with the Act. Under this proposed rule, individuals can hold only one valid REAL ID driver's license or identification card at a time.

DHS understands that at present an individual may hold active driver's licenses in multiple jurisdictions. Although DHS is not regulating issuance of non-REAL ID driver's licenses beyond what is required in the REAL ID Act, DHS wishes to further the concept of "one driver, one record, one record of jurisdiction" and seeks comment on how the REAL ID Act may be implemented to discourage the issuance of multiple non-REAL ID driver's licenses to an individual, or what steps States can take to ensure individuals are not holding multiple driver's licenses from multiple States.

1. Definition of "Official Purpose"

Section 201(3) of the Act provides that the term "official purpose" "includes but is not limited to accessing Federal facilities, boarding Federally-regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine." DHS proposes to limit the regulatory definition of "official purpose" at this time, to those purposes expressly stated in the Act—accessing Federal facilities, boarding commercial

aircraft, and entering nuclear power plants. DHS, under the discretionary authority granted to the Secretary of Homeland Security under the Act, may expand this definition in the future. DHS seeks comment on the proposed scope of "official purpose," and how DHS could expand this definition to other federal activities.

DHS considered including the acquisition of Federally-issued identification documents, such as a Transportation Worker Identification Card (TWIC), military Common Access Card (CAC), passport, or PASSport card within the proposed definition of "official purpose." To do so would be consistent with the concept of strengthening the reliability of identity documents, one of the primary objectives of the Act. However, since no State would be required to have all of its citizens possess Real ID driver's licenses and identification cards until May 2013, DHS concluded that it would be premature to require Federal agencies to accept only Real ID driver's licenses and identification cards during the phase-in period and that the imposition of such a requirement could inhibit individuals from obtaining these necessary forms of Federal identification.

Federal agencies themselves do not currently examine identification from all individuals seeking to board regulated commercial aircraft or to enter nuclear power plants. In the case of aircraft, often it is aircraft operators that examine driver's licenses or other identification credentials of individuals seeking entry to the sterile area of an airport. However, they do so in compliance with requirements in security programs issued pursuant to TSA regulations. DHS interprets the language of the REAL ID statute to mean that when nongovernmental entities require identification for the scope of activities considered "official purposes" in compliance with Federal requirements, and an individual presents a driver's license or DMV-issued identification card, the REAL ID Act's federal acceptance requirements would also apply to these nongovernmental entities.

These regulations are not intended to change current admittance practices at Federal facilities. If a Federal facility does not currently require presentation of photo identification prior to entry, the Act and these proposed regulations would not require that process to change. Similarly, if a Federal facility currently accepts identification other than a State-issued driver's license or identification card, the Act and these proposed regulations do not require that

the agency refuse to accept such other forms of identification. If the individual intends to use a State-issued driver's license or identification card, however, it must be one that is issued by a State that is complying with the REAL ID Act.

2. Definition of "REAL ID Driver's License or Identification Card"

Throughout this proposed rule, driver's licenses and identification cards issued under these regulations that Federal agencies may accept for official purposes are referred to as "REAL ID driver's licenses and identification cards." The term "REAL ID driver's licenses and identification cards" includes driver's licenses and identification cards issued by State DMVs (or other State agencies with comparable responsibility for issuing driver's licenses and identification cards) to U.S. citizens and Lawful Permanent Residents (LPRs) of the United States for a maximum renewable period of eight years. The term "REAL ID driver's licenses and identification cards" also includes driver's licenses and identification cards acceptable for official purposes that are issued to aliens legally present in the United States for a finite period of time, upon verification of their current lawful status for the period of their authorized length of stay, or for one year, if no length of stay is specified. In instances where the proposed regulation discusses these temporary driver's licenses and identification cards independently, these types of REAL ID licenses and identification cards are referred to as "temporary REAL ID driver's licenses and identification cards."

3. Definition of "Identification Card"

Section 201(2) of the Act defines "identification card" to mean "a personal identification card, as defined in section 1028(d) of title 18 United States Code, issued by a State." In turn, 18 U.S.C. 1028(d) defines this term, in pertinent part, to mean "a document made or issued by or under the authority of * * * a State [or] a political subdivision of a State * * * which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals[.]" Section 201(2), by its express terms, could cover any identification card issued by or under the authority of a State, including identification cards for State-chartered universities and colleges, and cards issued by State agencies to obtain public benefits. At this time, DHS is limiting the scope of this definition to identification cards issued by State

DMVs or other State offices with comparable responsibility for issuing driver's licenses.

DHS believes that these additional documents mentioned above are not currently accepted as identification documents to the same degree as State-issued driver's licenses and identification cards issued by a State DMV. In addition, it would be unduly burdensome at this time for DHS to require that the issuers of these additional documents comply with these proposed standards, since DMVs have been considering the Act's requirements for some time, and it is likely that universities and other State entities have not.

B. Compliance Period

Section 202(a)(3) of the Act provides that, "[b]eginning 3 years after the date of enactment of this division, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section." The Act further states that DHS "shall determine whether a State is meeting the requirements of [the Act] based on certifications made by the State to the Secretary." *Id.*, (a)(2). DHS, the Department charged with implementing and enforcing the REAL ID Act requirements for identification standards, interprets the compliance provision to mean that effective on May 11, 2008, Federal officials will be prohibited from accepting State-issued driver's licenses and identification cards for official purpose unless the State has submitted the required certification or extension application to DHS and DHS has determined that the State is meeting the requirements of the Act. DHS is proposing under this rule to find that a State certification is sufficient for compliance under the Act if the State has established a program that ensures the State's DMVs will begin issuing driver's licenses and identification cards that meet the requirements of the Act and standards proposed under this regulation beginning May 11, 2008. DHS does not interpret the Act as requiring the States to recall and reissue all driver's licenses and identification cards by May 11, 2008. Rather, States will be able to replace all driver's licenses and identification cards with REAL ID driver's licenses and identification cards intended to be accepted for official purposes by May 11, 2013.

Accordingly, DHS proposes the following compliance requirements:

(1) Each State must submit its certification package to DHS on its REAL ID driver's license and

identification card programs no later than February 10, 2008, 90 days before the May 11, 2008 compliance date required under the Act. DHS strongly encourages States to communicate their intent to certify compliance or request an extension by October 1, 2007;

(2) DHS will not find that a State is meeting the requirements of the Act if the State's certification does not demonstrate that the all REAL ID driver's licenses and identification cards issued by the State on or after May 11, 2008, will meet the standards required under the Act and proposed under these regulations, unless the State has sought and received an extension;

(3) For unexpired driver's licenses and identification cards issued prior to May 11, 2008, DHS proposes a five-year phase-in period to allow individuals to apply for and receive new driver's licenses and identification cards that comply with these rules. These driver's licenses and identification cards would be acceptable for official purposes until they expire, or until the phase-in period ends, on May 10, 2013—whichever is earlier. Driver's licenses and identification cards issued before May 11, 2008 that do not expire until after the phase-in period ends would have to be exchanged for driver's licenses and identification cards issued under the new rules in order to be accepted by Federal agencies for official purposes after May 10, 2013.

If a driver's license or identification card that would not otherwise expire until after May 11, 2008 needs to be reissued by a State prior to its expiration date, DHS is proposing that the driver's license or identification card must meet the new standards at the time it is reissued. This reissuance would occur, for example, if a driver's license or identification card has been lost or stolen and needs to be replaced, or if changes in information occur which would cause the DMV to issue a new driver's license or identification card.

Under section 205(b) of the Act, DHS may grant an extension of time to meet the requirements of the Act if the State provides adequate justification. DHS recognizes that many States need a final rule in order to guide their implementation efforts. Many States have informed DHS that, absent sufficient time to consider and act upon the final rule, the States will not be in a position to comply with the Act and the final rule. In recognition of this fact, DHS is establishing a mechanism where States can request an expedited extension of the compliance deadline. States may request an extension based on the lack of a final REAL ID rule by filing such a request no later than

October 1, 2007. Based on information already received by DHS, and absent extraordinary circumstances, an extension request will be deemed justified for a period lasting until, but not beyond, December 31, 2009.

Under this provision of the Act, DHS also intends to issue compliance guidance to the States. This guidance will set forth benchmarks or best practices against which progress toward full compliance will be measured and to assist States in drafting the certification packages. As proposed in this rule, DHS would require submission of certifications no later than February 10, 2008, but the Department strongly encourages States to submit certification packages by October 1, 2007. State certification packages should include milestones, schedules, and estimated resources needed to meet all the requirements of the final rule no later than May 11, 2008. States will resubmit and DHS will re-evaluate State plans on an annual basis until all requirements of this rule are met. DHS welcomes comments from the States on appropriate benchmarks for measuring progress toward meeting the requirements of this rule and on specific resource and schedule constraints in meeting these benchmarks.

C. Privacy Considerations

The public has long been accustomed to providing personal information for the purpose of obtaining driver's licenses and identification cards and to having this information printed on driver's licenses. Most States already include this information in a machine readable technology (MRT). With the enactment of the REAL ID Act, however, there has been increased attention to the privacy ramifications involving the information that will appear on the licenses and identification cards and the exchange of information. Some have raised concerns that the Act could create an increased risk of identity theft and erode privacy, or be a stepping-stone to a national identity card.

A frequently-heard concern relates to the amount of additional information the Federal Government will have about driver's license holders and what the Federal Government will do with that data. In fact, however, neither the Real ID Act nor these proposed regulations gives the Federal Government any greater access to information than it had before. Moreover, there is no information about a licensee that the Federal Government will store that it is not already required to store.

As described below, DHS has sought to address these privacy concerns within the limits of its authority under

the Act.³ At the Federal level, only the Driver's Privacy Protection Act of 1994 (DPPA)⁴ addresses the privacy of motor vehicle records, but its protections are limited. Although it addresses the use and disclosure of personal information stored in State motor vehicle records, the DPPA does not provide privacy protections for the personal information stored on the licenses themselves or set any security requirements for the motor vehicle databases. DHS has sought in the NPRM to provide for appropriate privacy and security protections to the extent of its authority.

This section of the NPRM will summarize the requirements of the Act that potentially have the greatest impact on privacy, the extent to which those requirements change current State driver's licensing practices, and how DHS intends to address privacy concerns regarding the Act. This analysis will address the three key privacy issues posed by the Act: (1) The connectivity of the databases; (2) the protection of the personal information stored in the State databases; and (3) the protection of the personal information stored on machine readable technology on the DL/IDs. We invite comments on whether the steps outlined below and otherwise discussed within the NPRM are appropriate and adequate.

1. Connectivity of Databases Mandated by the Act

One voiced privacy concern regarding the Act is that it will create a national identity card and centralized database on all drivers. This concern stems from the provisions in the Act requiring that the individual States electronically verify application information against Federal databases and provide State-to-State access to verify that each applicant only holds a valid license in one jurisdiction. DHS envisions that the operation of both the State data query of Federal reference databases and the State-to-State data exchanges will be left to the States, as is currently the practice in driver's licensing.

As discussed below and in section II.E.6 of the NPRM, the recommended architecture for implementing these data

exchanges does not create a national database, because it leaves the decision of how to conduct the exchanges in the hands of the States. Moreover, no Federal agency will operate the data exchanges affecting non-commercial driver's licensing.⁵

a. *The State Data Query of Federal Reference Databases.* Section 202(c)(3)(A) of the REAL ID Act requires that, before issuing a license or ID, a State verify with the issuing agency, the "issuance, validity, and completeness of each document required to be presented." Given that it is very difficult to validate that the source documents provided by applicants are genuine and have not been altered, certain identifying data contained in the source documents will be checked against authoritative Federal databases as described in more detail in section II.E. of the NPRM.

As described in section II.E., many State DMVs already access one or more of these databases as part of their current licensing processes. The fact, however, that this data verification may now be done by all 56 jurisdictions heightens privacy concerns. The proposed rule seeks to address many of these issues by leaving the operation of this data query, including the development of the business rules, to the States. The rule proposes to require individual States to document their business rules for reconciling data quality and formatting issues and urges States to develop best practices and common business rules by means of a collective governance structure.

A very important example of how administration of this data query will be left to the States is the commitment by DHS to support the development of a "federated querying service" to enable the States to access the Federal reference databases in a timely, secure, and cost-effective manner. (See section II.E.6.) Most States already query some of these reference databases either directly or indirectly through a portal provided by AAMVA. DHS is committed to the expedited development and deployment of a common querying service to facilitate

the State DMV queries for REAL ID data verification.

To address the privacy concerns posed by such a service, the NPRM makes clear that this service will only enable State DMVs to query Federal systems. The purpose of this federated querying service will be to minimize the impact of data verification on State DMV business processes and reduce the costs of data access. So while DHS will support the development of a querying service, it will not operate this service.

Moreover, use of this federated querying service will be voluntary, and States may choose to maintain or establish direct access to the reference databases; combine direct access with partial use of a common service; or verify applicant data against the reference databases in some other manner. The proposal by DHS to leave the operation of licensing verification with the States should resolve concerns about a centralized database operated by the Federal Government.

In addition, as part of the State certification mandated by section 202(a)(2) of the Act, each State will be required to prepare a comprehensive security plan for its DMV offices and driver's license storage and production facilities, databases, and systems utilized for collecting, disseminating or storing information used in the issuance of REAL ID licenses. As part of this requirement, DHS will require that each State include in its annual certification information as to how the State will protect the privacy of the data collected, used, and maintained in connection with REAL ID, including all the source documents.

b. *The State-to-State Data Exchange.* Section 202(d)(12) of the Act mandates that States provide electronic access to information contained in the motor vehicle database of the State to all other States; and section 202(d)(13) requires that the State motor vehicle database contains, at a minimum, all data fields printed on driver's licenses and identification cards, and motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on licenses.⁶ These two provisions mandate the State-to-State data exchange, however, the NPRM contemplates that the States will work out the business process and data access rules necessary to implement these provisions prior to May 11, 2008 by means of a collective governance structure.

⁶ The information available in each jurisdiction's database varies, but generally they already store what is required by the Act.

³ The Act does not include statutory language authorizing DHS to prescribe privacy requirements for the state-controlled databases or data exchange necessary to implement the Act. This is in sharp contrast with the express authorization provided in section 7212 of IRTPA, which was the prior state licensing provision repealed by the Real ID Act. Section 7212(b)(3)(E) of IRTPA stated that the Federal regulations "shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards."

⁴ Pub. L. 103-322 as amended by Pub. L. 106-69, 18 U.S.C. 2721 *et seq.*

⁵ The database connectivity mandated by the REAL ID Act is in addition to the database connectivity/functionality required to implement the Department of Transportation's existing control over commercial driver's licensing. In addition, law enforcement already have access directly to a State's driver history via the National Law Enforcement Telecommunication System (NLETS), which is the International Justice & Public Safety Information Sharing Network, a message switching system serving the criminal justice community. NLETS is a not-for-profit organization owned and governed by the States.

As described in section II.E., below, although the REAL ID Act creates a requirement for this State-to-State data exchange, such an exchange already exists under the Department of Transportation's (DOT) rules and regulations governing commercial driver's licenses (CDLs) and State connections to the National Driver Register (NDR)/Problem Driver Pointer System (PDPS) and the Commercial Driver's License Information System (CDLIS).⁷ These systems exchange information about commercial motor vehicle drivers, traffic convictions, and disqualifications.

A State uses both the NDR/PDPS and CDLIS to check a driver's record, and CDLIS to make certain that the applicant does not already have a CDL. Under these programs, as well as the REAL ID Act, the primary purpose of the State-to-State data exchange is to determine if the applicant is unqualified and the application fraudulent; the purpose is not specifically to verify the applicant's identity.

The existing State-to-State data exchange among DMVs, while focused on commercial driver's licensing, also impacts non-commercial license applicants, as States are currently required to run all license applicants against the PDPS and CDLIS, which are both pointer systems that collect limited information from each State in order to match against the incoming inquiries. Both systems offer some mandatory privacy protections. The PDPS is subject to Federal regulations 23 CFR 1327.1 *et seq.*, which adopts the Privacy Act of 1974⁸ principles of individual participation and collection, use, and disclosure limitation.

DHS intends to work closely with the DOT, AAMVA, and the States to fulfill the requirements for State-to-State data exchange under the REAL ID Act, while also supporting privacy protections for this exchange. It has not been determined whether CDLIS or some other service will be the platform for the State-to-State exchange, but regardless of the platform, it will be necessary for the States, working with DHS and DOT, to define the privacy protections for any State-to-State data exchange. DHS and DOT will collaborate with states on the privacy protections and access provisions for any State-to-State data exchange.

For example, with support from the DHS Privacy Office, representatives of

the DMVs of California, Iowa, Massachusetts, and New York formed a Federation in July 2006 to identify a collective governance structure for the State-to-State data exchange and to begin to develop business rules, including privacy protections. This Federation has recently joined with the AAMVA REAL ID Steering Committee to develop an independent governance structure for the State-to-State data exchange. The development of privacy protective business rules, standards, and governance mechanisms will be central to ensuring that the privacy of license holders is protected.

2. Protection of the Personal Information Stored in State Databases

As discussed at the outset of this section, the DPPA only addresses disclosure of motor vehicle record information but does not address the security of the motor vehicle record information or databases. The REAL ID Act, however, calls for DHS to issue regulations that "ensure the physical security of locations where licenses and identification cards are produced and the security of document materials and papers from which driver's licenses and identification cards are produced."

DHS believes that this language provides authority for it to define basic security program requirements to ensure the integrity of the licenses and identification cards. The NPRM, therefore, proposes that each State submit as part of the REAL ID Act certification process a written, comprehensive, security plan. This requirement provides an important safeguard for the personal information collected, maintained, and used by State motor vehicles offices, and it will help assure the public that their information is being handled appropriately. (See NPRM section II.K., below.)

As part of its security plan, each State is also required to outline how the State will protect the privacy of personal information collected, disseminated or stored in connection with the issuance of REAL ID licenses from unauthorized access, misuse, fraud, and identity theft. Each State must prepare these plans to cover all State DMV offices and driver's license storage and production facilities, databases and systems and submit them as part of its comprehensive security plan.

The State's certification should demonstrate that it has implemented best practices to protect the privacy of the license holder as guided by the fair information principles, which call for openness, individual participation (access, correction, and redress), purpose specification, data

minimization, use and disclosure limitation, data quality and integrity, security safeguards, and accountability and auditing. These principles are widely recognized and embodied in numerous Federal, State, and international law and codes of practice.

DHS requests comments on recommended best practices for protecting the privacy of the personal information stored in the various State motor vehicle databases pertaining to the requirements under this Act.

3. Protection of the Personal Information Stored in the Machine Readable Technology

The REAL ID Act standardizes the minimum personal information on REAL ID driver's licenses and identification cards, and mandates a machine readable technology. DHS is sensitive to the privacy concerns raised by the potential for non-governmental third parties to collect and use the personal information on REAL ID driver's licenses and identification cards. As discussed in sections II.H.7–9, DHS is recommending that States use the PDF-417 2D bar code and DHS leans toward recommending that States protect the personally identifiable information stored in this 2D bar code by requiring encryption, if the operational complexity of deploying a nationwide encryption infrastructure to process access by law enforcement can be addressed.

4. Conclusion

In summary, DHS has proposed the following privacy protections in its implementing regulations for the REAL ID Act: (1) The State-to-State data exchanges and the State data query of Federal reference databases will be State operated and governed; (2) as part of the State certification process, States will be required to submit a comprehensive security plan, including information as to how the State implements fair information principles; and (3) while acknowledging the benefits of employing encryption of the personal information stored on the identification cards, we invite comment on its feasibility and costs and benefits to ensure that its costs do not outweigh the benefits to privacy.

These protections are intended to serve as a floor and do not prevent the States from using their own statutory or executive authority to provide additional privacy protections, consistent with Federal law, for the personal information stored on the REAL ID licenses and in their databases. DHS intends to work closely with the States as they develop the information

⁷ CDLIS was developed to enable record checks of the nation's professional truck and bus drivers. It is an enhanced pointer system that requires States to update records and exchange data.

⁸ The Privacy Act of 1974, 5 U.S.C. 552a.

system(s) necessary for querying appropriate Federal and State databases to verify the information contained in the source documents and to determine lawful status of applicants. DHS expects that any system developed for purposes of the REAL ID Act will build in appropriate privacy and security mechanisms to reduce the risk of unauthorized access, misuse, fraud, and identity theft.

DHS believes that protecting the privacy of the personal information associated with implementation of the REAL ID Act is critical to maintaining the public trust that Government can provide basic services to its citizens while preserving their privacy. DHS recognizes the significant privacy issues that are associated with the Act. The public is encouraged to comment on the privacy and security issues associated with implementation of the Act in order to ensure that the final rule implementing this statute reflects sufficient public input on these important issues, which could include the requirements of State comprehensive security plans; access to information collected by States pursuant to the REAL ID Act and the protection of such information stored in State databases; and the operation and governance of electronic verification by States of driver's license application information.

D. Document Standards for Issuing a REAL ID Driver's License or Identification Card

Section 202(c)(1) and (2) of the Act requires that States issuing REAL ID driver's licenses and identification cards obtain and verify from applicants documentation establishing—

(1) The applicant's identity, through a photo identity document, or a non-photo identity document that includes full legal name and date of birth if a photo identity document is not available;

(2) Date of birth;

(3) Proof of SSN or ineligibility for an SSN;

(4) The applicant's address of principal residence; and

(5) Lawful status in the United States.

Currently, every State has a different list of the kind and number of acceptable identification documents. Many are voluminous, encompassing 40 or 50 different types of documents. Many States utilize a "points" system where a combination of documents accumulating a sufficient number of "points" is deemed sufficient. Others use a tier system of "primary" and "secondary" documents, where, for example, a primary (such as a passport)

and a secondary (such as an electric bill confirming an address) are required.

Driver's licenses are the documents used most frequently to establish identity and often serve as source documents to obtain other forms of identification. If an individual obtains a fraudulent driver's license or identification card, he or she can potentially engage in identity-based fraud, or even obtain access to areas and facilities where he or she might cause harm or otherwise pose a severe risk to security.

Based on these considerations, DHS has determined that many of the documents currently accepted by DMVs and proposed by others are not sufficient to address Congress' direction to enhance national security. Many of the documents on these lists can easily be counterfeited, or their authenticity cannot be easily verified by the States—especially outside of the State of issuance. Therefore, this rule proposes a short list of acceptable documents for REAL ID and temporary REAL ID driver's licenses and identification cards.

This approach offers several advantages from a security perspective. First, restricting the number of documents means that only the documents which DHS has found to be the most secure are chosen to demonstrate identity. Second, limiting the number improves the chances that DMV employees will be able to distinguish valid from fraudulent documents because there will be fewer categories of documents with which they will need to be familiar. Third, a smaller list of documents increases the ease of verifying the documents independently, a related statutory requirement and one that will be very effective in reducing document and identity fraud.

Under the NPRM, DHS proposes that States require that applicants provide at least one of these documents in order to obtain a REAL ID driver's license or identification card. States could add additional documentation requirements to satisfy their own objectives, but at least one of the documents listed below would have to be presented for every application. State agencies would not be required to comply with these requirements when issuing driver's licenses or identification cards in support of the Federal Witness Security Program, codified at 18 U.S.C. 3521 *et seq.*, or operations by other Federal, State, or local criminal justice agencies. In addition, when requested by an authorized representative of the Federal Witness Security Program or the criminal justice agency, States should

remove from public records appropriate material relating to the prior or other identities of people involved in the operation and should take sufficient other steps, as directed by appropriate officials, to safeguard the identities of such persons.

1. Documents Required for Proving Identity

The list of acceptable documents that DHS proposes to establish identity for purposes of this regulation is as follows:

- A valid unexpired U.S. passport.⁹
- A certified copy of a birth certificate.
- A consular report of birth abroad.
- An unexpired permanent resident card.
- An unexpired employment authorization document (EAD).
- An unexpired foreign passport with valid U.S. visa affixed.
- A U.S. certificate of citizenship.
- A U.S. certificate of naturalization;

or

- A REAL ID driver's license or identification card issued subsequent to the standards established by this regulation.

a. *A Valid Unexpired United States Passport.* A U.S. passport is issued only by the U.S. Department of State (DOS). It may be issued only to United States citizens or nationals. If issued for the full validity period (ten years for adults; five years for minors under 16 and for diplomatic and official bearers) it is statutory proof of U.S. citizenship during its period of validity. Before a U.S. passport is issued, the written application is carefully adjudicated to establish the citizenship and identity of the bearer. First-time applicants must appear in person. A U.S. passport has security features that include special paper, inks and photo printing that make it difficult to counterfeit or alter. Beginning in 2006, U.S. passports also contain the additional security feature of an integrated circuit chip containing the bearer's bio-data, a biometric, and unique chip identification information.

b. *Certified Copy of a Birth Certificate Issued by a U.S. State or Local Office of Public Health, Vital Records, Vital Statistics or Equivalent.* DHS recognizes that a birth certificate is not an identity document in the true sense of the term. Instead, a birth certificate is a record that a birth took place at a particular time and place, and nothing (such as a photograph or other biometric) ties a particular person to a particular birth

⁹ A passport also includes the passport card that the Department of State announced in its Notice of Proposed Rulemaking published October 17, 2006 concerning the Western Hemisphere Travel Initiative (WHTI) (71 FR 60928).

certificate. However, section 202(c)(1)(A) of the Act states that a non-photo identity document is acceptable, if it includes the person's full legal name and date of birth. DHS believes that this strongly suggests that Congress intended to maintain the use of the birth certificate for this purpose, recognizing the longstanding practice that birth certificates are used to obtain driver's licenses and identification cards. DHS also understands that the vast majority of driver's license and identification card applicants may only have a birth certificate available for this purpose; while U.S. citizens could use a U.S. passport, passports are currently held only by an estimated 25 percent of Americans.

To achieve security objectives, DHS is proposing that only certified copies of birth certificates that include the individual's full name and can be verified by a State vital statistics, public health, or similar office would be acceptable. Interpreting this more broadly could result in a myriad of non-secure, non-verifiable documentation being used to obtain a driver's license or identification card. Given the fact that Congress specified that the requirements enumerated in section 202(c)(11) were a "minimum," and given also the serious security implications associated with other implementation considerations included in Title II of the Act, DHS believes that it has the necessary authority to interpret this clause narrowly. Accordingly, this regulation interprets section 202(c)(1)(A) to mean only a certified copy of a birth certificate, and only one issued pursuant to the other requirements discussed in this section. These regulations do not preclude a State that accepts a birth certificate as the applicant's identity document from requiring the individual to also present one or more forms of photo identification to substantiate his or her claimed identity.

A corollary issue considered by DHS is whether to recognize delayed birth certificates issued more than one year after the birth itself. While these cases are relatively few, States have established procedures in place for adjudicating these claims and require evidence to prove the actual occurrence of the birth prior to issuing the birth certificate. Therefore, delayed birth certificates lawfully issued by the States will also be acceptable as an identity document.

c. *DOS Consular Report of Birth Abroad of a Citizen of the United States, FS-240; and DS-1350 and FS-545.* The Consular Report of Birth Abroad (CRBA), FS-240, is a document issued

by a United States consular officer to a person born abroad who acquired United States citizenship at birth. It is statutory proof of U.S. citizenship. The parent of a child acquiring U.S. citizenship at birth abroad must apply for the CRBA before the child's 18th birthday, and must document the child's acquisition of U.S. citizenship. The CRBA is printed on secure paper in a format that resembles a state birth certificate. There are two other DOS documents issued for U.S. citizens born abroad and acquiring U.S. citizenship at birth. Certifications of Report of Birth Abroad (DS 1350), issued only by Passport Services Vital Records Office, may be accepted as the equivalent of the CRBA. Certifications of Birth (FS-545) issued at U.S. Foreign Service posts prior to November 1990 but no longer issued are still valid and list only the child's name, date of birth, place of birth, and recording date.

d. *Certificate of Naturalization, Form N-550 or N-570, or Certificate of Citizenship, Form N-560 or N-561.* The Certificate of Naturalization is issued by the United States government as proof of a person having obtained U.S. citizenship through naturalization (a legal process of obtaining a new nationality). The Certificate of Citizenship is proof of an individual having obtained U.S. citizenship through derivation or acquisition at birth. These documents are currently issued by DHS, printed on secure paper and have a photograph attached.

e. *Unexpired Permanent Resident Card, Form I-551.* This document, also known as a "green card," is issued by DHS to lawful permanent residents of the United States. The current version contains numerous security features, such as microline printing and a digital photograph. While most of these documents display an expiration date, the status itself does not expire.

f. *Unexpired EAD, Form I-766 or Form I-688B.* This document is issued by DHS to numerous categories of aliens in the United States who are lawfully authorized to work. The Form I-766 document is secure and difficult to counterfeit. The I-688B is expected to be phased out by 2008, but under this proposal would be acceptable until it is phased out.

g. *Unexpired Foreign Passport with valid U.S. visa affixed.* Valid unexpired passports from around the world have traditionally been acceptable documentation to establish identity in most, if not all, States. Most passports meet certain international standards criteria for security as defined by the International Civil Aviation Organization (ICAO). Security features

for these documents include digital photographs, information stored on a machine-readable zone, and other forensic features. Some passports issued by foreign countries, however, do not have these features, and can even be hand-written. DHS was concerned about requiring the States to maintain knowledge of passport types from all around the world in order to be able to combat fraud. Further, DHS believes that DMVs, once they verify the visa, should be permitted to rely on the fact that, in issuing the visa and admitting the alien to the United States, the Departments of State and Homeland Security have verified the passport to the extent required by the REAL ID Act (see section 202(c)(3)(A) of the Act, and subsection II.E. of this preamble, below).

Accordingly, States may accept a U.S. visa contained in a foreign passport as an acceptable means of authenticating identity. Not only are the U.S. visas secure and contain a photograph, issued U.S. visas can be verified against DOS systems electronically using the same connectivity required to verify U.S. passports.

DHS is aware that inclusion of a visa alone will leave a large group of aliens who have lawful status in the United States unable to obtain a document that is on this list. First, this includes those nonimmigrants admitted under section 217 of the Immigration and Nationality Act (the Visa Waiver Program, or VWP), as well as the Guam visa waiver program. However, these aliens are admitted solely for short periods of time, are prohibited from working in the United States, and are unlikely to qualify for a U.S. driver's license under typical State residency requirements. Further, these aliens can typically use either the driver's license from their home country or an international driver's license to be able to drive a car while lawfully in the United States. Also, they will still be able to obtain a non-REAL ID license (if the State permits it) that could be used for driving purposes, but not for official Federal purposes pursuant to this regulation. Overall, DHS does not believe that this policy would significantly impact VWP aliens.

Another classification of persons that would be unable to present a visa are Canadians who enter the United States without having to obtain a visa and who stay in the United States for extended periods (*i.e.*, more than 90 days) at a time. While the majority of these are short-term visitors who would not need a U.S. driver's license, and indeed are not issued any U.S. documentation or recorded in U.S. nonimmigrant data systems, some are longer-term visitors

who may be students, authorized workers or others who may have reason to need a U.S. license. DHS requests comments specifically on how this group could be affected if they are unable to obtain a U.S. REAL ID driver's license that could be used for Federal purposes.

h. *Driver's License/Identification Card Issued After the Standards Established by the Regulation.* Any REAL ID driver's license or identification card issued after the establishment of these new standards, except non-REAL ID driver's licenses and identification cards issued under section 202(d)(11) of the Act, should be acceptable to establish identity, when an individual moves from State to State or when a driver's license or identification card is being renewed.

2. Additional Documents Considered and Rejected for Proof of Identity

a. *Transportation Worker Identification Credential.* One document considered by DHS as acceptable to demonstrate identity is the Transportation Worker Identification Credential (TWIC). This identification document will be very secure and those who obtain it will be subjected to rigorous background checks. However, DHS believes that any identification document acceptable in this regulation must be capable of being verified electronically by a State in a timely fashion. Including a TWIC on the list of acceptable identity documents, at this time, would require DHS to develop, and the DMVs to access, information electronically using a system that has yet to be created. All TWIC holders would also have one of the other documents prescribed by the regulation. Thus, DHS is not at this time proposing to include the TWIC as an acceptable identity document for REAL ID driver's licenses and identification cards.

b. *Department of Defense's Common Access Card.* DHS also considered the Department of Defense's Common Access Card (CAC). The CAC card may prove convenient for members of the military who move frequently and need to get new driver's licenses and identification cards. For the same reasons as the TWIC, DHS is not proposing to include this document on the list at this time. DHS does not dispute the quality or utility of the CAC; however, DHS believes that any CAC holder would also have one of the other documents on the DHS proposed list, and including the CAC card would require States to connect to additional Federal databases for verification purposes, without sufficient justification.

c. *Native American Tribal Documents.* DHS discussed these documents with the Bureau of Indian Affairs of the Department of the Interior and concluded that since all tribes obtain State-issued documentation to verify birth, all tribal members will have, or can obtain, an eligible identification document, rather than using tribal documents.

DHS solicits comments on whether these or any other documents should be included as acceptable documentation for showing identity. Commenters should address instances in which classifications of individuals could not obtain any of the documents already on the proposed list, issues of reliability of the document proposed, and ability of the States to verify the proposed document. If DHS concludes that other documents, including those listed above and others submitted by commenters, are reliable and can be verified electronically by the States, they may be included as acceptable identity documents in the final REAL ID rule.

3. *Other Documentation Requirements.* In addition to presenting evidence of identity, the Act requires that a driver's license or identification card applicant present the following:

a. *Documentation Showing Date of Birth.* Individuals may use all documents included on the list of identity documents to demonstrate date of birth. Thus, while this is a statutory requirement, it is fulfilled by presenting one of the documents already required under the proposed list of identity documents.

b. *Evidence of a SSN or Proof of Ineligibility.* The United States, on both Federal and State levels, has experienced significant amounts of fraud due to the misuse of SSNs. Much of this has been in the context of "identity theft" or other financial crimes. However, the misuse of SSNs can have a national security impact as well. For example, many of the September 11, 2001 (9/11) hijackers used numbers that were either never issued by the Social Security Administration (SSA), were issued in the name of a child, or had been associated with multiple names. The hijackers used this information to obtain driver's licenses, and some held multiple driver's licenses from States including Virginia, Florida, California, Arizona, and Maryland.¹⁰ Accordingly, DHS believes that the congressional

mandate to check all SSNs against SSA databases prior to the issuance of a REAL ID driver's license or identification card will increase security and decrease the ability to obtain driver's licenses fraudulently. This will not be a significant burden to the States as almost all jurisdictions currently verify SSNs against SSA databases, 46 States using Social Security On-Line Verification (SSOLV).

SSA has taken significant steps since 2001 to strengthen the SSN issuance process. SSA has a plan for improving the security of the SSN card itself, in compliance with section 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004. In recognition of improvements in the SSN issuance process and plans for improving the security of the SSN card, DHS considered requiring DMVs to require individuals to present a social security card with their full name and SSN as the only mechanism to demonstrate evidence of their SSN.

DHS recognizes, however, that this approach would be costly and would create an undue hardship on SSA and the public, particularly on members of the public who had lost or misplaced their social security cards. Accordingly, DHS proposes to allow an applicant to establish his or her SSN by presenting his or her social security card, a W-2 form, a SSA-1099 form, a non-SSA 1099, or a pay stub with the applicant's name and SSN on it.

An alien in the United States without authorization to work is generally not eligible for an SSN. Thus, to prove ineligibility for an SSN, an alien must present evidence that he or she is currently in a non-work authorized non-immigrant status.

c. *Documentation of Address of Principal Residence.* There are a number of potential ways to define the term "principal residence." DHS reviewed State definitions of this term and did not find a consistent definition. The NGA observed that State laws vary widely on how to define residency/domicile because a mobile society leads to frequent relocations, ownership of multiple properties, as well as lifestyles that include no fixed address. Accordingly, DHS proposes to use the *Black's Law Dictionary* definition of "domicile" which DHS believes captures the intent of the principal residence requirement of the Act:

The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal and permanent home, to which that

¹⁰ Testimony of James Huse, Jr. Inspector General, Social Security Administration, House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security; and Subcommittee on Immigration, Border Security, and Claims, 107th Cong., 2nd Sess., June 25, 2002.

person intends to return and remain even though currently residing elsewhere.¹¹

The need to determine an individual's principal residence prior to issuance of a REAL ID driver's license also has its origins in the 9/11 terrorist activity. Seven of the 9/11 hijackers fraudulently obtained driver's licenses in the Commonwealth of Virginia, although none of them actually lived there, by providing false information as to their true place of residence. At the time Virginia allowed only a "signed affidavit" of a Virginia resident to suffice as proof of residency in the State, and two of the hijackers paid an illegal immigrant (who had himself obtained a driver's license fraudulently) \$100 to vouch for them.¹² By September 21, 2001, Virginia had eliminated this loophole.

DHS recognizes that some individuals do not have a fixed address, as that term is commonly used. Individuals who do not have a fixed address, such as the homeless, may still obtain a REAL ID driver's license or identification card if they otherwise can produce the documents a State must possess and verify prior to issuing a REAL ID driver's license or identification card. For such individuals, a State may issue REAL ID driver's licenses and identification cards by adhering to a written exceptions policy as described in section II.F. below.

d. *Evidence of Lawful Status in the United States.* The REAL ID Act specifies the scope of lawful status in the United States for purposes of eligibility for a REAL ID driver's license or identification card acceptable for official purposes. The applicant must be a person who: Is a citizen or national of the United States; is an alien lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in refugee status; has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; or has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has

a pending application for LPR or conditional permanent resident status.

A U.S. passport, certified copy of a birth certificate, DOS consular report of birth abroad, certificate of citizenship, certificate of naturalization or a permanent resident card can be used to establish lawful status in the United States for purposes of this proposed regulation. If an applicant presents an employment authorization document (Form I-766) or a foreign passport with a valid U.S. visa and/or DHS nonimmigrant Form I-94 affixed for identification, these documents may be accepted as provisional evidence of lawful status, pending verification of status through the Systematic Alien Verification for Entitlements (SAVE) system (see section II.E.3 below). Note that while all documents presented must be verified through SAVE or otherwise, the difference is that since a visa or EAD are not necessarily linked to an authorized status, their acceptance is deemed provisional pending confirmation of exact status through further verification. DHS considered, but rejected, requiring additional documentary evidence of status that may be issued by DHS, but considered this requirement unworkable, particularly since many holders of EADs simply do not have any other consistent, reliable identification.

The EAD is envisioned as the document to be presented by the following classes of REAL ID-authorized aliens: Temporary Protected Status (TPS) aliens; asylees and asylum applicants; refugees; adjustment applicants; and aliens granted deferred action. DHS understands that regulatory limitations on issuance of EADs to asylum and TPS applicants will result in a wait period before these aliens will have acceptable documentation, and invites comment on what alternative documentation regimen may serve for these groups, and whether those groups need a REAL ID driver's license or identification card before their applicable wait period expires.

The proposed rule also does not include immigration documentation showing any status under the immigration laws of American Samoa or the Commonwealth of the Northern Marianas for aliens within those jurisdictions. REAL ID specifies U.S. immigration statuses. DHS invites further comment about how these jurisdictions may better be integrated into the REAL ID framework.

E. Verification of Information Presented

Section 202(c)(3)(A) of the Act requires verification from the issuing agency for issuance, validity, and

completeness of documentation to establish the following:

- Identity.
- Date of birth.
- Proof of SSN, or that the person is not eligible for an SSN.
- The person's name and address of principal residence.
- The person's lawful status in the United States.

The documents that individuals are required to present are described in section II.D.1 and are listed in § 37.11 of the proposed regulation.

To verify with the issuing agency, the issuance, validity, and completeness of documentation means that the State must determine independently that the document itself has been legitimately issued by the issuing agency to the individual presenting the document, prior to issuing the driver's license or identification card to the individual.¹³ This means that DMVs are required to perform a physical inspection of the source document to ensure that it appears authentic and has not been tampered with. However, document verification is not sufficient. DMVs must also verify the information contained in the document with an authoritative or reference database. Thus, States must verify both document and data under the Act, although this verification may be phased in over time.

The use of the phrase "required to be presented by the person under paragraph (1) and (2)" in section 202(c)(3)(A) of the Act means that only the specific documents required by this proposed regulation need to be verified. Thus, in the case of identity, only the documents listed in these regulations as required to be presented must be verified. If States wish to require additional documentation to prove identity—for example, if they wish to require photo identification in addition to a certified copy of a birth certificate—then the State does not need to independently verify these additional items, only the birth certificate, as it is included on the Federal list. Ensuring that at least one document presented is independently verified will increase security by reducing the ability to fraudulently manufacture documentation typically used to obtain driver's licenses and identification cards.

Requiring additional documentation can help a State to confirm the identity (or address, or whatever fact is at issue)

¹¹ Bryan A. Garner, editor, *Black's Law Dictionary*, 8th ed., p. 523 (Thomson-West, 2004).

¹² Testimony of Paul McNulty, United States Attorney, Eastern District of Virginia, House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security, and Subcommittee on Immigration, Border Security, and Claims, 107th Cong., 2nd Sess., June 25, 2002.

¹³ See discussion infra at II.J.2 on verification of birth certificates through the Electronic Verification of Vital Events system (EVVE). If this system is not operational by May 11, 2008, a State must verify the validity of the birth certificate at the first license renewal or re-issuance once EVVER is available.

of a person. This is a common method used now by many States—the idea of “cross-verifying” data elements included on different documents. However, each independent verification of a document can cost time and money for the DMVs—which can create a disincentive to require many documents to prove identity and thus eliminate the benefits of this cross-verification. If this regulation proposed to require that all documents presented for any purpose be verified, this would be an incentive for States to require only the one document that the REAL ID regulation requires. In that circumstance, the verification requirement could result in a less secure process. DHS believes that the better and more secure solution is to require that a State verify the identity document an applicant presents, pursuant to REAL ID requirements. States retain the flexibility to require documents in addition to the Federal document requirements, and to verify them pursuant to their own regulations and practices. Any additional documents beyond those listed in § 37.11 need not be verified independently, but can be “cross-verified” against the one document that must be verified according to these regulations. DHS proposes that it be up to the States whether to keep digital or paper copies of supplemental documentation beyond the Federal document requirements, pursuant to the retention requirements discussed in this regulation.

1. Verification of “Address of Principal Residence”

Although the Act requires States to verify an applicant’s “address of principal residence,” DHS believes that there is no nationally available, reliable, up-to-date, and cost-effective method for States to verify this information with the issuing source of the document, as the plain language of the Act would seem to require. DHS examined existing governmental and non-governmental databases that alone, or in combination, could be used by States to fulfill this requirement, and determined that there is no single way for States to comply with this requirement by May 11, 2008, or in the reasonably foreseeable future.

States currently have widely varying ways of determining a person’s residence, although all States require an applicant to demonstrate that they live in the State in which they are applying for a driver’s license or identification card. While the U.S. Postal Service can do a basic electronic check for a fee, this system is based on nothing more than the applicant or some unrelated individual sending to the post office a change of address card. Thus, although

an electronic verification, it is not based on reliable information.

Further, in almost all cases there is no way to verify independently from documents presented that an address is a person’s principal address. A mortgage statement or lease may indicate that a person owns or rents property in a particular place, and while the landlord or bank holding the mortgage could verify this, it does not establish that this is the person’s principal residence, just that the ownership or rental is legitimate. In addition, the cost to States of verifying a multitude of documents presented to establish address, such as utility bills, leases, mortgages, or other documents, is potentially significant.

In spite of these limitations, there is a need for some reliability in the information presented for principal residence, as evidenced by the experience of the 9/11 hijackers and how they obtained Virginia driver’s licenses (see section II.D.3). Therefore, DHS is proposing that the States require each applicant to present at least two documents that include his or her name and current principal residence. However, the States will retain the flexibility to determine for themselves precisely which documents, or combination of documents, an applicant must present to satisfy this requirement and how a State will validate or verify this information. The proposed regulation would require States to establish a written policy identifying acceptable documents and how, or if, they will be independently validated or verified. The proposal would also require that States provide this information to DHS as part of their initial certification package and whenever this policy is modified or superseded.

While States are free to determine the list of acceptable documents for themselves, whatever documents individuals submit must contain a street address for individuals where available. Post office boxes or rural route numbers are not acceptable addresses, since the statute requires a residence, not simply an address.¹⁴ Documents issued monthly (e.g., bank statements, utility bills) could not be more than three months old at the time of application. Documents issued annually (e.g., property tax records) would need to be for the most current year at the time of application.

Applicants would also be required to sign a declaration (that could be included as part of the driver’s license

or identification card application form) affirming that the information presented is true and correct, including information presented to establish address of principal residence. For minors and other dependents, parents or legal guardians would submit the documentation establishing a principal residence on behalf of the driver’s license or identification card applicant. The parent or legal guardian would need to present photo identification (that the DMV would need to verify) and would be required to submit two or more address documents, as if he or she were the primary applicant, and sign the affirmation.

2. Verification of Identity Information

a. *Certified copy of a Birth Certificate Issued by a U.S. State or local office of Public Health, Vital Records, Vital Statistics or equivalent.* DHS anticipates that the States will be able to verify electronically the issuance of a birth certificate through the Electronic Verification of Vital Events (EVVE) system. Once functional, this system will be able to verify that the information presented on a certified copy of a birth certificate is a match to a vital statistics birth record, in response to an electronic query from a State DMV. While the EVVE system has not been tested nationwide, the National Association of Public Health Statistics and Information Systems (NAPHSIS) has informed DHS that such a system could be in place and fully operational by May 2008. If such a system is either not available nationally by the effective date of the regulations, or a State is seeking to verify the validity of a birth certificate from a State that is not participating in the EVVE system, a State may establish written procedures for how it will attempt to verify such records, and document its use of those procedures. At a minimum, the applicant’s file and/or records should contain a notation that the birth certificate information was not verified electronically with the issuing agency, and such electronic verification will be necessary at the first driver’s license or identification card renewal or re-issuance once the information is available for electronic verification. Confirmation of the birth certificate through EVVE will verify not only the person’s identity but also provide evidence that they are very likely to be a U.S. citizen and therefore have lawful status in the United States.

As discussed above, individuals born before January 1, 1935, may be unable to produce birth certificates, or States may be unable to verify any birth certificates produced by such

¹⁴ One exception might be American Samoa as this territory does not possess the same type of addresses commonly used in the 50 States.

individuals. Individuals born before 1935 may never have received a birth certificate, and it may not be possible for their birth States to reproduce the document for them. In addition, States may not have birth information available electronically for all births prior to 1935, and DHS believes that it would be too burdensome on States to verify this information in a non-electronic method. Such cases should not preclude persons from obtaining a REAL ID driver's license or identification card, but should be handled according to the State's exceptions process. DHS intends to align this provision with the final rule on minimum standards for birth certificates promulgated by HHS, in accordance with its statutory obligation under section 7211 of the Intelligence Reform and Terrorism Prevention Act (Pub. L. 108–58).

b. *U.S. passports or Consular Report of Birth Abroad issued to U.S. citizens abroad by the Department of State.* It is anticipated that a State will be able to electronically verify a U.S. passport, or a birth certificate issued to a U.S. citizen abroad. The automated system that is eventually developed will confirm that the passport was issued by DOS. In the case of a U.S. passport or a consular report of birth abroad issued by DOS, electronic verification will also confirm that the applicant has lawful status in the United States.

c. *Valid U.S. visas affixed in an unexpired foreign passport.* DHS examined several options in determining how to independently verify a U.S. visa affixed to a foreign passport as required by the REAL ID statute. First, verifying the foreign passport itself with the Government that issued it is simply not feasible. There is no guarantee that a foreign Government would answer a State DMV's request to authenticate a specific document, or any requirement in international law that they do so in a timely manner. Requiring this foreign independent verification would be an unfair burden to both the driver's license or identification card applicant and the State DMV attempting to adjudicate the application.

Recognizing that the U.S. visa affixed in the passport, and not the passport itself, would be the acceptable documentation to demonstrate identity, DHS turned to how that verification would occur. First, DHS examined whether the DMVs could use the State Department systems to verify the visa. While this was a feasible solution since access to DOS databases will ultimately be necessary for all DMVs anyway (to verify U.S. passports and certain birth

certificates), authentication of a U.S. visa does not, by itself, establish lawful status in the United States.

While a U.S. visa can be issued for as long as ten years (and often is), it is the Customs and Border Protection (CBP) Officer at U.S. ports of entry who determines the actual admission period for the person seeking to enter the United States. In most cases, this admission period is less than the validity period of the U.S. visa. Accordingly, foreign travelers often use the same visa for multiple trips to the United States—and the length of validity period for the visa is not dispositive as to whether someone has lawful status in the United States. Therefore, to adopt a policy in which a U.S. visa holder must use that visa to establish identity would require that aliens using a U.S. visa as evidence of identity have to undergo three separate checks—the DOS database (to confirm identity), SAVE (to confirm lawful status), and SSOLV (to confirm the Social Security Number). All other categories of driver's license or identification card applicants, including U.S. citizens (whether born in the U.S. or abroad), LPRs, and others would require only two database checks. This approach was deemed to be unduly burdensome on both the applicant and the DMV.

DHS then considered another solution—validating the U.S. visa through existing U.S. immigration and border processing procedures, including DHS's U.S. VISIT and the Department of State's BioVisa Program. Currently, when a person applies for a U.S. visa abroad, he or she is required to submit finger scans, which are biometrically verified when the person arrives in the United States—so that the United States can be sure that the person who received the visa is the same person seeking admission.

DHS believes that, for purposes of obtaining a REAL ID driver's license or identification card, the fact that the U.S. visa was used to enter the United States, and that person was checked against US-VISIT, is an acceptable verification that the document (the U.S. visa) is legitimate. The U.S. visa has been checked against a Government-held database via the biometric check upon arrival. State DMVs will not be required to check the US-VISIT system to confirm that the visa was used for admission. Thus, if the person holding a U.S. visa has lawful status in the United States, which can be verified through SAVE, then the person will have established both identity and lawful status. Under this proposal, aliens presenting a foreign passport with

a valid U.S. visa would require only a SAVE and SSOLV check, placing them on par with other driver's license or identification card applicants.

3. Verification of Lawful Status

If an applicant presents a permanent resident card (Form I–551), an EAD (Form I–766), or a foreign passport with a U.S. visa affixed, the applicant is not a U.S. citizen. In accordance with the Act, this proposal would require the States to verify the authenticity of the identity documentation and lawful status in the United States at the same time, using the SAVE system maintained by U.S. Citizenship and Immigration Services (USCIS). Under section 202(c)(3)(C) of the Act, States have already been required to enter into memoranda of understanding with DHS by September 11, 2005, to use the electronic and automated system to verify the legal status of a non-U.S. citizen applying for a REAL ID driver's license or identification card.

SAVE is an existing program within DHS that allows State DMVs (as well as many other Federal, State, and local benefit and license granting agencies) to verify electronically the immigration status of the person applying for a driver's license or identification card. This system can verify that a person presenting a Permanent Resident Card (Form I–551) was issued lawful permanent resident status in the United States and, thus, is lawfully in the country. SAVE can also confirm that a person presenting an EAD (Form I–766 or Form I–688B) is in a lawful nonimmigrant status and present in the United States for a fixed period of time. Moreover, SAVE can confirm that an applicant presenting a U.S.-issued visa affixed to a foreign-issued passport is lawfully in the country for a temporary period of time. If a person presents a U.S.-issued visa affixed to a foreign-issued passport, then the applicant will also need to present additional documentation to allow for a SAVE search. This could be a passport stamp, an I–797 Notice of Action, or some other documentation issued by USCIS. The terms and conditions of access to SAVE by a State, including any costs to be borne by the State, shall be established by memorandum of agreement between DHS and the State pursuant to section 202(c)(3)(C) of the Act.

For student aliens admitted for duration of status (D/S), DMVs should use the Student and Exchange Visitor Information System (SEVIS) for verification. SEVIS is a system in which DHS and schools who enroll foreign students communicate to ensure that the aliens claiming student status (as well

as exchange visitors such as au pairs) are in fact currently enrolled. There will ultimately be a connection between SEVIS and SAVE, but until such time, DHS has decided on the following:

- DHS will use the SAVE/SEVIS connection, if the systems are connected prior to May 2008.

- If the SAVE/SEVIS connection is not available, DHS may require foreign students to present a certified statement from the registrar of the school in a sealed envelope demonstrating that he or she is still in school at the time of the alien's application for a driver's license or identification card (and thus still in lawful status).

Individuals who are denied a temporary REAL ID driver's license or identification card due to a SAVE check that they believe is in error should contact the local USCIS branch, or as USCIS may otherwise direct, to resolve concerns over verification of their lawful status.

4. Verification of Date of Birth

As stated earlier, all of the documents listed on the proposed list of acceptable identity documents display the date of birth on the face of the document. Thus, once the information on the document is verified, as it must be for identity purposes, there is no further need for the States to verify date of birth independently.

5. Verification of Social Security Account Number or Ineligibility

Because of the requirements for the issuance of commercial driver's licenses, the majority of State DMVs already have access to the SSA database for verification of SSNs. Thus, when the DMV applicant presents evidence of an SSN, the DMV will be able to verify that number through existing systems. Verification that a person is not eligible for an SSN must also be provided. To satisfy this requirement, an alien must present evidence, verifiable through SAVE, that he or she is currently in a nonimmigrant status establishing that he or she does not have the right to work in the United States. A person is never permanently ineligible for an SSN, as he or she could obtain some type of immigration status that would entitle him or her to one.

6. Connectivity to Systems and Databases Required for Verification

For individual States to verify information and documentation provided by applicants, each State must have electronic access to multiple databases and systems as described above. DHS considers the deployment of the information systems needed to

support the electronic verification of applicant data to be its highest priority. Secure and timely access to trusted data sources is a prerequisite for effective verification of applicant data. Electronic access to the Federally-sponsored databases described above will also significantly reduce the costs of REAL ID driver's license and identification card issuance to States. Finally, DHS will work closely with the States to improve their capabilities for verifying the authenticity of source documents. Both data verification and document authentication are necessary to ensure the validity of REAL ID driver's licenses and identification cards.

a. Applicant Data Verification. Electronic data verification requires secure and timely communications among a number of both Federal and State-sponsored information systems. DHS can provide assistance to states in three key areas: Enhancement of Federally-sponsored reference databases; development of a cost effective service for querying these reference databases; and the exchange of data among states to reduce fraud. While DHS will provide assistance to states in all three areas, its role and responsibilities will differ in each.

i. Reference databases. Confidence in the accuracy and reliability of the data provided by applicants and included on their driver's licenses and identification cards depends in large part on the quality and completeness of data in the reference databases used for verification. These databases, however, are Federally-sponsored and Federally-funded initiatives. Therefore, DHS recognizes that one of its primary responsibilities under the REAL ID Act is to expedite the improvement of the databases required for electronic verification of applicant data. DHS is working with the sponsoring agencies to ensure that the reference databases meet the standards for data quality, reliability, integrity, and completeness required to support REAL ID data verification by the states and other jurisdictions. While some of these reference databases are mature and fully operational, others are still under development and need investments of resources.

First, almost all State DMVs currently access the SSOLV database to verify social security numbers through a portal provided by the American Association of Motor Vehicle Administrators (AAMVA). The quality and reliability of this reference data is good and improving. Second, all fifty states have signed MOUs for access to SAVE and twenty State DMVs are currently querying SAVE to verify lawful status.

While secondary queries may be required in some instances to update applicant records in SAVE, more than a million initial queries from State DMV are already being processed each year. Moreover, DHS anticipates that the SEVIS-SAVE connection will be completed before May 2008. Third, DHS is working with NAPHSIS to enhance EVVE functionality and expedite implementation of EVVE in all vital records jurisdictions. Since EVVE is currently in pilot phase and will require states to bring their vital records online, assistance to both NAPHSIS and individual states will be needed. Finally, DHS is working with the Department of State to develop an automated system for verifying data from U.S. Passports, Consular Reports of Birth, and Certifications of Report of Birth. For all of these systems, DHS is committed to improving data quality and data consistency to support timely, cost-effective, and reliable data verification.

ii. Federated querying service. States must be able to access the reference databases in a timely, secure and cost-effective manner. As noted above, most states already query some of these reference databases either directly or indirectly through a portal provided by AAMVA. This access, however, needs to be enhanced as the Federally-sponsored systems are upgraded or deployed and all 56 jurisdictions seek access for purposes of applicant data verification. DHS is committed to expediting the development and deployment of a common querying service that will automatically distribute State DMV queries for REAL ID data verification to the appropriate reference databases and combine the multiple responses into a single reply. The purpose of this federated querying service will be to minimize the impact of data verification on State DMV business processes and reduce the costs of data access. DHS will support the development of querying service but will not operate or control this service. DHS is currently exploring alternative solutions. However, use of this federated querying service will be voluntary and States may choose to: Maintain or establish direct access to the reference databases; combine direct access with partial use of the common service; or verify applicant data against the reference databases in some other manner. Finally, DHS and DOT will assist the States in their efforts to develop improved business rules and data formats for data communications with reference databases. These business

rules will, in turn, become part of the security plans submitted to DHS.

iii. *Data exchange among states.* The third area of applicant data verification involves access to other state databases to verify that the applicant is not disqualified from obtaining a REAL ID driver's license or identification card due to possession of a REAL ID driver's license or identification card in another state. Data exchange among states is mandated by section 202(d)(12) of the Act, wherein each State must provide to each other State(s) electronic access to the DMV database of that State. In particular, this rule requires the exchange of data among all jurisdictions to verify that the applicant does not hold a valid driver's license or identification card in another jurisdiction and that other jurisdictions have terminated the applicant's driver's licenses and identification cards before a REAL ID can be issued. However, data exchange among State DMVs is also governed by the National Driver Register Act of 1982, as amended, and the Federal Commercial Motor Vehicle Safety Act of 1986. The Act and this rule pose an additional requirement for State-to-State data exchange, but it does not alter existing rules and regulations. Under all three statutes, the primary purpose of State-to-State data exchange is driver safety—to ensure that drivers are not holding multiple licenses in multiple jurisdictions to avoid points from dangerous driving and to determine if the applicant is unqualified or the application fraudulent—not specifically to verify the applicant's identity. Thus, data exchange among states is substantially different from verification of applicant identity data with the Federally-sponsored databases discussed above. State-to-State data exchange among DMVs is governed by multiple statutes and multiple agency regulations and has been effectuated through multiple database systems. DHS will build upon the existing infrastructure of Federal statutes, regulations, and data systems in implementing REAL ID.

Therefore, DHS will work closely with the Department of Transportation, AAMVA and the States to fulfill the requirements for State-to-State data exchange under the REAL ID Act. DHS will actively support the enhancement and expansion of existing DOT-sponsored systems to meet the requirements of the REAL ID Act. For example, verification that the applicant does not hold a valid driver's license or identification card in another jurisdiction can be accomplished by a variety of methods, including the exchange and comparison of digital

image information based on applicant photos. DHS will support such State-to-State exchange initiatives and will partner with DOT, the States and territories, and AAMVA to leverage the value of existing information systems, business rules, standards, and governance mechanisms to facilitate implementation of the Act.

b. *Source document authentication.* In addition to verification of applicant identity data, the Act requires that the jurisdictions authenticate the source documents provided by the applicant. According to section 202(3)(A), “the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented.” This requires that jurisdictions inspect applicant source documents to ensure that they are genuine and have not been tampered with. DHS recognizes that source document authentication is the responsibility of State DMVs who employ a variety of procedures, both manual and automated, to verify both the overt and covert security features of identity documents. In addition, jurisdictions may institute the exchange of data on identity document security features in order to facilitate the manual or automated inspection and authentication of source documents. DHS will support these State initiatives and require that jurisdictions document their procedures and standards for document authentication as part of their security plans. However, DHS will not support the development of a federally-controlled or operated repository for source documents or a national facility for document authentication under the Act.

F. Exceptions Processing for Extraordinary Circumstances

DHS recognizes that there may be extraordinary circumstances where the required documents verifying an applicant's identity, date of birth, SSN, principal address or lawful status may be unavailable. This would include applicants such as a homeless person with no fixed address, as well as an individual who has lost all documentation to a natural disaster such as Hurricanes Katrina and Rita. In such circumstances, DHS believes that the States should have the flexibility to accept alternative documents to establish a particular data element, provided that the State follows defined, written, procedures that are approved by DHS as part of the State certification process for REAL ID. Therefore, DHS proposes that, where a State chooses to establish an exceptions process, that

process must include, at a minimum, the following requirements:

- The driver record maintained by the DMV must indicate when an alternate document is accepted.
- Any driver's license or identification card issued using exceptions processing requires a complete record of the transaction, including a full explanation of the reason for the exception, alternative documents accepted and how applicable information from the document was verified.
- The jurisdiction retains the alternate documents accepted or copies thereof in the same manner as for other source documents as described in section II.J. and provides these upon request to DHS for audit review.

G. Temporary Driver's Licenses and Identification Cards

Aliens who are in the following lawful statuses may receive REAL ID driver's licenses and identification cards: Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status. However, driver's licenses and identification cards issued to these classes of aliens are only valid for the duration of the person's lawful period of admission, but no more than eight years, or, if there is no fixed date, a period of one year. Further, these “temporary” driver's licenses and identification cards must clearly identify on the face of the document that they are temporary.

Renewal of these temporary driver's licenses and identification cards must be in person. The renewal applicant must present valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of DHS, or that the individual has qualified for another lawful status category listed in the Act.

The following statuses are indeterminate and will always require issuance of a driver's license or identification card limited to one year: Asylum applicant, TPS applicant, and adjustment applicant. Other temporary categories will vary, and the end of the period of authorized stay, if any, must be verified through the SAVE or other designated verification system. Expiration dates on an EAD are not

necessarily the same as the end date of the status. Visa expiration dates have no relevance to the period of authorized stay. Aliens with immigration statuses other than those designated by REAL ID for temporary driver's licenses and identification cards are not subject to this limitation on the length of their driver's licenses and identification cards, regardless of any expiration date that may appear on their documentation.

H. Minimum Driver's License or Identification Card Data Element Requirements

To meet the requirements of section 202(b) of the Act, a State is required to include, at a minimum, the following information and features on each driver's license and identification card:

- (1) Full legal name;
- (2) Date of birth;
- (3) Gender;
- (4) Driver's license or identification card number;
- (5) A digital color photograph;
- (6) Address of principal residence;
- (7) Signature;
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for any fraudulent purpose;
- (9) A common MRT, with defined minimum data elements.

In addition, DHS has determined that States must also include issue date and expiration date on each driver's license or identification card.

Some of these elements are discussed below.

1. Full Legal Name

The intent of this requirement is to improve the ability of law enforcement officers, at all levels of Government, to confirm the identity of individuals presenting State-issued driver's licenses or identification cards. Many States do not have a "full" legal name requirement, and using a name other than a full legal name results in "no matches" when checked against other public records that use the full legal name. This occurred with some of the driver's licenses and identification cards obtained by the 9/11 terrorists, where the driver's licenses "names" were variants on the actual name carried in some of the terrorists' validly issued passports.¹⁵

This requirement raises several issues. First, the name on the REAL ID driver's license or identification card should be identical to the name shown on the identity document used to obtain the driver's license or identification card.

However, formats for recording names on identity documents differ and a driver's license or identification card holder's name may change through marriage, divorce, adoption, or court order. State DMVs currently require appropriate proof in the form of documents indicating an official name change: A U.S. court- or Government-issued marriage certificate, a U.S. court-issued divorce decree, or a U.S. court-issued name change decree. States must require an original or certified copy of one of these documents as proof of change of name, and the document must include either the date of birth or the age of the individual. States must also add the changed name in the motor vehicles record database and not delete any previously captured names so that a complete record of the individual's full name history is present in the motor vehicles database.

With regard to the name placed by the DMV on the face of the driver's license or identification card, DHS is proposing to adopt the ICAO 9303 Standard. The ICAO 9303 standard requires Roman alphabet characters, allows a total of 39 characters on the face of the driver's license or identification card, and provides standards for truncation of longer names.

For the machine readable portion of the card, the machine readable technology standard proposed is the PDF-417 2D bar code (see section II.H.8 below). For the machine readable portion of the card, DHS would require States to capture and record up to 125 characters in the bar code and State database to permit capture of the full name history. Allowing at least 125 characters accommodates certain cultures in which multiple, lengthy names, are common and permits greater accuracy in identifying particular individuals.

2. Driver's License or Identification Card Number

Section 202(b)(4) of the Act requires that each REAL ID license or identification card include the person's unique "driver's license or identification card number." Federal law prohibits the display of an individual's SSN on a driver's license.¹⁶

3. Digital Photograph

Section 202(b)(5) of the Act requires that the State-issued REAL ID license or identification card include a digital photograph of the person. In addition,

section 202(d)(3) provides that the State shall require that each person applying for a driver's license or identification card be subject to mandatory facial image capture. This requirement applies whether or not the person is granted a driver's license or identification card. DHS believes that these provisions require each applicant to allow a DMV to take a photograph for the motor vehicle record, and to place the digital image on the face of the driver's license or identification card, if one is issued. If a driver's license or identification card is not issued, DHS is proposing that States dispose of the photograph after one year. The DMV's photo of the individual should be updated with the most recent photograph in the event the applicant reappplies, and any photos taken of the individual prior to successful issuance of the document should be discarded in favor of the photo associated with the successful application. If the DMV does not issue the driver's license or identification card because of suspected fraud, the record should be maintained for ten years and reflect that a driver's license or identification card was not issued for that purpose.

DHS recognizes that some individuals that may apply for a REAL ID driver's license or identification card are opposed to having their photograph taken based on their religious beliefs. However, the Act requires a facial photograph, which serves important security purposes. Given these concerns and the clear statutory mandate, DHS believes that a driver's license or identification card issued without a photograph could not be issued as a REAL ID driver's license or identification card. Many States now issue non-photo driver's licenses or identification cards based on the applicant's religious beliefs. States may continue to issue these driver's licenses or identification cards to such individuals and DHS recommends that these driver's licenses and identification cards be issued in accordance with the rules for non-compliant driver's licenses and identification cards.

DHS is proposing that digital photographs comply with current ICAO standards.¹⁷ Such standards include diffused lighting over the full face to eliminate shadows and "hotspots," a full face image from the crown to the base of the chin and from ear-to-ear (unless the State chooses to use profiles for licensees under 21), and images with

¹⁶ Section 7214 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458, 118 Stat. 3638, Dec. 17, 2004) amended section 205(c)(2)(c)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(VI)).

¹⁷ The relevant ICAO standard is ICAO 9303 part 1 vol 2, specifically ISO/IEC 19794-5—Information technology—Biometric data interchange formats—Part 5: Face image data, which is incorporated into ICAO 9303.

¹⁵ H.R. Rep. No. 109-72 (2005) (Conf. Rep.).

no veils, scarves or headdresses to obscure facial features, or eyewear that obscures the iris or pupil of the eyes. Photos should also be in color.

4. Address of Principal Residence

This regulation proposes that, in most cases, the individual's principal address be included on the face of the REAL ID driver's license or identification card. DHS proposes exceptions to this requirement, as described below.

a. *Confidential Address.* Section 202(b)(6) of the Act requires that the driver's license or identification card include the person's address of principal residence. Many States have laws that allow addresses to be kept confidential in certain circumstances; for example, where the disclosure of an address may jeopardize the personal safety of such an individual, such as victims of domestic violence, judges, protected witnesses, and law enforcement personnel. Some States provide the standards for address confidentiality through legislation or in their exceptions processing. Most States retain the "real" address in their database, but often protect it so that only authorized personnel have access to the "real" address. In addition, most States do not have the "real" address in the machine readable technology barcode. Rather, the machine readable zone contains only what is on the face of the driver's license or identification card.

Section 827 (Protection of domestic violence and crime victims from certain disclosures of information) of the Violence Against Women and Department of Justice Reauthorization Act of 2005,¹⁸ amended the REAL ID Act 2005 (49 U.S.C. 30301 note), to protect against disclosure addresses of individuals who have been subjected to battery, extreme cruelty, domestic violence, dating violence, sexual assault, stalking or trafficking. Consequently, DHS is proposing to exempt individuals who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or by a court order, or who are protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 from the requirement to have their address displayed on REAL ID driver's licenses and identification cards. DHS understands that other categories of individuals, such as federal judges, may also require that their addresses remain

confidential to protect their safety. DHS seeks comment on how these categories of individuals can be protected, while remaining consistent with requirements of the Act.

b. *No Fixed Address.* DHS recognizes that some people do not have a fixed address and that States have exceptions processes in place to address this situation. DHS believes that each State should continue to address these situations through a written and documented exceptions process. For example, in some States homeless people may use addresses of accredited organizations on the local or State level. A State can address such circumstances through a written exceptions process, and States must document each use of such a process. Exceptions processing is discussed further at section II.F.

5. Signature

DHS proposes that the signature meet the requirements of the existing AAMVA standards for the 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section A.7.7.2. This standard includes requirements for size, scaling, cropping, color, borders, and resolution.

6. Physical Security Features

Section 202(b)(8) of the Act requires that States must include physical security features on driver's licenses and identification cards to ensure they are resistant to tampering, counterfeiting, or duplication for fraudulent purposes. The legislative history of this requirement states:

The importance of this requirement cannot be overstated. A majority of States maintain a high level of physical security in the manufacture of their cards. Unfortunately, a significant minority of States do not issue licenses or ID cards with secure physical characteristics. This results in criminals, identity thieves, and amateurs such as college students being able to "manufacture" fake driver's licenses or ID card from these States. Federal law enforcement officials—national forensic document laboratory—can validate that the driver's license of these States are not secure from counterfeiting using easily available technology.¹⁹

To develop a regulation that meets these objectives, DHS consulted forensic document experts and evaluated information helpful in determining minimum standards that would achieve significant security benefits within the next few years, make it significantly harder for amateurs to counterfeit or duplicate driver's licenses and identification cards, and enable States to

continue to improve the security of their documents.

One option DHS considered was to permit States to select from a "menu" of recognized security features contained in many existing driver's licenses and identification cards. This option would essentially continue the status quo and provide States with the most flexibility since no two States would necessarily select the same security feature choices. DHS rejected this option since State choice in this area has not produced sufficiently secure forms of identification. There are a variety of websites offering counterfeit driver's licenses and identification cards from each State, and even trained officers cannot always detect counterfeit identification from another jurisdiction. In addition, this option did not provide sufficient incentives for States to continue to improve the security of their driver's licenses and identification cards.

DHS also considered mandating all the required security features, including the document card stock, to the States. This option had the benefit of producing a set of standardized security features that law enforcement and other personnel could be trained to recognize, would achieve significant security benefits within the next few years, and would make it significantly harder for amateurs to counterfeit or duplicate. States were concerned that a fixed array of features would permit professional counterfeiters to focus on countering a static set of security features and might inhibit States from using new and evolving technology. States were also concerned that mandating the particular card stock a State could use would put States at a competitive disadvantage with potential card stock suppliers and lead to increased costs for the States.

The approach DHS is adopting is to combine some mandatory security features with a performance standard, based on impartial adversarial testing of the card and security features. The mandatory security features DHS proposes, such as the use of offset lithography in place of dye sublimation printing, is designed to impair the ability of amateurs to manufacture counterfeit driver's licenses and identification cards or alter genuine ones. It will also lead to a set of standardized security features that law enforcement and other personnel can be trained to recognize. The use of adversarial testing permits States to experiment with a variety of card stocks and new technologies while fulfilling the underlying security requirements of the Act. DHS understands that a number of different types of card stock,

¹⁸ Title VIII, subtitle C, Sec. 827 (Pub. L. 109–162, 119 Stat. 2960, 3066, Jan. 5, 2006).

¹⁹ H.R. Rep. No. 109–72, at 179 (2005) (Conf. Rep.).

including polycarbonate, would likely satisfy the proposed performance standard.

DHS seeks comments on whether the proposed adversarial testing standards will lead to the development of a secure document solution that deters amateurs from producing deceptive counterfeits and/or alterations. DHS also seeks comments on other alternative approaches DHS could pursue on document security to achieve the same objective and how those approaches compare to a performance-based independent adversarial testing. DHS requests that States specifically comment on what contractual issues, if any, the States will face in satisfying the proposed document security requirements if the State's existing license fails one or more of the proposed adversarial tests.

DHS understands that technology is ever-advancing. Therefore, the proposed regulation would establish standards for achieving increased document security for driver's licenses and identification cards. DHS encourages experimentation and development of advanced security technologies.

7. Privacy of the Information Stored on the Driver's License or Identification Card

An important purpose of the Act is to improve law enforcement's ability to confirm the identity of the individual bearing the driver's license or identification card, in order to reduce identity theft and fraud. Authorized users of the information on the REAL ID driver's licenses and identification cards including, but not limited to, law enforcement should be able to access the necessary personal information stored on the driver's license or identification card in order to accomplish a legitimate law enforcement purpose. The ability of commercial entities and other non-law enforcement third parties to collect the personal information encoded on driver's licenses or identification cards raises serious privacy concerns. However, while cognizant of this problem, DHS believes that it would be outside its authority to address this issue within this rulemaking.

As discussed in the Privacy Considerations section of this Preamble, DHS strongly encourages the States to address concerns about the ability of non-law enforcement third parties to collect or skim personal information stored on the REAL ID driver's licenses or identification cards. Some States, such as California, Nebraska, New Hampshire and Texas have passed laws that prohibit the collection of

information on a driver's license or identification card. In addition, as noted above, AAMVA has drafted a Model Act²⁰ that, if enacted by a State, would prohibit commercial users, except as provided by the State's legislation, from using a scanning device to: (1) Obtain personal information printed or encoded on the card and; (2) buy, sell or otherwise obtain and transfer or disclose to any third party or download, use or maintain any data or database, knowing it to contain personal information obtained from a driver's license or identification card. The Model Act authorizes verification of age for purchasing alcoholic beverages or tobacco products, but with strict limitations on the storage and use of such information. DHS supports the privacy and security benefits such State legislation affords and encourages the States to consider the benefits of promulgating the Model Act or similar legislation.

DHS is attempting to achieve a balance between facilitating the ability of law enforcement and other authorized persons to have access to the information on the card and protecting the integrity of the information on the card by limiting the ability of non-authorized persons to obtain that same information. Encryption discussed in section II.H.9 below is one option, but significant concerns exist about the feasibility of deploying encryption, given the need for Federal, State and local law enforcement access.

DHS seeks comments on how best to secure the data, or whether or not to employ protections for the data encoded on the 2D bar code needs to be protected at all, while permitting law enforcement access and what technologies may be available to accomplish this balance. DHS is interested in comments that address whether a technology, such as the National Law Enforcement Telecommunications System (NLETS), or other system currently being used by law enforcement, could be used by the States to provide law enforcement ready access while maintaining the security of the information on the driver's license or identification card.

8. Machine-Readable Technology (MRT)

Section 202(b)(9) of the Act requires the States to include a common MRT with defined minimum data elements for the driver's licenses and identification cards to be accepted by a Federal agency for official purposes. DHS looked at several types of

technology that could be used, including:

- A 1D bar code, commonly used for tracking inventory, mostly used by supermarket scanners. This does not have the capability to store significant amounts of information.
- A 2D bar code. This is currently used by 45 of 50 States, plus the District of Columbia. It stores a greater amount of information than the 1D bar code, although the "scanning" process is extremely similar to the 1D bar code. This is also the current AAMVA standard.
- An optical stripe. This is currently used on DHS-issued permanent resident cards and border crossing cards, and stores information digitally, much like a compact disc.
- A contact integrated circuit chip. A contact integrated circuit chip (ICC) in a document could be read by inserting the document in a contact ICC reader.
- A contactless integrated circuit chip. A contactless integrated circuit chip in a document could be read by transmitting data via radio frequency to readers.

Of these five options, DHS believes the following are inappropriate for the purposes of this proposal:

- The 1D bar code does not have the storage capacity to hold the amount of data that the Act requires, and would inhibit States from storing additional State-specific information on the card, should they so choose.
- The integrated contactless chip was not deemed an appropriate technology for this particular document, as there is not an identifiable need for driver's licenses and identification cards to be routinely read at a distance.
- The optical stripe has had durability difficulties over time.

Of the two remaining options—the 2D bar code and the contact chip—DHS proposes the 2D bar code as the better option. The 2D bar code is the existing standard for AAMVA, and is also something with which the public is familiar. Forty-five of the fifty United States use this technology currently, making it relatively easy for virtually every State to meet this requirement by May 2008, at little additional cost for most States. The proposed selection of the 2D bar code ensures that the majority of States have available and usable technology that is interoperable among all the States.

The proposed regulation would mandate the use of the PDF-417 2D bar code as the common MRT standard and DHS proposes to adopt most of the mandatory data elements described in the 2005 AAMVA Driver's License/Identification Card Design

²⁰ "Model Act to Prohibit the Capture and Storage of Personal Information Obtained from a Driver's License or ID Card," AAMVA 26-8.2-03, 2003.

Specifications, Annex D, as its MRT data elements model. PDF417 is a two dimensional, open source (public domain) barcode that is used to store and transfer large amounts of data inexpensively. PDF stands for "portable data file" in that the barcode acts as an independent database that travels along with the item, document, or card on which it is affixed. The printed barcode symbol consists of several linear (minimum 3, maximum 90) rows, each of which is like a small linear barcode made up of code words that can carry up to 1.1 kilobytes of machine-readable data in a space no larger than a standard bar code. The American National Standards Institute has published a standard for PDF417, and AAMVA has approved the use of PDF417 for driver's licenses and identification cards. The PDF417 barcode can be read by a standard 2D barcode scanner.

The AAMVA list of data elements includes expiration date, bearer's name, issue date, date of birth, gender, address, and a unique identification number.²¹ DHS proposes that States consider storing in the machine-readable zone (MRZ) only the minimum data elements necessary for the purpose for which the REAL IDs will be used. DHS requests comments on what data elements should be included in the machine readable zone and the privacy considerations regarding the selection of such data elements and this technology.

9. Encryption

Annex D of the AAMVA standard requires that all of the data on the 2D bar code be unencrypted. Although DHS leans toward requiring encryption for the data stored in the 2D bar code on REAL ID driver's licenses and identification cards, DHS believes that access to this information by law enforcement is essential to the requirements of the Act and invites comment on how to provide this access and the protection of the information at the same time.

Because 2D bar code readers are extremely common, there is a possibility that the data could be captured from the driver's licenses and identification cards and accessed by third parties by reading the driver's license or identification card's 2D bar code. For example, a bar code scanner could scan the 2D barcode to verify that the individual presenting the driver's license or identification card was 21 or over, and at the same time could conceivably obtain the person's name and address off the barcode and compile

a list of names and addresses of its patrons, which it could subsequently sell or use. Encryption would help mitigate this privacy risk by preventing the "skimming" of the information from the MRZ, while still allowing the bar to read the date of birth off the face of the license. Alternatively, the date of birth could be left unencrypted so that the bar code could scan the date of birth only. Another alternative would be to eliminate the address from the 2D bar code, requiring "skimmers" to take the extra step of using information brokers to acquire and match an address to the name and date of birth previously collected off the MRZ.

Because encryption of the data necessitates access to the cryptographic key in order to decrypt the data, employing encryption in the 2D bar code would require having a key infrastructure allowing permitted agencies access to the secured key information. For example, a least 16,000 local, State, and Federal law enforcement agencies would need access to the key infrastructure to check the information on the MRZ.

The need for a key infrastructure to support access to encrypted 2D bar code data could create two separate scenarios of concern.

First, there could be a complex and comprehensive exchange of encryption keys through or among all 56 jurisdictions. Although the encryption system would be most secure the larger the number of keys used to secure MRZ information, this large number of cryptographic keys would need to be accessible to law enforcement personnel wherever they would be reading the driver's license. Building such an infrastructure would present certain complexities that, if not addressed appropriately, could reduce the utility of encryption.

Second, there could be one single encryption key, which would avoid the complexities of needing a key infrastructure, but this greatly increases the risk that this single key could be compromised. Although employing a single key greatly simplifies the availability of the cryptographic key for law enforcement, the compromise of this single cryptographic key would compromise all data secured on all REAL ID driver's licenses and identification cards. In this case, encryption could create a false sense of security if a license holder thought his or her information was truly secure and it was not.

For all of the above reasons, we have not proposed that encryption of MRZ data be required. Nonetheless, DHS leans toward an encryption requirement

if the practical concerns identified above can be overcome in a cost-effective manner. We request comments on whether and how encryption could be employed to secure the information stored in the MRZ of the cards.

DHS understands the privacy concerns associated with including personal information in an unencrypted machine readable zone of a driver's license, particularly an individual's address, and also recognizes a legitimate law enforcement need for access to certain data elements. Because of this, DHS seeks comments on whether a demonstrable law enforcement need exists to include address in the MRZ portion of the REAL ID driver's license, as currently proposed in this rule.

I. Validity Period and Renewals of Driver's Licenses and Identification Cards

Section 202(d) of the Act limits the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed eight years.

1. Remote/Non-In-Person Renewals

Under the Act, REAL ID driver's licenses and identification cards (excluding temporary REAL ID driver's licenses and identification cards) may be valid for a period not to exceed eight years. Remote renewal will be allowed for REAL ID driver's licenses and identification cards if the State has retained images or paper copies of the source documents used by the State to issue the original driver's license or identification card through the time of renewal, and if no information has changed since prior issuance (name or address, for example). The State must re-verify information on the source documents that were used as the basis for issuing the original REAL ID driver's license or identification card, to assure there is no match against death information recorded with either the State vital statistics offices or SSA, and in order to diminish the likelihood that an individual obtained his or her original REAL ID driver's license or identification card under a false name or with a fraudulent document.

Finally, under Section 202(d)(4) a State must take reasonable measures to ensure that the individual seeking the renewal is the same person to whom the REAL ID driver's license or identification card was issued. DHS is considering how best to authenticate the identity of an individual requesting renewal of his or her driver's license or identification card remotely, to guarantee that the REAL ID driver's license or identification card is being

²¹ The AAMVA standard also includes eye color and height, but DHS is not proposing these as required elements in the machine readable zone.

reissued to its proper holder. For example, DHS proposes that the State may choose to authenticate the identity of a renewal applicant through use of personal identifiers such as PIN numbers or questions whose answers only the proper holder would know, or through use of biometric information. DHS requests comments on these renewal procedures, including suggestions on any alternative approaches for remote renewals and authentication of remote renewals.

2. In-Person Renewals

A holder of a REAL ID driver's license or identification card must renew his or her driver's license or identification card in person with the State DMV at least once every sixteen years (or every other renewal period, if the State chooses a renewal period of less than the eight-year statutory maximum) for the State to take an updated photograph. The States must re-verify original information and source documents used as the basis for issuance of the original REAL ID driver's license or identification card, but the individual need not resubmit documents for verification as long as the State has retained copies of source documents for the period of renewal. Documents supporting name changes or address changes since prior issuance must be presented to the DMV and verified. This process should apply any time a driver's license or identification card is renewed or reissued for any purpose.

Holders of temporary REAL ID driver's licenses and identification cards must renew their driver's licenses and identification cards in person at each renewal in order to present evidence of continued lawful status. States must verify continued lawful status and re-verify source documents as outlined above.

The renewal process for non-REAL ID driver's licenses and identification cards is not subject to this regulation.

J. Source Document Retention

Section 202(d)(1) requires that States employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format. The intent behind this provision is applicant convenience upon renewal, and availability of documentation to law enforcement.²² DHS is proposing that if a State employs digital imaging of source documents, it use the AAMVA Digital Image Exchange Program for this purpose and capture the image in color.

If a State does not currently use color scanners, DHS is proposing that current black and white scanners be replaced with color scanners by December 31, 2011. If a State uses a different standard, that standard must be interoperable with the AAMVA standard to ensure an efficient interstate exchange of data when DMVs need to do so. Photo images should be stored in the Joint Photographic Experts Group (JPEG) 2000 standard for image compression, as modified in the future. Document and signature images should be stored in a compressed Tagged Image Format (TIF). This proposal would require that all images be linked to the applicant through the applicant's unique identifier assigned by the DMV.

As an alternative, a State may retain the paper copies of the source documents until it develops an electronic system.²³ Capturing paper documents on microfiche also would be acceptable, but the State will likely find an electronic system to be more economically efficient over time. Under section 202(d)(2) of the Act, States must retain paper copies of source documents for a minimum of seven years, or images of source documents for a minimum of ten years.

Retaining images of source documents allows for renewal of driver's licenses and identification cards remotely, without requiring the driver's license or identification card holder to present source documents at the renewal. Since REAL ID driver's licenses and identification cards must be issued for a maximum period of eight years in accordance with the Act, States may wish to reconcile their source document retention periods accordingly.

K. Security of DMV Facilities Where Driver's Licenses and Identification Cards Are Manufactured and Produced; Facility Security Plans

DHS is proposing that States that choose to produce REAL ID driver's licenses and identification cards submit to DHS a security plan that outlines the State's consolidated approach to security of DMV facilities and the driver's license or identification card production process. Such security plans should also include the State's approach to conducting background checks of certain DMV employees pursuant to section 202(d)(8) of the Act, physical security of the locations where driver's licenses and identification cards are

produced, and the security of document materials and papers from which driver's licenses and identification cards are produced, pursuant to section 202(d)(7) of the Act. Security plans should also describe the security features incorporated into the driver's licenses and identification cards as required under section 202(b)(8) of the Act. Also, should the State decide to incorporate biometrics as an additional security feature (which is not mandated in the regulation), DHS is proposing that the State should describe this use in its security plan and present the technology standard the State intends to use to DHS for approval. This will enable DHS to ensure interoperability of technical standards amongst States seeking to incorporate biometrics in their licensing programs.

This proposed regulation would require that the State submit the security plan to DHS in conjunction with the State's request for certification to enable DHS to review the plan, along with the State's request for certification.

1. Background Checks for Certain Employees

Section 202(d)(8) of the Act requires that "all persons authorized to manufacture or produce driver's licenses and identification cards" must be required to undergo "appropriate security clearance requirements." The purpose of this requirement is to make sure that those individuals who are in a position to produce, manufacture or issue driver's licenses and identification cards are trustworthy. In some jurisdictions in the past, certain DMV employees involved in this process have aided in the issuance of fraudulent driver's licenses and identification cards.

Section 37.45 of the proposed regulations addresses the requirements of section 202(d)(8) of the Act by identifying which categories of DMV employees must undergo background checks²⁴ and the nature of the background checks. With respect to scope, Congress made it clear that section 202(d)(8) was included in the Act because recent investigations into driver's license/identification card insider corruption cases in various

²⁴ A background check is the investigation into someone's past history to permit them to either gain a security clearance or pass a suitability screening. A security clearance is the end result of a background investigation whereby the government makes a determination that someone may be trusted with specified levels of information, such as "classified" information. While section 202(d)(8) of the Act uses the term "security clearance," DHS believes that the intent was to conduct background checks, as DMV employees do not need clearance to handle "classified" information.

²² H.R. Rep. No. 109-72, at 182 (2005) (Conf. Rep.).

²³ Congress made it very clear in the legislative history of section 202(d)(2) of the Act that the intent is for all States to have an electronic system. "The goal is to move all the State's records into electronic format." H.R. Rep. 109-72, at 182 (2005) (Conf. Rep.).

states “revealed that a routine security investigation would have prevented key perpetrators from ever being employed to handle documents of high ‘street’ value that can be sold to illegal aliens, criminals, terrorists, and identity thieves.”²⁵

In light of Congress’s clearly expressed intention that background checks be used to prevent the fraudulent creation of identity documents, DHS concluded that background checks should be required for any DMV employee who has the ability to affect the identity information that appears on the driver’s license or identification card, who has access to the production process, or who is involved in the manufacture of driver’s licenses and identification cards (“covered employees”). Understanding that each State’s DMV has a unique organization and structure, it will be up to each State to determine which positions would fall under this definition (“covered positions”). DHS proposes to require that the State DMVs provide their employees and prospective employees that have been selected for placement in a covered position with notice that a background check is required for employment in a covered position and what that background check will include.

With respect to the type of background check required, the regulations propose that States collect fingerprints for individuals who seek employment in a covered position, in order to conduct a criminal history record check (CHRC) on those individuals through the Federal Bureau of Investigation (FBI) and State repositories. Individuals who have been convicted or found not guilty by reason of insanity of certain permanent disqualifying offenses; or individuals who have been convicted or found not guilty by reason of insanity within the previous seven years or who have been released from prison within the past five years for certain interim disqualifying offenses, would not be allowed to hold covered positions within a State DMV. The list of disqualifying offenses, based on current Federal requirements, mirrors requirements for TSA’s Hazardous Materials Endorsement program (HAZMAT program) and Transportation Workers Identification Credential (TWIC) program. See 49 CFR 1572.103 and the final rule on TWIC (72 FR 3492, Jan. 25, 2007).

DHS concluded that this list of crimes is sufficient as a Federal minimum. States may add additional disqualifying offenses to this list for their covered

employees. States will be responsible for arranging reimbursement with the FBI for the cost of conducting the fingerprint CHRC check. DHS invites comment on whether the proposed list of disqualifying offenses is appropriate, too large, or insufficient as it concerns REAL ID.

DHS is also proposing that the States perform a financial history check on individuals seeking employment in covered positions. Such checks are already being conducted by many employers, including many DMVs, as one indicator that an individual may warrant additional scrutiny or supervision before assuming responsibilities that raise security risks. While questionable financial history would not be considered a Federal disqualifier, the information should be used by the States in making their own determinations on how or whether particular individuals should be employed at the DMV.

DHS recognizes that this requirement is not a feature of the TWIC or HAZMAT programs. Nevertheless, DHS believes that it is warranted in the instant case, due to the sensitivity of the personal information that will routinely be handled by employees at State motor vehicle administrations and the fact that a driver’s license or identification card serves as a key “breeder” document in securing other forms of State and Federal identification. If the DMV personnel issuing and authenticating the driver’s license or identification card are compromised and issue genuine REAL ID driver’s licenses and identification cards to individuals who are seeking to mask their true identity, those individuals can obtain additional identification using that false identity and thwart the Government’s and law enforcement’s ability to identify accurately individuals lawfully stopped and screened. Moreover, as set forth in the Conference Report on section 202(d)(8) of the REAL ID Act, Congress was concerned at the extent of “driver’s license insider corruption.” H.R. Rep. No. 109–72, at 183 (2005) (Conf. Rep.). DHS believes that DMV employees with severe financial difficulties might be more susceptible to bribery, and that States should take this into consideration in determining whether an individual should be placed in a covered position.

These proposed regulations do not preclude a DMV from hiring any individual based on the results of the financial history check and do not preclude the DMV from placing the individual in a covered position based on that check. The financial history check information is intended to

provide the employer a fuller picture when deciding whether to place a potential employee in a covered position.

DHS also proposes that States conduct a lawful status check through SAVE to verify that the individual has lawful status in the United States.

DHS proposes that States may grant waivers allowing individuals to maintain their positions under particular circumstances as authorized by the States; for example, where an individual has made full disclosure of his or her criminal history to the State DMV. DHS proposes that States adopt written practices for waiver processes and provide them to DHS as part of the background check discussion of the State’s comprehensive security plan. Waiver practices will be reviewed by DHS during a State’s initial certification and thereafter as part of periodic DHS audits of the State’s REAL ID program.

2. Physical/Logical Security

The Act requires that States “ensure the physical security of locations where driver’s licenses and identification cards are produced and the security of document materials and papers from which driver’s licenses and identification cards are produced.” This means that the DMV buildings, storage areas, databases and systems, and other areas of perceived vulnerability must be protected from theft and fraud. The State’s comprehensive security plan should include a written risk assessment of each facility, physical security measures, access identification and control measures for employees and vendors, written policies and procedures, training and internal controls to identify and minimize fraud, and an emergency/incident response plan if procedures are breached.

DHS is considering the American National Standards Institute/North American Security Products Organization’s “Security Assurance Standards for the Document and Product Security Industries,” ANSI/NASPO-SA-v3.OP-2005, Level II, as the preferred performance-based standard for physical security of DMV facilities. DHS seeks comment on adoption of this standard, as well as recommendations on other appropriate performance-based standards to meet this statutory requirement. DHS also specifically seeks comment on the extent that the adoption of any performance-based standard would require modification of existing office space or construction of new space. DHS also seeks comments on the extent to which physical changes to existing office spaces required by the adoption of

²⁵ Conference Report at 183.

the ANSI standards or any other physical security performance-based standards would impact historical properties.

3. Document Security Features on Driver's Licenses and Identification Cards

The security plan discussed above must detail the document security features that States are adopting for their driver's licenses and identification cards to prevent tampering, counterfeiting, or duplication of the driver's license or identification card for fraudulent purposes. These features are discussed in more detail in the preamble at Section II.H.6, *infra*,

4. Security of Information Stored in the DMV Database

Section 202(d)(7) of the Act requires States to "ensure the physical security of locations where driver's licenses and identification cards are produced and the security of document materials and papers from which driver's licenses and identification cards are produced." DHS believes that the scope of this provision includes protecting the security of the personal information stored in DMV databases. The House Conference Report discussion of this section of the Act states that the requirement for improved physical security is to address "a growing problem of identity thieves and documents purveyors breaking into State facilities and stealing driver's license or identification card stock blanks, printing machines, and sometimes actual computer hard drives in which current driver's license or identification card holder data is stored."²⁶ It is well documented that a number of DMVs have had incidents of theft of personal information from their databases,²⁷ and security of personal information is a high priority for all Federal and State governmental agencies. Therefore, DHS believes it is reasonable to require that, as part of the security plan mandated for State certification under the Act, States address the security of the DMV databases storing personal information.

5. Security of Personal Data and Documents Collected and Managed Under the Act

As part of the Comprehensive Security Plan, States shall be required to describe standards and procedures for managing driver records and data collected, stored, modified, accessed and transmitted under the requirements

of this rule. With respect to the identity documents required to be provided by applicants, States shall describe procedures to prevent unauthorized access to, or dissemination of, images of these documents stored pursuant to the Act. States shall also detail procedures for document retention and destruction for both physical and electronic records. With respect to applicant data required under the Act, States shall document access controls and related procedures governing the authorized use of such data. Finally, States shall document procedures for resolving data formatting, quality, and integrity issues. DHS encourages States to draft collective standards and best practices for the management of both documents and data required under the provisions of this rule.

In the event of a terrorist event or natural disaster as extensive as 9/11 or Hurricane Katrina, the sharing of information collected and maintained by DMVs pursuant to the REAL ID Act may prove useful to the States for many purposes, such as recreating lost State data, providing individuals' access to images of their source documents when originals are destroyed, or assisting in recovery efforts. DHS seeks comment on whether and to what extent States can or should include in their security plans access to data for information sharing purposes as necessary in the event of a catastrophic event.

III. State Certification Process

Section 202(a)(2) of the Act requires the Secretary to determine whether a State is meeting the requirements of the Act based on certifications made by the State to the Secretary of DHS. Certifications "shall be made at such times and in such manner as the Secretary, in consultation with the Department of Transportation, may prescribe by regulation." Section 37.55 of the regulations presents the requirements for certification.

To ease the burden on the States, DHS determined that this certification process should be similar to the certification process included in DOT's regulations governing State administration of commercial driver's licenses, 49 CFR Part 384. The States are accustomed to these certification requirements, and the requirements appear useful in providing the information DHS will need to ensure that States are in compliance with applicable REAL ID standards. Accordingly, Subpart F of these regulations was based, to a large extent, on 49 CFR Part 384. States must demonstrate initial compliance with these regulations by submitting a

certification and certain specified documents including a description of its REAL ID program, and demonstrate continued compliance by annually submitting such certification and documents. DHS will review such initial and annual certifications and notify the State of its preliminary determination as to the State's compliance with the regulations. The State will have 30 calendar days to respond to the preliminary determination and explain how any identified deficiencies will be corrected or, alternatively, why the DHS preliminary determination is incorrect. DHS will then notify the State of its final determination for which the State may seek judicial review.

IV. Driver's Licenses and Identification Cards That Do Not Meet the Standards of Subparts A and B of These Regulations

Section 202(d)(11) of the Act requires that any driver's license or identification card that does not satisfy the requirements of this section must clearly state on its face that it may not be accepted by any Federal agency for Federal identification or any other official purpose. DHS is proposing that this statement be in bold lettering on the face of the driver's license or identification card. States must also differentiate non-REAL ID driver's licenses and identification cards from REAL ID driver's licenses and identification cards by incorporating a unique design or color indicator to alert Federal agencies and other law enforcement personnel that it may not be accepted for Federal official purposes pursuant to this regulation. DHS seeks comment on whether a uniform design/color should be implemented nationwide for non-REAL ID driver's licenses and identification cards.

V. Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458, 118 Stat. 3638, Dec 17, 2004) requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan, as expeditiously as possible, to require travelers entering the United States to present a passport, other document, or combination of documents, that are "deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship." Section 7209 of IRTPA is commonly known as the Western Hemisphere Travel Initiative (WHTI).

²⁶ H.R. Rep. 109-72, at 183 (2005) (Conf. Rep.).

²⁷ <http://www.cdt.org/testimony/020805schwartz.shtml>.

DHS and DOS issued a final rule on the plan for the air implementation of WHTI which took effect on January 23, 2007. The WHTI requirements for the land and sea borders will be addressed in a separate rulemaking proceeding. In a related WHTI proceeding, DOS issued a Notice of Proposed Rulemaking concerning the Passport Card that would be an acceptable WHTI document at U.S. land and sea borders. See 71 FR 60928 (Oct. 17, 2006). The NPRM proposed that the Passport Card incorporate integrated circuit chip (ICC) technology that would transmit a unique identifier number that could be matched to the holder only in a Government database. The use of ICC technology would facilitate the border inspection of the Passport Card holder. DHS understands that numerous States are interested in exploring whether enhanced driver's licenses and identification cards could be acceptable at the land border to satisfy the WHTI requirements. There are a number of significant differences, however, between a Federally-issued border crossing document and a State-issued driver's license or identification card, including the different vetting criteria. In addition, for purposes of satisfying WHTI requirements, the State would have to ensure that the State-issued REAL ID driver's license or identification card denoted citizenship for purposes of border crossing under WHTI. For REAL ID purposes, DHS is not proposing that States must present the individual's citizenship on the face of the driver's license or identification card or MRZ.

Nevertheless, recognizing the strong interest in some border States to explore the possible interplay between an enhanced driver's license/identification card and WHTI requirements, DHS seeks comments on several topics relating to this notion, including what procedures and business processes a State DMV could develop in order to offer individuals applying for a State-issued REAL ID driver's license or identification card the voluntary option to use the document as a WHTI-compliant border crossing document by meeting some additional requirements. DHS also invites comments on how a State would integrate the type of ICC technology necessary to provide a travel facilitation benefit at the land and sea border along with the common machine readable technology proposed in the REAL ID proceeding while also including an MRZ meeting ICAO standards.

VI. Solicitation of Comments

DHS solicits public comments on all aspects of this proposed regulation. DHS is particularly interested in comments on the following issues:

(1) Whether the list of documents acceptable for establishing identity should be expanded. Commenters who believe the list should be expanded should include reasons for the expansion and how DMVs will be able to verify electronically with issuing agencies the authenticity and validity of these documents.

(2) Whether the data elements currently proposed for inclusion in the machine readable zone of the driver's license or identification card should be reduced or expanded; whether the data in the machine-readable portion of the card should be encrypted for privacy reasons to protect the data from being harvested by third parties, and whether encryption would have any effect on law enforcement's ability to quickly read the data and identify the individual interdicted. What would it cost to build and manage the necessary information technology infrastructure for State and Federal law enforcement agencies to be able to access the information on the machine readable zone if the data were encrypted?

(3) Whether individuals born before 1935 who have established histories with a State should be wholly exempt from the birth certificate verification requirements of this regulation, or whether, as proposed, such cases should be handled under each State's exceptions process.

(4) If a State chooses to produce driver's licenses and identification cards that are WHTI-compliant, whether citizenship could be denoted either on the face or machine-readable portion of the driver's license or identification card, and more generally on the procedures and business processes a State DMV could adopt in order to issue a Real ID driver's license or identification card that also included citizenship information for WHTI compliance. DHS also invites comments on how States would or could incorporate a separate WHTI-compliant technology, such as an RFID-enabled vicinity chip technology, in addition to the REAL ID PDF417 barcode requirement.

(5) How DHS can tailor the address of principal residence requirement to provide for the security of classes of individuals such as federal judges and law enforcement officers.

(6) What benchmarks are appropriate for measuring progress toward implementing the requirements of this

rule and what schedule and resource constraints will impact meeting these benchmarks.

(7) Adoption of a performance standard for the physical security of DMV facility, including whether DHS should adopt the ANSI/NASPO "Security Assurance Standards for the Document and Product Security Industries," ANSI/NASPO-SA-v3.OP-2005, Level II as the preferred standard.

(8) How DHS can better integrate American Samoa and the Commonwealth of the Northern Marianas into the REAL ID framework.

(9) Whether the physical security standards proposed in this rule are the most appropriate approach for deterring the production of counterfeit or fraudulent documents, and what contractual issues, if any, the States will face in satisfying the document security requirements proposed in this rule.

(10) The federalism aspects of the rule, particularly those arising from the background check requirements proposed herein.

(11) How the Federal government can better assist States in verifying information against Federal databases.

(12) In addition to security benefits, what other ancillary benefits could REAL ID reasonably be expected to produce? For example, could REAL ID be expected to reduce instances of underage drinking through use of false/fraudulent identification. If so, please provide details about the expected benefit and how it would be achieved through REAL ID.

(13) The potential environmental impacts of the physical security standards and other requirements proposed under this rule.

(14) Whether other federal activities should be included in the scope of "official purpose."

(15) How the REAL ID Act can be leveraged to promote the concept of "one driver, one record, one record of jurisdiction" and prevent the issuance of multiple driver's licenses.

(16) Whether DHS should standardize the unique design or color required for non-REAL ID under the REAL ID Act for ease of nationwide recognition, and whether DHS should also implement a standardized design or color for REAL ID licenses.

VII. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA

section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This proposed rule contains new and amended information collection activities subject to the PRA. Accordingly, DHS has submitted the following information requirements to OMB for its review.

Title: Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes.

Summary: This proposal would require States participating in the REAL ID program to meet certain standards in the issuance of driver's licenses and identification cards, including security plans and background checks for certain persons who have the ability to affect the recording of any information required to be verified, or who are involved in the manufacture or production of drivers' licenses and identification cards, or who have the ability to affect the identity information that appears on the license (covered employees).

Use of: This proposal would support the information needs of: (a) The Department of Homeland Security, in its efforts to oversee security measures implemented by States issuing REAL ID driver's licenses and identification cards; and (b) other Federal and State authorities conducting or assisting with necessary background and immigration checks for covered employees.

Respondents (including number of): The likely respondents to this proposed information requirement are States (including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and State agencies (such as Departments of Motor Vehicles) and driver's license and identification card applicants.

Frequency: DHS estimates that each State will submit an initial certification of compliance or request for extension, together with a comprehensive security plan. Subsequently, on an annual basis, each State will re-certify its compliance with the REAL ID Act. States will also submit quarterly reports analyzing their use of the exceptions process and monitoring security trends. Further, DHS anticipates that approximately 17,781 covered employees will receive background checks (Criminal History Records Check or CHRC) on an annual basis. Thus, the annual frequency of information requirements is: 17,781 background checks; 56 annual certifications; and 224 quarterly reports.

Background check information will be submitted on an as-needed basis. Additionally, driver's license and identification card applicants must provide proof of identity and lawful status in the U.S. when applying for a REAL ID drivers' licenses or identification cards. Applicants would submit this information only for initial applications or when their lawful status or identifying information has changed.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows: States will be responsible for sending initial certifications (including security plans), annual certifications and background check information to the Federal Government. The compilation and transmission of the initial certifications will require an annualized 76,000 labor hours by DMV and/or State government staff. Using an average hourly total cost of compensation of \$24.92, the annual burden for labor hours would be \$1,895,000.

In the first three years of license issuance, applicants for REAL ID would spend an average of 55.9 million more hours per year. This is equal to approximately 44 additional minutes per applicant on average. This time includes the increase in time to obtain source documents, travel to the DMV, wait in line, and receive service at a customer window.

One-time initial certifications of compliance would require an estimated \$1,106,000 for all jurisdictions. Using an average hourly total cost of compensation of \$24.92 yields an estimate of 44,397 hours for the first year. This collection occurs only in the first year. However, over three years the annualized burden is 14,799 hours or \$368,795.

State annual re-certification would cost the states, on average, \$295,035 per year. Using an average hourly total cost of compensation of \$24.92 yields an estimate of 11,839 hours each year.

Each quarterly report is likely to require effort similar to the annual re-certifications. Accordingly, the hourly burden estimate is 11,839 hours per quarter or 47,356 hours annually. Using an average total cost of compensation of \$24.92 yields a monetized estimate of \$1,180,142 per year.

Forwarding information to the Federal Government for the employee background checks would impose an annualized burden of 889 hours on DMVs and/or State governments. This assumes that each submission will take three minutes to forward information for the FBI CHRC. Multiplying the three minutes per transaction by the 17,781

annualized employee background checks yields the annualized hour burden above. Using an average total cost of compensation of \$24.92 yields an annual monetized estimate of \$22,156.

Driver's license and identification card applicants would incur an annual \$171 million in order to seek acceptable source documents as required by this rule.

Running immigration checks on foreign-born applicants for driver's licenses and identification cards will not impart a new hourly burden upon DMVs. DMVs already collect biographic information from applicants' source documentation. At most, this requirement will change which pieces are collected, not the total amount of information collected. Further, the transmission of information to the SAVE system run by DHS will be automated and will therefore not require DMV labor hours to conduct each check.

DHS 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.

Individuals and organizations may submit comments on the information collection requirements by May 8, 2007. Direct the comments to the address listed in the **ADDRESSES** section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806. A comment to OMB is most effective if OMB receives it within 30 days of publication. TSA will publish the OMB control number for this information collection in the **Federal Register** after OMB approves it.

As protection provided by the Paperwork Reduction Act, as amended, 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.

B. Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. A summary of the required analyses follows. A detailed regulatory impact analysis has been prepared as a separate document and is available for review in the docket.

First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

Although Congress recognized that States will have to expend monies in order to comply with REAL ID,²⁸ it explicitly stated that the REAL ID Act is binding on the Federal government, and not the States.²⁹ Moreover, by its terms, UMRA does not apply to regulations “necessary for the national security” and those which impose requirements “specifically set forth in law.”³⁰ Thus, as a matter of law, the UMRA requirements do not apply to this proposed rulemaking even though States will be expending resources. However, the analyses that would otherwise be required are similar to those required under Executive Order 12866, which have been completed and may be found in the full Regulatory Evaluation.

Executive Order 12866 Assessment

DHS has determined that this rule will have an impact of over \$100 million and that it raises novel or complex policy issues. Accordingly, this rule is significant under Section 3(f)(1) of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

DHS has assessed the costs, benefits and alternatives of the requirement proposed under this rule. A complete regulatory impact assessment, as required under Executive Order 12866 and OMB Circular A–4, is set forth in a separate document in the docket for this regulatory action at <http://www.regulations.gov> at Docket Number DHS–2006–0030. A summary of the estimated costs and benefits, including potential ancillary benefits realized by the requirements proposed in this rule, is set forth below.

The Department of Homeland Security (DHS) has conducted a comprehensive, rigorous, and exhaustive Regulatory Evaluation of the benefits and costs of the proposed minimum standards for state-issued driver’s licenses and non-driver identification cards pursuant to the REAL ID Act of 2005. Since these standards will impact the lives of approximately 240 million people and the operations of all 56 state and territorial jurisdictions, DHS is committed to an ongoing dialogue with all stakeholders on the benefits and burdens of the proposed regulation. This Regulatory Evaluation is the initial step in joint State, Federal, and public effort to improve the security and trustworthiness of driver’s licenses and identification cards.

Assumptions

This Regulatory Evaluation covers the ten-year costs of REAL ID Program deployment and operations. This includes:

- Year One—State and Federal government program startup efforts prior to the statutory deadline of May 2008.
- Years Two through Six—the five-year implementation period ending in May 2013, by which time States must be in full compliance with the statute and regulation
- Years Seven through Ten—four years of program operation

Moreover, this Regulatory Evaluation is based upon five key assumptions and to the extent that any of these five assumptions are relaxed, then it is likely that the compliance costs may be lower.

(1) *That all States will comply with the regulation by the statutory deadline.*

DHS recognizes that some States will be unable to comply by May 2008 and will file requests for extensions that may result in phased compliance implementation schedules that could mitigate some of the startup costs examined below. Hence, the costs allocated to the period prior to May 2008—that is, program year one in this analysis—may be redistributed to subsequent years.

(2) *That all Driver’s License/Identification (DL/ID) holders will seek a REAL ID credential.* DHS anticipates some individuals may not need to access Federal facilities or fly on commercial airlines or may choose to use a passport or alternative form of photo identification for these purposes. To the extent that some people would not seek a REAL ID credential, then the compliance costs may be considered high.

(3) *That States will issue both REAL IDs and non-REAL IDs.* DHS anticipates that States will offer an alternative DL/ID (not acceptable for Federal official purposes) to those who are unwilling or unable to obtain a compliant one. Thus, this Regulatory Evaluation assumes that States will deploy a two-tier or multi-tier licensing system. States instead may choose to issue only REAL ID compliant driver’s licenses and identification cards, thereby reducing their operational and system costs.

(4) *That all IT systems will be functional by the statutory deadline.* DHS has calculated the costs assuming that all required verification data systems be operational and fully populated by May 2008. DHS is working to bring these systems online and up to standards as soon as possible and will work with the States to develop alternative procedures. Again, to the extent that these systems are not operational, then the discounted costs and benefits of the proposed rule may be lower.

(5) *State impact is not uniform due to progress already made in some States.* States that have already invested in improving the security of their licenses will have to invest far less per capita than states with less secure licenses and issuance processes. Those States that are more advanced would incur lower compliance costs than other States.

Costs and Benefits

It is impossible to quantify or monetize the benefits of REAL ID using standard economic accounting techniques. However, though difficult to quantify, everyone understands the benefits of secure and trusted identification. The proposed minimum standards seek to improve the security

²⁸ See, e.g., section 204(b) authorizing “such sums as may be necessary to carry out this title.”

²⁹ See, e.g., section 202(a)(1) (“a Federal Agency may not accept” no-compliant State licenses) and Conference Report language on section 202(a)(1) (“the law is binding on Federal agencies—not the states”).

³⁰ See 2 U.S.C. 1503(5), 1535.

and trustworthiness of a key enabler of public and commercial life—state-issued driver's licenses and identification cards. As detailed below, these standards will impose additional burdens on individuals, States, and even the Federal government. These costs, however, must be weighed against

the intangible but no less real benefits to both public and commercial activities achieved by secure and trustworthy identification.

Economic Costs

The costs of the proposed rule are significant. Implementing the REAL ID Act will impact all 56 State and

territorial jurisdictions, more than 240 million applicants for and holders of State DL/IDs, private sector organizations, and Federal government agencies. Figure 1 summarizes the estimated marginal economic costs of the proposed rule over a ten-year period.

FIGURE 1.—ESTIMATED MARGINAL ECONOMIC COST OF REAL ID PROPOSED RULE

Estimated costs (10 years)	\$ Million	\$ Million (2006 dollars)	% Total	% Total
	7% Discounted	Undiscounted	7% Discounted	Undiscounted
Costs to States	10,770	14,600	62.5	63.2
Customer Services	5,253	6,901	30.5	29.9
Card production	3,979	5,760	23.1	24.9
Data Systems & IT	1,127	1,436	6.5	6.2
Security & Information Awareness	388	471	2.3	2.0
Data Verification	12	18	0.1	0.1
Certification process	10	14	0.1	0.1
Costs to Individuals	5,991	7,875	34.8	34.1
Opportunity Costs (268.8 million hours)	5,401	7,113	31.4	30.8
Application Preparation (161.9 million hours)	3,243	4,283	18.8	18.5
Obtain Birth Certificate (26.5 million hours)	542	700	3.1	3.0
Obtain Social Security Card (15.8 million hours)	302	418	1.8	1.8
DMV visits (64.7 million hours)	1,315	1,712	7.6	7.4
Expenditures: Obtain Birth Certificate	590	762	3.4	3.3
Cost to Private Sector	7	9	0.0	0.0
Costs to Federal Government	451	617	2.6	2.7
Social Security card issuance	349	483	2.0	2.1
Data Verification—SAVE	22	32	0.1	0.1
Data Systems & IT	63	78	0.4	0.3
Certification & training	17	24	0.1	0.1
Total Costs	17,219	23,101	100.0	100.0

Figure 1 shows the primary estimates calculated in both undiscounted 2006 dollars and discounted dollars at a 7% discounted rate. Excluding the cost to individuals, primarily associated with obtaining documents, DHS estimates that the discounted cost of the proposed rule is \$11.2 billion (\$13.81 per issuance for each of the 813 million issuances over ten years) over ten years. The total discounted cost of the proposed rule, including the cost to individuals is \$17.2 billion (\$21.18 per issuance). The undiscounted costs are estimated at \$15.2 billion (\$18.73 per issuance), excluding the direct cost to individuals or \$23.1 billion total (\$28.41 per issuance). DHS acknowledges that an individual may have more than one application experience over a ten year period due to the expiration period or relocation between states.

States will incur the largest share of the costs as shown in Figure 1. More than 60 percent of the costs (discounted or undiscounted) are associated with providing customer services and card production. Over 30 percent of the costs (discounted or undiscounted) are categorized as costs to individuals and

are associated with preparing applications and obtaining necessary documents.

Several factors influence the high cost of this proposed rule. First, this rule is assumed to affect 56 jurisdictions and 240 million license holders. This regulatory evaluation assumes that every license holder will acquire a REAL ID. Second, many individuals will not have their required documents when they need them. Again, the regulatory evaluation realistically assumes that many individuals will need to find the appropriate documents. Third, individuals will need to renew their licenses periodically. DHS does not foresee any way to significantly lessen the 813 million issuances over the next ten years.

Estimated Benefits

The proposed REAL ID regulation would strengthen the security of personal identification. Though difficult to quantify, nearly all people understand the benefits of secure and trusted identification and the economic, social, and personal costs of stolen or fictitious identities. The proposed REAL ID NPRM seeks to improve the security

and trustworthiness of a key enabler of public and commercial life—state-issued driver's licenses and identification cards.

The primary benefit of REAL ID is to improve the security and lessen the vulnerability of federal buildings, nuclear facilities, and aircraft to terrorist attack. The rule would give states, local governments, or private sector entities an option to choose to require the use of REAL IDs for activities beyond the official purposes defined in this regulation. To the extent that states, local governments, and private sector entities make this choice, the rule may facilitate processes which depend on licenses and cards for identification and may benefit from the enhanced security procedures and characteristics put in place as a result of this proposed rule.

DHS provides a rough “break-even” analysis based on the rule having an impact on the annual probability of the U.S. experiencing 9/11 type attacks in the 10 years following the issuance of

the rule.³¹ DHS believes that the probability and consequences of a successful terrorist attack cannot be determined for purposes of this benefit analysis. However, for the purposes of this analysis, it is not necessary to assume that there is a probability of being attacked in any particular year. Setting a probability for a successful attack is not necessary for this analysis, so long as we make some admittedly tenuous assumptions about the costs of attack consequences, to determine the reduction in probability of attack that REAL ID would need to bring about so that the expected cost of REAL ID equals its anticipated security benefits. Since it is exceedingly difficult to predict the probability and consequences of a hypothetical terrorist attack, DHS instead provides an answer to the following question: what impact would this rule have to have on the annual probability of experiencing a 9/11 type attack in order for the rule to have positive quantified net benefits. This analysis does not assume that the U.S. will necessarily experience this type of attack, but rather is attempting to provide the best available information to the public on the impacts of the rule. This analysis is preliminary, and DHS specifically requests comments on the methodology used in this discussion, and the types of additional security incidents this rulemaking may impact. DHS is also continuing to develop this analysis for the final rule.

In summary, if these requirements lowered by 3.60% per year the annual probability of a terrorist attack that caused immediate impacts of \$63.9 billion (which is an estimate of the immediate impact incurred in the 9/11 attack and might be considered a lower bound estimate), the quantified net benefits of the REAL ID regulation would be positive. If these requirements lowered by 0.61% per year the annual probability of a terrorist attack that caused both immediate and longer run impacts of \$374.7 billion (which is an estimate of the immediate and longer run impacts incurred in the 9/11 attack and might be considered an upper bound estimate), the quantified net benefits of the REAL ID regulation would be positive.

The potential ancillary benefits of REAL ID are numerous, as it would be more difficult to fraudulently obtain a legitimate license and would be substantially more costly to create a false license. These other benefits include reducing identity theft,

unqualified driving, and fraudulent activities facilitated by less secure driver's licenses such as fraudulent access to government subsidies and welfare programs, illegal immigration, unlawful employment, unlawful access to firearms, voter fraud, and possibly underage drinking and smoking. DHS assumes that REAL ID would bring about changes on the margin that would potentially increase security and reduce illegal behavior. Because the size of the economic costs that REAL ID serves to reduce on the margin are so large, however, a relatively small impact of REAL ID may lead to significant benefits.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." The following analysis suggests that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Under the RFA, the term "small entity" has the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction." This action will affect States, and States are governmental jurisdictions. However, States are not considered "small governmental jurisdictions" under the RFA. As defined by the RFA, small governmental jurisdictions include governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50 thousand. The proposed rule would regulate driver's licenses and non-driver identification cards at the state level. It would not directly regulate small government jurisdictions nor would it directly regulate small entities in the driver's license and identification card industry.

The rule would regulate the acceptance of a driver's license or identification card by Federal agencies for official purposes. (If the rule is adopted, Federal agencies would not accept state-issued driver's licenses or identification cards unless they were REAL IDs for the purposes of boarding federally regulated commercial aircraft, entering nuclear power plants and accessing Federal facilities. The rule does not require presentation of this, or any other document, nor does it prohibit

the acceptance of any other document.) Consequently, employees and agents would be trained in the acceptance of REAL ID driver's licenses and identification cards to ensure they are compliant with the Act.

The acceptance of REAL ID driver's licenses and identification cards for accessing Federal facilities does not directly regulate small entities as the Federal government is not itself a small entity.

Nuclear power plants qualify as small entities if "including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours."³² With only three exceptions, every nuclear power plant in the United States produced more than 4 million megawatt hours in fiscal year 2005.³³ However, each of those three plants are owned by companies producing more than 12 million megawatt hours.³⁴ None of the nuclear power plants qualify as a small business using the SBA definition.

DHS estimates that airlines and their representatives would need to train some of their personnel in the acceptance of REAL ID driver's licenses and identification cards under the proposed rule. While data exist on the number of employees for some firms in the air carrier industry, data do not exist on how many of these employees accept identification from passengers before allowing them to board an aircraft. DHS has therefore established a threshold measure to determine if the proposed regulation would have a significant impact on a substantial number of small entities.

DHS estimates that each employee accepting REAL ID driver's licenses and identification cards for official purposes would require two hours of training. This training will assist personnel in identifying the differences between REAL IDs and non-compliant IDs. The training will also inform personnel about which States are or are not compliant during the phase-in period.

³² Small Business Administration. *Small Business Size Standards Matched to North American Industrial Classification System*, footnote 1. Available at <http://www.sba.gov/size/sizetable2002.html#fn1>. Accessed Jul 14, 2006.

³³ Calculations based on data from the Energy Information Administration. U.S. Department of Energy. *Monthly Nuclear Utility Generation by State and Reactor, 2004 and Monthly Nuclear Utility Generation by State and Reactor, 2005*. Available at http://www.eia.doe.gov/cneaf/nuclear/page/nuc_generation/gensum.html. Accessed Jul 14, 2006.

³⁴ Conclusion based on an internet search conducted on July 14, 2006 of the three specific power plants and the companies that own and operate them.

³¹ This type of analysis is recommended by OMB Circular A-4 when it is difficult to quantify and monetize the benefits of rulemaking.

DHS calculated the fully loaded wage rate of \$22.95 per hour for airline ticket counter agents and \$22.50 per hour for airport checkpoint staff. Multiplying the wage rates by the estimated two hours to complete the training yields estimates of \$45.90 and \$45.01 per-employee for ticket counter agents and checkpoint staff, respectively. If a firm's revenue divided by the number of ticket counter

agents to be trained is more than \$4,590:1 then the effect is less than one percent of their total revenue. To have an impact equal to or greater than three percent of total revenue, the revenue to trained agents would need to be equal to or less than \$1,530:1. Firms employing airport checkpoint staff with a total revenue to trained employee ratio greater than \$4,501:1 would experience

impacts less than one percent of total revenue. DHS estimates that, to have an impact of three percent or more, the firm would need to have a revenue to trained employee ratio equal to, or less than, \$1,500:1. DHS is unable to identify any firms for which the total revenue to trained employee ratio would be less than \$4,500:1.

Figure 2: IRFA threshold for significant impact

Employee type	Airport ticket counter agent	Airport checkpoint staff
Fully loaded wage	\$ 22.95	\$ 22.50
Hours of training	2	2
Training cost per employee	\$ 45.90	\$ 45.01

Impact size (as % of revenue)	Total revenue to trained employee ratio (X : 1)	
1%	\$ 4,590	\$ 4,501
2%	2,295	2,250
3%	1,530	1,500

This analysis suggests that the proposed rule would not have a significant impact on a substantial number of small entities. The Department welcomes comments and data on the impacts of the proposed regulation on small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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. There is no international standard for state-issued driver licenses or identification cards. DHS has determined that the proposed regulation would not have an impact on trade.

Unfunded Mandates Assessment

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for

which a written statement is needed, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. Agencies are also required to seek input from the States in the preparation of such rules.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows DHS to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

As indicated above, UMRA excludes from its scope regulations which are required for national security reasons. National security was a primary motivator for the REAL ID Act; indeed, the Act itself is an effort to implement recommendations of the 9/11 Commission, and Congress took pains to explain the connection between REAL ID and national security, with over a dozen references to "terrorists" or "terrorism" in the Conference Report. *See 9/11 Commission Public Report*, Chapter 12.4; Conf. Rep., 179–183.

Notwithstanding the national security nature of the REAL ID Act requirements, DHS has analyzed the estimated cost to states and considered appropriate alternatives to, and benefits derived

from, the proposed regulation. Moreover, as detailed in the following section (Executive Order 13132, Federalism), DHS has solicited input from State and local governments in the preparation of this proposed rule.

C. Executive Order 13132, Federalism

Executive Order (E.O.) 13132 requires each Federal agency to develop a process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase "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."

Executive Order 13132 lists as a "Fundamental Federalism Principle" that "[f]ederalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people." The issue covered by the instant regulation is, without question, national in scope and significance. It is also one in which the States have significant equities.

While driver's licenses and identification cards are issued by states, they are also the most widely used identification documents. Not

surprisingly, they are very frequently used by Americans to establish their identities in the course of their interactions with the Federal Government (e.g., when entering secure Federal facilities or passing through Federally-regulated security procedures at U.S. airports). The fact that the use of driver's licenses as identity documents is an issue that is "national in scope" is illustrated by the events of September 11, 2001. A number of the terrorists who hijacked U.S. aircraft on that day had, through unlawful means, obtained genuine driver's licenses; these documents were used to facilitate the terrorists' operations against the United States.³⁵

1. DHS Has Considered the Federalism Implications of Proposed REAL ID Policies

Section 3 of the E.O. sets forth certain "Federalism Policymaking Criteria." In formulating or implementing policies with "federalism implications," agencies are required, to the extent permitted by law, to adhere to certain criteria. DHS has considered this action in light of the criteria set forth in E.O. 13132 section 3(a)–(d) and submits the following:

(a) *Constitutional principles and maximizing the policymaking discretion of the States.* The proposed rule is being promulgated in strict adherence to constitutional principles, and the limits of DHS' constitutional and statutory authority have been carefully considered. DHS is proceeding with this action pursuant to direct Congressional authorization as set forth in the REAL ID Act.

Notwithstanding this clear mandate, DHS has taken steps, in consultation with the States, to maximize policymaking discretion at the state level. In response to concerns expressed during the course of DHS' discussions with stakeholders, DHS has proposed, as part of this rule, an exceptions process (see section II.F, *supra*, *Exceptions Processing for Extraordinary Circumstances*) that would allow each State participating in REAL ID to exercise maximum discretion in responding to exigencies arising in the course of verifying an individual's identity.

In section II.K.1 of this proposed rule (section 37.45 of the regulations *Background checks for certain employees*), DHS has recognized that each State's unique situation mandates that the maximum possible latitude be allowed to States in fulfilling the statutory mandate that certain

employees undergo background investigations. The proposed rule provides parameters for use by the States in determining which employees are subject to the statutory background check requirements but allows the individual States to make the determinations on a case-by-case basis.

States are also given the discretion to find the best way to determine an individual driver's license or identification card applicant's address of principal residence (see sections II.D, II.E.1).

In other aspects of the proposed regulation (see, e.g., section II.H.6, *supra*, *Physical Security Features*), DHS has prescribed baseline requirements while allowing States the discretion to impose more stringent standards. Any State that chooses to participate in REAL ID will retain the discretion to issue non-REAL ID driver's licenses and identification cards in any manner it sees fit (provided such driver's licenses and identification cards are clearly identified as non-REAL ID). Most significantly, as set forth above, each State retains the discretion to opt out of REAL ID in its entirety.

(b) *Action limiting the policymaking discretion of the States.* As indicated above, the instant proposed rule strives to maximize State policymaking discretion on two levels: first, because a State's participation in REAL ID is optional; and second, because of the policymaking discretion (e.g., the exceptions process) incorporated into the regulation for States which do choose to participate. DHS believes that it has incorporated into this action the maximum possible State discretion consistent with the purposes of the statute.

(c) *Avoiding intrusive Federal oversight.* Consistent with Congress' vision for REAL ID (see section 202(a)(2) of the Act), States which choose to participate in the program will be responsible for monitoring their own compliance. See section IV, *State Certification Process*, *supra*. As detailed in that section (and section 37.55 of the instant regulations), the Secretary of Homeland Security will determine whether a State is meeting the requirements of the Act based on certifications made by the State. Certifications "shall be made at such times and in such manner as the Secretary, in consultation with the Department of Transportation, may prescribe by regulation."

To facilitate compliance with REAL ID, DHS has adopted a certification process similar to that used by DOT in its regulations governing State administration of commercial driver's

licenses. Under the proposed rule, DHS will not directly oversee State compliance. Rather, States will demonstrate initial compliance with REAL ID by submitting a certification and certain specified documents including a description of their REAL ID programs. Continued compliance will be demonstrated through annual submission of such certification and documents. DHS will make compliance determinations based on submissions by the States (and will retain an audit function). States receiving adverse determinations will have the opportunity for an internal appeals process as well as judicial review. Thus, intrusive oversight is avoided by allowing the States themselves to serve as the primary compliance mechanism with this regulation.

(d) *Formulation of policies with federalism implications.* DHS recognizes both the important national interest in secure identity documents and the federalism implications of the policies which underpin this proposed rule. Accordingly, DHS has welcomed and encouraged State participation in this process. Consistent with Congressional intent, DHS has sought, where possible, to draft this regulation in such a way as to maximize State discretion. The examples of exceptions processing and the State certification process are outlined above in this Federalism Statement, and detailed elsewhere in this proposed rule.

Where the exigencies of national security and the need to prevent identity fraud have militated in favor of a uniform national standard (e.g., baseline security features on identity cards and background check requirements), DHS has, as reflected above, consulted with States in order to ensure that the uniform standards prescribed could be attained by the States and would reflect the accumulated security experience of state motor vehicles administrations. The Department recognizes that imposing qualifications for State employees through background check requirements may raise federalism concerns. DHS specifically requests comments on the federalism aspects of the background check requirements proposed under this rule.

2. The REAL ID Proposed Rule Complies With the Regulatory Provisions of E.O. 13132

Under section 6 of E.O. 13132, an agency may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides

³⁵ See 9/11 Commission Report, Chapter 12.4.

the funds necessary to pay the direct compliance costs incurred by State and local governments, or consults with state and local officials early in the process of developing the proposed regulation. Moreover, an agency may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

(a) *The proposed rule is required by statute.* As stated above, the regulatory requirements of E.O. 13132 apply only to regulations that are not “required by statute.” See E.O. 13132, section 6(b). The REAL ID Act authorizes the Secretary of Homeland Security to define and implement the various requirements prescribed in the statute; the instant rule merely carries out that mandate. Thus, given the statutory mandate, E.O. 13132’s regulatory requirements arguably may not apply to this rulemaking.

(b) *The proposed rule does not preempt state law.* As detailed elsewhere in this document, the REAL ID Act is binding on Federal agencies, rather than on States. The proposed rule would not formally compel any State to issue driver’s licenses or identification cards that will be acceptable for federal purposes. Importantly, under this scheme, “[a]ny burden caused by a State’s refusal to regulate will fall on those [citizens who need to acquire and utilize alternative documents for federal purposes], rather than on the State as a sovereign.”³⁶ In other words, the citizens of a given State—not Congress—ultimately will decide whether the State complies with this regulation and the underlying statute. DHS has concluded that the proposed rule is consistent with the Tenth Amendment to the U.S. Constitution and does not constitute an impermissible usurpation of state sovereignty. Rather, it is a permissible “program of cooperative federalism” in which the federal and state governments have acted voluntarily in tandem to achieve a common policy objective.³⁷

(c) *DHS has engaged in extensive consultations with the States.* The statutory mandate and the lack of preemption both satisfy the requirements of E.O. 13132. Nevertheless, in the spirit of federalism, and consistent with section 205(a) of the REAL ID Act, DHS has engaged in extensive consultations with the States prior to issuing this proposed rule. As set forth in section I.B of this proposed

rule, DHS held meetings and solicited input from various States and such stakeholders as the National Governors Association and the National Conference of State Legislatures.

In particular, DHS’ Office of State and Local Government Coordination hosted three face-to-face meetings (October 2005, January 2006 and February 2006), as well as a conference call (March 2006). DHS also participated in other conferences on REAL ID, hosted by various other stakeholders, including the American Association of Motor Vehicle Administrators. Details of conferences and the input received by DHS from participants are reflected in the docket for this proposed rule and are available for public review as set forth above. See *Reviewing Comments in the Docket*, *supra*. As detailed in that section, input from the States was instrumental in formulating the policies proposed herein.

(d) *DHS recognizes the burdens inherent in complying with the regulation.* Notwithstanding both the statutory mandate and the Federal (rather than State) focus of the REAL ID Act, DHS recognizes that, as a practical matter, States may view noncompliance with the requirements of REAL ID as an unattractive alternative. DHS also recognizes that compliance with the rule carries with it significant costs and logistical burdens, for which federal funds are generally not available. The costs (to the States, the public and the Federal Government) of implementing this rule are by no means inconsiderable and have been detailed in the regulatory evaluation accompanying this proposed rule.

As indicated above, E.O. 13132 prohibits any agency from implementing a regulation with federalism implications which imposes substantial direct compliance costs on State and local governments unless the regulation is required by statute, the Federal Government will provide funds to pay for the direct costs, or the agency has consulted with State and local officials. In such a case, the agency must also incorporate a federalism statement into the preamble of the regulation and make available to the Office of Management and Budget any written communications from State and local officials. See E.O. 13132, section 6(b).

This proposed rule is required by the REAL ID Act. DHS has (as detailed above) consulted extensively with State and local officials in the course of preparing this regulation. Finally, DHS has incorporated this Federalism Statement into the preamble to assess the federalism impact of its proposed REAL ID regulation.

3. REAL ID and Federalism

The issuance of driver’s licenses has traditionally been the province of State governments; DHS believes that, to the extent practicable, it should continue as such. However, given the threat to both national security and the economy presented by identity fraud, DHS believes that certain uniform standards should be adopted for the most basic identity document in use in this country. DHS has, in this proposed rule, attempted to balance State prerogatives with the national interests at stake. We look forward to receiving input from States, citizens and other stakeholders with regard to the federalism implications of this proposed rule.

D. Environmental Analysis

Under this proposed rule, DHS is seeking specific public comment and, in particular, information from State DMVs, on the potential environmental impact of the physical standards and other proposed requirements under this rule. DHS will be conducting the necessary analysis to determine the environmental impacts of this rule for purposes of complying with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508, and will be considering public comments received in this analysis.

E. Energy Impact Analysis

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 37

Document security, Driver’s licenses, Identification cards, Incorporation by reference, Motor vehicle administrations, Physical security.

The Proposed Amendments

For the reasons set forth in the preamble, the Department of Homeland Security proposes to amend 6 CFR chapter I, by adding a new part 37 to read as follows:

³⁶ *New York v. U.S.*, 505 U.S. 144, 173 (1992).

³⁷ See *id.* at 167.

Title 6—Homeland Security**CHAPTER I—DEPARTMENT OF
HOMELAND SECURITY, OFFICE OF THE
SECRETARY****PART 37—REAL ID DRIVER'S
LICENSES AND IDENTIFICATION
CARDS****Subpart A—General**

Sec.

37.1 Applicability.

37.3 Definitions.

37.5 Deadlines and validity periods for
REAL ID driver's licenses and
identification cards.**Subpart B—Minimum Documentation,
Verification and Driver's License and
Identification Card Issuance Requirements**37.11 Application and documents the
applicant must provide.

37.13 Document verification requirements.

37.15 Physical security features for the
driver's license or identification card.37.17 Requirements for the face of the
driver's license or identification card.37.19 Machine readable technology on the
driver's license or identification card.37.21 Temporary driver's licenses and
identification cards.37.23 Renewed and reissued driver's
licenses and identification cards.**Subpart C—Other Requirements**

37.31 Source document retention.

37.33 Database connectivity with other
States.**Subpart D—Security at DMVs and Driver's
License and Identification Card Production
Facilities**

37.41 Comprehensive security plan.

37.43 Physical security of DMV facilities.

37.45 Background checks for covered
employees.**Subpart E—Procedures for Determining
State Compliance**

37.51 Compliance—general requirements.

37.55 Initial State certification.

37.57 Annual State certifications.

37.59 DHS reviews of State compliance.

37.61 Results of compliance determination.

37.63 Extension of deadline.

37.65 Effect of failure to comply with this
part.**Subpart F—Non-REAL ID Driver's Licenses
and Identification Cards**37.67 Non-REAL ID driver's licenses and
identification cards.**Authority:** 49 U.S.C. 30301 note; 6 U.S.C.
111, 112.**Subpart A—General****§ 37.1 Applicability.**

(a) Subparts A through F of this part apply to States and territories that choose to issue driver's licenses and identification cards that can be accepted by Federal agencies for official purposes.

(b) Subpart F of this part establishes certain standards for State-issued driver's licenses and identification cards that do not meet the standards for acceptance for Federal official purposes.

§ 37.3 Definitions.

For purposes of this part:

Birth certificate means the record related to a birth that is permanently stored either electronically or physically at the State Office of Vital Statistics or equivalent agency in a registrant's State of birth.

Card means either a driver's license or identification card issued by the State DMV or equivalent State office.

Certification means an assertion by the State that the State has met the requirements of this part.

Certified copy of a birth certificate means a copy of the whole or part of a birth certificate registered with the State that the State considers to be the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency.

Covered employees means DMV employees or DMV contractors who have the ability to affect the recording of any information required to be verified, or who are involved in the manufacture or production of driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card.

Data verification means checking the data contained in source documents presented under this regulation against authoritative reference databases.

Department of Motor Vehicles means any State Government entity that issues driver's licenses and identification cards, or an office with equivalent function for issuing driver's licenses and identification cards.

Determination means a decision by the Department of Homeland Security that a State has or has not met the requirements of this part and that Federal agencies may or may not accept the driver's licenses and identification cards issued by the State for official purposes.

DHS means the U.S. Department of Homeland Security. When used in connection with the issuance of documents, the term also includes the former Immigration and Naturalization Service (INS) of the Department of Justice when INS issued documents that are still valid.

Digital photograph means a digitally printed reproduction of the face of the holder of the license or identification card.

Document authentication means verifying that the source document

presented under these regulations is genuine and has not been altered.

Domestic violence and dating violence have the meanings given the terms in section 3, Universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42 U.S.C. 13925.

Driver's license means a motor vehicle operator's license, as defined in 49 U.S.C. 30301.

Federal agency means all executive agencies including Executive departments, a Government corporation, and an independent establishment as defined in 5 U.S.C. 105.

Federally-regulated commercial aircraft means a commercial aircraft regulated by the Transportation Security Administration (TSA).

Full legal name means an individual's first name, middle names or family names, and last name, without use of initials or nicknames.

IAFIS means the Integrated Automated Fingerprint Identification System, a national fingerprint and criminal history system maintained by the FBI that provides automated fingerprint search capabilities.

Identification card means a document made or issued by or under the authority of a State Department of Motor Vehicles which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Lawful status: A person in lawful status: is a citizen or national of the United States; Is an alien lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in refugee status; has a valid nonimmigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.

NCIC means the National Crime Information Center, a computerized index of criminal justice information maintained by the FBI that is available to Federal, state, and local law enforcement and other criminal justice agencies.

Official purpose means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.

Passport means a passport booklet or card issued by the Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the Department of State.

Principal residence means where a person has his or her true, fixed, and permanent home and to where he or she has the intention of returning whenever he or she is absent.

REAL ID Driver's License or Identification Card means a driver's license or identification card that meets the standards of subparts A through D of this part, including temporary driver's licenses or identification cards issued under § 37.21.

Reissued means a card that a State DMV issues to replace a card that has been lost, stolen or damaged.

SAVE means the DHS Systematic Alien Verification for Entitlements system, or such successor or alternate verification system at the Secretary's discretion.

Secretary means the Secretary of Homeland Security.

Sexual assault and stalking have the meanings given the terms in section 3, Universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42 U.S.C 13925.

Source document(s) means original or certified copies (where applicable) of documents presented by an applicant as required under these regulations to the Department of Motor Vehicles to apply for a driver's license or identification card.

Source information means the pertinent information present on source documents that are presented by an applicant to the Departments of Motor Vehicles to apply for a driver's license or identification card.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State address confidentiality program means any State-authorized or State-administered program that—

(1) Allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or

(2) Provides confidential record-keeping regarding the addresses of such victims.

Temporary lawful status: A person in temporary lawful status is a person who: Has a valid nonimmigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.

§ 37.5 Deadlines and validity periods for REAL ID driver's licenses and identification cards.

(a) *Cards issued on or after May 11, 2008.* A State-issued driver's license or identification card issued on or after May 11, 2008 is acceptable by Federal agencies for official purposes only if the card meets the requirements of this part, and DHS has determined that the issuing State meets the requirements of the REAL ID Act of 2005 (Pub. L. 109–13, 119 Stat. 231, 302, May 11, 2005).

(b) *Cards issued before May 11, 2008.* If DHS determines that a State is in compliance with the REAL ID requirements in this part, all cards issued before May 11, 2008 are acceptable by Federal agencies for official purposes until and including May 10, 2013. All cards issued, reissued, or renewed after May 11, 2008 must be REAL ID compliant by May 11, 2013 or they shall not be acceptable by Federal agencies for official purposes.

(c) *REAL ID card validity period.* Driver's licenses and identification cards issued under this part that are not temporary driver's licenses and identification cards are valid for a period not to exceed eight years. A card may be valid for a shorter time period based on other State or Federal requirements.

Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements

§ 37.11 Application and documents the applicant must provide.

States must require each individual applying for a REAL ID driver's license or identification card to have their photograph taken by the DMV, and maintain that photograph as described in paragraph (a) of this section. States must further require each individual applying for a REAL ID driver's license or identification card to submit the declaration in paragraph (b) and to present the documents described in paragraphs (c), (d), (e) and (f) of this section. Documents in paragraph (g) of this section are required as described in

that paragraph. States are not required to comply with these requirements when issuing REAL ID driver's licenses or identification cards in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or in support of their other official duties. As directed by appropriate officials of these Federal, State, or local agencies, States should take sufficient steps to safeguard the identities of such persons. Driver's licenses and identification cards issued in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or in support of their other official duties shall not be distinguishable from other REAL ID licenses or identification cards issued by the State.

(a) The State must subject each person applying for a REAL ID driver's license or identification card to a mandatory facial image capture, whether or not such person is issued a REAL ID driver's license or identification card.

Photographs of individuals who were not issued a REAL ID driver's license or identification card must be kept for 1 year, unless the DMV did not issue the driver's license or identification card because of suspected fraud, in which case the record should be maintained for ten years and reflect that a driver's license or identification card was not issued for that reason.

(b) *Declaration.* Each applicant must sign a declaration under penalty of perjury that the information presented is true and correct, and the State must retain this declaration with copies of the applicant's source documents pursuant to § 37.31. An applicant must sign a new declaration when presenting new information to the DMV.

(c) *Identity.* (1) To establish the individual's identity, the individual must present at least one of the following documents containing a photograph or non-photo identity document including full name and date of birth:

(i) A valid unexpired United States passport.

(ii) Certified copy of a birth certificate issued by a U.S. State or local office of Public Health, Vital Records, Vital Statistics or equivalent office.

(iii) Consular Report of Birth Abroad issued by DOS, Form FS–240, DS–1350 or FS–545.

(iv) An unexpired Permanent Resident Card issued by DHS, Form I–551.

(v) An unexpired employment authorization document (EAD) issued by DHS, Form I–766 or Form I–688B.

(vi) Unexpired foreign passport with a valid unexpired U.S. visa affixed.

(vii) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570.

(viii) Certificate of Citizenship, Form N-560 or Form N-561.

(ix) REAL ID driver's license or identification card issued in compliance with the standards established by this part.

(2) If the individual's name has changed through adoption, marriage, divorce, or court order, the individual must present an original or certified copy of the documents showing a legal name change, before the name is changed on the driver's license or identification card. These documents must come from a U.S. or State-level Court or government agency.

(d) *Date of birth.* To establish the person's date of birth, the individual must present at least one document included in paragraph (c) of this section.

(e) *Social security number.* The individual must provide documentation establishing an SSN, or the person's ineligibility for an SSN.

(1) To establish an SSN, an applicant must present his or her social security account number card, a W-2 form, a SSA-1099 form, a non-SSA 1099 form, or a pay stub with the applicant's name and SSN on it; the SSN must be verified pursuant to § 37.13 of this subpart.

(2) To establish ineligibility for an SSN, an alien must present evidence that he or she is currently in a non-work authorized nonimmigrant status.

(f) *Documents demonstrating address of principal residence.* To document the address of principal residence, a person must present at least two documents of the State's choice that include the individual's name and principal residence.

(1) Documents used to demonstrate address of principal residence that are issued monthly (such as bank statements or utility bills) must not be more than three months old at the time of application.

(2) Documents used to demonstrate address of principal residence that are issued annually (such as property tax records) must be for the most current yearly period at the time of application.

(3) Except as provided in § 37.17(f)(1), (f)(2) and (f)(3) of this part, a street address must be required.

(g) *Evidence of lawful status in the United States.* A DMV may issue a REAL ID driver's license or identification card only to a person who has presented satisfactory evidence of lawful status. The documentation listed under paragraph (c) of this section is also evidence of lawful status, except

that if the applicant presents an identity document listed under paragraphs (c)(1)(v) or (c)(1)(vi) of this section, the documentation is to be considered provisional evidence pending verification of immigration status through SAVE. If the applicant presents an identity document listed under paragraph (c)(1)(ix) of this section, he or she must also present another document listed in paragraph (c) of this section as evidence of lawful presence in the United States.

(h) State DMVs may choose to establish a written exceptions process in order to provide REAL ID driver's licenses and identification cards to persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity. An exceptions process may not be used to demonstrate lawful status. Each State establishing an exceptions process must have that process approved by DHS for the verification of documents in this section, and document each time the process is used, both on the applicant's record in the DMV's database and in the DMV's files.

(1) The applicant's records must visibly indicate when an alternate document is accepted and how applicable information from the document was verified.

(2) The record must include a full explanation of the reason for the exception and alternative documents accepted whenever a driver's license or identification card is issued using exceptions processing.

(3) The State shall retain copies of the alternate documents accepted pursuant to this section and provide these upon request to DHS for audit.

(4) The State shall provide DHS with quarterly reports analyzing the use of the exceptions process and any trends that indicate potential vulnerabilities.

§ 37.13 Document verification requirements.

States must adopt procedures satisfying the requirements of paragraph (a) of this section to verify with the issuing agency the issuance, validity, and completeness of a document presented to demonstrate a person's eligibility for a REAL ID driver's license or identification card before issuance of the driver's license or identification card.

(a) States must use the following procedures to verify the documents required under this section:

(1) A certified copy of a birth certificate must be verified through the Electronic Verification of Vital Events System, or an alternative approved by

DHS. In the event of a non-match, the DMV may not issue a driver's license or identification card to an applicant, and must refer the individual to their birth state's vital statistics office for resolution.

(2) A U.S. passport or Consular report of birth abroad must be verified through existing Department of State systems.

(3) A lawful permanent resident card (Form I-551) or other DHS-issued document demonstrating permanent residency, an EAD (Form I-766 or Form I-688B), Certificate of Citizenship, Certificate of Naturalization, or other documentation issued by DHS demonstrating lawful status, must be verified through the Systematic Alien Verification for Entitlements (SAVE) system operated by DHS, or an alternate verification system approved by DHS. In the event of a non-match to SAVE, the DMV may not issue a driver's license or identification card to an applicant, and must refer the individual to the local USCIS office for resolution.

(4) REAL ID driver's licenses and identification cards must be verified with the State of issuance.

(5) Social security account numbers must be verified by the Social Security Administration's (SSA) electronic database. In the event of a non-match with SSA, a DMV must not issue a driver's license or identification card to an applicant until the information verifies with SSA's database.

(6) Documents demonstrating address of principal residence must be verified by the State in accordance with a system of document verification acceptable to DHS, to ensure that a document produced establishes an individual's address of principal residence.

§ 37.15 Physical security features for the driver's license or identification card.

(a) *General.* States must include document security features on REAL ID driver's licenses and identification cards designed to deter forgery and counterfeiting and promote an adequate level of confidence in the authentication of genuine documents and the detection of fraudulent ones in accordance with this section.

(1) These features must not be reproducible using commonly used or available technologies.

(2) The proposed card solution must contain a well designed, balanced set of features that when effectively combined provide multiple layers of security. States must describe these document security features in their security plans pursuant to § 37.41.

(b) *Integrated security features.* REAL ID driver's licenses and identification cards must contain at least three levels

of integrated security features that provide the maximum resistance to persons' efforts to—

- (1) Counterfeiting, simulating, or reproducing a genuine document;
 - (2) Altering, deleting, modifying, masking, or tampering with data concerning the original or lawful card holder;
 - (3) Substituting or altering the original or lawful card holder's photograph and/or signature by any means; and
 - (4) Creating a fraudulent document using components from legitimate driver's licenses or identification cards.
- (c) *Security features to detect false cards.* States must employ security features to detect false cards for each of the following three levels:
- (1) *Level 1.* cursory examination, without tools or aids involving easily identifiable visual or tactile features, for rapid inspection at point of usage.
 - (2) *Level 2.* Examination by trained inspectors with simple equipment.
 - (3) *Level 3.* Inspection by forensic specialists.
- (d) *Minimum security features.* States must employ, at a minimum, the following security features in each REAL ID driver's license or identification card:
- (1) An intricate, fine-line, multicolored background design produced via offset lithography that includes microline printing and an intentional error/field check.
 - (2) An optically variable feature providing adequate protection against copying. The inclusion of a diffractive optically variable feature is recommended to achieve an enhanced level of protection.
 - (3) An ultraviolet (UV) long wave responsive feature.
 - (4) The proposed card solution must include cards constructed such that application of personal data provides for the highest quality of printed information including sufficient depth, clarity and resolution. The application of variable data shall be in a manner that is considered secure and difficult, if not virtually impossible, to erase, modify or otherwise successfully tamper. Some variable data must be applied via laser engraving to include tactile features (that protect the bearer portrait from substitution via thin film overlay) and variable microline text that is specific to the bearer. The laser must effectively penetrate the card layers ensuring that the data is engraved into the layers containing the security characteristics.
 - (5) A series of check digit numbers or letters printed on the cards.
 - (6) Incorporation of covert taggants and/or markers.

(e) *Document card stock.* States must use a document card stock in the issuance of REAL ID driver's licenses and identification cards that complies with the following performance standards:

- (1) The card stock must be UV dull or possess a controlled response to UV, such that when illuminated by UV light it exhibits fluorescence distinguishable in color from the blue used in commonly available fluorescent materials. The card stock must use suitable materials that provide for a highly durable card stock that can survive, at least, an eight-year card life. If the card stock is a multi-layered structure, there must be adequate adhesion and/or tamper evident properties to protect the personalized data and security features contained in the card. The card stock must provide for the highest clarity for information applied.
- (2) External surfaces of the cards must be printed using recognized security printing methods to resist duplication or facsimile reproduction by commercially available products. The card must bear a security background pattern designed to be resistant to counterfeiting by scanning, printing or copying. To achieve this, the background pattern shall not be composed of the primary colors Cyan, Magenta, Yellow and Key (Black) (CMYK). The pattern shall show no evidence of half-tone dots, or pixel structure typically found in digital printing technologies.
- (3) States must issue REAL ID driver's licenses and identification cards produced on serialized card stock and implement controlled inventory measures that meet recognized industry standards. The State must maintain a record of any missing cards and report the loss to the DMV and to law enforcement.
- (4) Driver's licenses and identification cards must contain a revision date that is printed or engraved on the card surface and which must be updated whenever the card design changes.
- (5) States must provide DHS with samples of REAL ID driver's licenses and identification cards in a quantity that DHS will specify. The cards provided will be representative of issued driver's licenses and identification cards, produced on equipment identical to that used by the State to issue REAL ID driver's licenses and identification cards, and include all data fields and security features used by the State.
- (f) *Document security and integrity.*
 - (1) States must conduct an annual review of their card design and submit a report to DHS that indicates the ability

of the designs to resist compromise and document fraud activity attempts. The report must be submitted as part of the State's annual certification. The report required by this paragraph is Sensitive Security Information (SSI) and will be handled in a manner consistent with DHS regulations concerning SSI published at 49 CFR part 1520.

(i) States must provide DHS with examination results from a recognized independent laboratory experienced with adversarial analysis of identification documents as part of the State's initial certification under § 37.55, and annual certification under § 37.57.

(ii) As part of the State's initial and annual certifications, the State must submit to DHS results from a facility described in paragraph (g)(2)(i) of this section, in the following areas:

- (A) Photo substitution.
 - (B) Delamination and deconstruction.
 - (C) Reverse engineering.
 - (D) Modification of any data element.
 - (E) Erasure of information.
 - (F) Duplication, reproduction, or facsimile creation.
 - (G) Effectiveness of security features (three levels).
 - (H) Confidence and ease of second level authentication.
- (iii) The specifics of the lab analysis requirements and the analysis results are Sensitive Security Information (SSI) and will be handled in a manner consistent with DHS regulations concerning SSI at 49 CFR part 1520.
- (iv) DHS may change lab analysis requirements under this section upon notice to the State and opportunity for comment or immediately if DHS determines that there is a need for immediate application of the new requirements.

§ 37.17 Requirements for the face of the driver's license or identification card.

To be acceptable by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the face of the card the following information:

- (a) *Full legal name.* The name on the face of the card must be the same as the name on the document presented by the applicant to establish identity. This includes the individual's first name, middle names or family names, and last name without use of initials or nicknames.
- (b) *Date of birth.*
- (c) *Gender.*
- (d) *Unique Driver's license or identification card number.* This cannot be the individual's Social Security Number (SSN).
- (e) *Full facial digital photograph.* A full facial photograph must be taken pursuant the standards set forth below:

(1) Lighting shall be equally distributed on the face.

(2) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows. States use photographs in profile rather than ear-to-ear to differentiate licensees that are under the age of 21.

(3) Veils, scarves or headaddresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes.

(4) There must be no dark shadows in the eye-sockets due to the brow. The iris and pupil of the eyes shall be clearly visible.

(5) Care shall be taken to avoid "hot spots" (bright areas of light shining on the face).

(f) *Address of principal residence*, except individuals who satisfy one of the following:

(1) If the individual is enrolled in a State address confidentiality program;

(2) If the individual's address is entitled to be suppressed under State or Federal law or suppressed by a court order; or

(3) If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(g) *Printed information*. The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Roman alphabet characters. The name must contain a field of no less than a total of 39 characters for the full legal name, and longer names may be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, "Machine Readable Travel Documents," Part IV, Sixth Edition, 2005. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ICAO 9303 from the ICAO, Document Sales Unit, 999 University Street, Montréal, Québec, Canada H3C 5H7, tel: 1-(514) 954-8022; E-mail: sales@icao.int. You may inspect a copy at the Office of the Federal Register, 800 N. Capitol Street, NW., Suite 700, Washington, DC.

(h) *Signature*. The card must include the signature of the card holder. The signature must meet the requirements of the existing American Association of Motor Vehicle Administrators (AAMVA) standards for the 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section A.7.7.2. This standard includes requirements for size, scaling, cropping,

color, borders, and resolution. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from AAMVA on-line at <http://www.aamva.org>, or by contacting AAMVA at 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203, tel. (703) 522-4200. You may inspect a copy at the Office of the Federal Register, 800 N. Capitol Street, NW., Suite 700, Washington, DC.

(i) *Physical security features*, pursuant to § 37.15 of this subpart.

(j) *Machine-readable technology*, pursuant to § 37.19 of this subpart.

(k) *Issuance date*.

(l) *Expiration date*.

§ 37.19 Machine readable technology on the driver's license or identification card.

For the machine readable portion of the REAL ID driver's license or identification card, States must use PDF417 2D bar code standard, with the following defined minimum data elements:

(a) Expiration date.

(b) Holder's name. The machine readable portion of the card must have at least 125 characters to permit capture of the full name history, including full legal name and all name changes.

(c) Issue date.

(d) Date of birth.

(e) Gender.

(f) Address.

(g) Unique identification number.

(h) Revision date, indicating the most recent change or modification to the visible format of the driver's license or identification card.

(i) Inventory control number of the physical document.

§ 37.21 Temporary driver's licenses and identification cards.

States may issue only a temporary driver's license or identification card to an individual who has temporary lawful status in the United States.

(a) States must require, before issuing a temporary driver's license or identification card to a person, valid documentary evidence that the person has lawful status in the United States, as determined by DHS, and verification of that status through SAVE.

(b) States shall not issue a temporary driver's license or identification card pursuant to this section:

(1) For a time period longer than the expiration of the applicant's authorized stay in the United States, or, if there is no expiration date, for a period longer than one year.

(2) For longer than eight years or the State's maximum driver's license or identification card term.

(c) States shall renew a temporary driver's license or identification card pursuant to this section and § 37.23(b)(2), only if:

(1) The individual presents valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or identification card has been extended by DHS, or

(2) The individual presents valid documentary evidence that they have qualified for another lawful status under paragraph (a) of this section, and such continued or new status is verified through SAVE.

(d) States must verify the documents an individual presents to establish his or her temporary lawful status through SAVE.

(e) Temporary driver's licenses and identification cards must clearly state on the face of the driver's license or identification card in bold lettering, and in the machine readable zone of the driver's license or identification card, that it is temporary.

§ 37.23 Renewed and reissued driver's licenses and identification cards.

(a) *General*. Any driver's license or identification card that is renewed or reissued between May 11, 2008, and May 10, 2013 that is intended to be acceptable by federal agencies for official purposes must meet the standards set forth in subparts A through C of this part.

(b) *State procedure*. States must establish an effective procedure to confirm or verify an applicant's identity each time a REAL ID driver's license or identification card is renewed or reissued, to ensure that the individual receiving the renewed or reissued REAL ID driver's license or identification card is the same individual to whom the driver's license or identification card was issued originally.

(1) *Remote/Non-in-person renewals and reissuance*. Except as provided in paragraph (b)(2) of this section a State may conduct a non-in-person (remote) renewal or reissuance if the State continues to retain the images or copies of source documents presented by the individual and used by the State to issue the REAL ID driver's license or identification card, and no source information has changed since prior issuance.

(i) The State must re-verify information from the images or copies of the source documents used as the basis for issuance of the original REAL ID driver's license or identification card at each renewal and reissuance in accordance with § 37.13 of this part.

(ii) Any information that has changed since prior issuance (such as name or address) must be established through presentation of an original source document as provided in Subpart B, and must be verified, or, in the case of address, validated.

(iii) The process described in paragraph (b) of this section applies any time a driver's license or identification card is renewed or reissued for any purpose.

(2) *In-person renewals.* States must require holders of REAL ID driver's licenses and identification cards to renew their driver's licenses and identification cards with the State DMV in person, every other renewal cycle, or at least once every 16 years.

(i) The State shall take an updated photograph of the applicant, at least at every other renewal.

(ii) The States must re-verify information and source documents used as the basis for issuance of the original REAL ID driver's license or identification card, or must require the individual to resubmit documents and verify those documents.

(iii) Holders of temporary REAL ID driver's licenses and identification cards must renew their driver's license or identification card in person each time, and present evidence of continued lawful status.

Subpart C—Other Requirements

§ 37.31 Source document retention.

States must retain copies of the application, declaration and source documents presented under § 37.11 of this part.

(a) States that choose to keep paper copies of source documents must retain the copies for a minimum of seven years.

(b) States that choose to transfer information from paper copies to microfiche must retain the microfiche for a minimum of seven years.

(c) States that choose to keep digital images of source documents must retain the images for a minimum of ten years.

(1) States currently using black and white imagers must replace them with color imagers by December 31, 2011.

(2) States using digital imaging to retain source documents, must use the AAMVA Digital Image Exchange Program, or a standard other than AAMVA that has interoperability with the AAMVA standard, so that the digital images are retained in electronic storage in a transferable format.

(i) Photo images must be stored in the Joint Photographic Experts Group (JPEG) 2000 standard for image compression, or a standard that is interoperable with the JPEG standard.

(ii) Document and signature images must be stored in a compressed Tagged Image Format (TIF), or a standard that is interoperable with the TIF standard.

(iii) All images must be linked to the applicant through the applicant's unique identifier assigned by the DMV.

§ 37.33 Database connectivity with other States.

(a) States must maintain a State motor vehicle database that contains, at a minimum—

(1) All data fields printed on driver's licenses and identification cards issued by the State, individual serial numbers of the card, and Social Security Number; and

(2) Motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on driver's licenses.

(b) States must provide to all other States electronic access to information contained in the motor vehicle database of the State, in a manner approved by DHS pursuant to this regulation. This section does not intend to supersede DOT requirements codified at 49 CFR parts 383 and 384.

(c) Prior to issuing a REAL ID driver's license or identification card, States must check with all other States to determine if any State has already issued a REAL ID driver's license or identification card to the applicant.

(1) If the State receives confirmation that the individual currently holds a REAL ID driver's license or identification card issued by another State, the receiving State must:

(i) Take measures to confirm that the person has taken steps to terminate, or has terminated, the REAL ID driver's license or identification card issued by the prior State.

(ii) Require the person to surrender the REAL ID driver's license or identification card issued by another State, unless the person signs a declaration under penalty of perjury pursuant to 28 U.S.C. 1746 stating that the driver's license or identification card was lost or stolen.

(iii) If the person signs a declaration stating that the driver's license or identification card was lost or stolen in another State, the State receiving the declaration must inform the State that issued the driver's license or identification card that it has been reported as lost or stolen.

(iv) The State that issued the driver's license or identification card reported as lost or stolen must record that information on its database and terminate that driver's license or identification card upon notice from another State.

Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

§ 37.41 Comprehensive security plan.

(a) States must prepare a comprehensive security plan for all State DMV offices and driver's license/identification card storage and production facilities, and submit it as part of its application for certification.

(b) At a minimum, the security plan must address—

(1) Physical security for the following:
(i) Buildings used to manufacture or issue driver's licenses and identification cards.

(ii) Storage areas for card stock and other materials used in card production.

(iii) Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the physical location and the personal information stored and maintained in DMV records and information systems.

(2) Document and physical security features for the face of the card, consistent with the requirements of § 37.15, including a description of the State's use of biometrics, and the technical standard utilized, if any;

(3) Access control, including the following:

(i) Employee identification and credentialing, including access badges.

(ii) Employee background checks, in accordance with § 37.45.

(iii) Controlled access systems.

(4) Periodic training requirements in—

(i) Fraudulent document recognition, approved by DHS, for appropriate employees engaged in the issuance of driver's licenses and identification cards.

(ii) Domain awareness training including threat identification;

(5) Privacy policy regarding personal information collected and maintained by the DMV;

(6) Emergency/incident response plan;

(7) Internal audit controls;

(8) The State's standards and procedures for safeguarding information collected, stored, or disseminated for purposes of complying with the REAL ID Act, including procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act and standards and procedures for document retention and destruction;

(9) Procedures to revoke and confiscate driver's licenses or identification cards fraudulently issued in another State;

(10) An affirmation that the State possesses both the authority and the means to produce, revise, expunge, and protect the confidentiality of REAL ID driver's licenses or identification cards issued in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or support their official duties. These procedures must be designed in coordination with the key requesting authorities to ensure the procedures are effective and to prevent conflicting or inconsistent requests. In order to safeguard the identities of individuals, these procedures should not be discussed in the plan and States should make every effort to prevent disclosure to those without a need to know about either this confidential procedure or any substantive information that may compromise the confidentiality of these operations. The appropriate law enforcement official and United States Attorney should be notified of any action seeking information that could compromise Federal law enforcement interests; and

(11) Other information as determined by DHS.

§ 37.43 Physical security of DMV facilities.

(a) States must ensure the physical security of locations where driver's licenses and identification cards are produced, and the security of document materials and papers from which driver's licenses and identification cards are produced. State compliance with a performance-based standard approved by DHS will satisfy this requirement.

(b) States must describe the security of DMV facilities as part of their comprehensive security plan, in accordance with § 37.41.

§ 37.45 Background checks for covered employees.

(a) *Scope.* States are required to subject persons who have the ability to affect the recording of any information required to be verified, or who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card (covered employees), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, a financial history check, and a lawful status check. States shall describe their background check process as part of their comprehensive security plan, in accordance with § 37.41. This

section also applies to contractors utilized in covered positions under this paragraph.

(b) *Background checks.* States must ensure that any covered employee or prospective employee under paragraph (a) of this section is provided notice that he or she must undergo a background check and the contents of that check, before employment in a covered position commences. For persons employed in covered positions on the effective date of this regulation, States must complete the background check described in this section prior to that person's participation in the issuance of any REAL ID driver's licenses or identification cards that comply with this part.

(1) *Criminal history records check.* States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's NCIC and IAFIS database and State repository records on each covered employee or prospective employee identified in paragraph (a) of this section, and determine if the covered employee or prospective employee has been convicted of any of the following disqualifying crimes:

(i) *Permanent disqualifying criminal offenses.* An applicant has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) *Interim disqualifying criminal offenses.* The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying, if the applicant was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of application; or the applicant was released from incarceration for the crime within the five years preceding the date of application.

(iii) *Under want or warrant.* An applicant who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of (b)(1)(ii) of this section under circumstances determined by the State.

(2) *Financial history check.* The State must conduct a financial history check on all covered employees and prospective employees identified under paragraph (a) of this section in a manner consistent with the Fair Credit Reporting Act. An employee's financial history shall be considered for informational purposes by the States only and shall not be considered a Federal disqualifier.

(3) *Lawful status check.* The State shall subject each covered employee to a lawful status check through SAVE.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying crime under paragraph (b)(1)(i) or an interim disqualifying offense under paragraph (b)(1)(ii); or the results of the lawful status check are unsatisfactory; the covered employee or prospective employee may not be employed in a position described in paragraph (a) of this section.

(c) *Appeal.* An individual who has been informed by the State that he or she may not be employed in a covered position as identified in paragraph (a) of this section as a result of the background check must be so informed and provided the opportunity to appeal. If a State determines that the individual does not meet the standards for the CHRC, is not trustworthy based on the financial history check, or does not have lawful status in the United States based on the lawful status check, the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State. Appeals based on the lawful status check should be appealed to DHS.

Subpart E—Procedures for Determining State Compliance

§ 37.51 Compliance—general requirements.

(a) To be in compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must be meeting each and every standard of subparts A through D of this part, or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. DHS will find that a State is in compliance with REAL ID only if the State's certification submitted pursuant §§ 37.55 and 37.57 of this part establishes that all REAL ID driver's licenses and identification cards issued by the State on or after May 11, 2008 will meet the standards required under the REAL ID Act and this part.

(b) States must meet the requirements of subparts A through D of this part no later than May 11, 2008. In order to satisfy this requirement, a State must demonstrate compliance with this part

by submitting a certification and the documents specified in § 37.41 no later than February 10, 2008.

(c) States must demonstrate continued compliance by submitting a certification and documents specified at § 37.57 of this part as required by DHS.

§ 37.55 Initial State certification.

States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification cards is meeting the requirements of this part, must provide DHS with the following documents and information no later than February 10, 2008:

(a) A detailed narrative description of the State's program for issuing REAL ID driver's licenses and identification cards, including a description of the State's exceptions processing under § 37.11(h), the State's waiver processes under § 37.45(b)(1)(v).

(b) The State's Comprehensive Security Plan under § 37.41.

(c) A letter from the Attorney General of the State confirming that the State has the legal authority to impose requirements necessary to meet the standards established by this part.

(d) A copy of all statutes, regulations, administrative procedures and practices, and other documents that demonstrate the State's implementation program for this part.

(e) A certification by the Governor of the State reading as follows:

I, Governor of the State (Commonwealth) of ___, do hereby certify that the State (Commonwealth) has implemented a program for issuing driver's licenses and identification cards in compliance with the requirements of the REAL ID Act of 2005, as further defined in 6 CFR part 37, and intends to remain in compliance with these regulations through [the last date of the current year].

§ 37.57 Annual State certifications.

Prior to January 1 of each year, each State must review its compliance with this part and certify to the Department of Homeland Security as prescribed in paragraph (a) of this section.

(a) The certification must consist of a Statement signed by the Governor of the State, reading as follows:

I (name of certifying official), (position title), of the State (Commonwealth) of ___, do hereby certify that the State (Commonwealth) has continuously been in compliance with all requirements of the REAL ID Act of 2005 as further defined in 6 CFR part 37, since [the first day of the current Federal fiscal year], and intends to remain in compliance through [the last date of the current year].

(b) States shall provide DHS any changes to the information requiring certification, at least 30-days prior to the changes going into effect in the State.

(c) States shall supply the comprehensive security plan under § 37.41 of this part and a quarterly accounting of the State's use of its exceptions process, and the report required by § 37.15(f)(1) to DHS as part of the annual certification.

§ 37.59 DHS reviews of State compliance.

States' REAL ID programs will be subject to DHS review to determine whether or not the State meets the requirements for compliance with this part.

(a) *General inspection authority.* States must cooperate with DHS's review of the State's compliance during initial reviews, annual reviews, and at any other time. The State must provide any information requested by DHS, must permit DHS to conduct inspections of any and all sites associated with the application and verification process, manufacture, and production of driver's licenses or identification cards, and must allow DHS to conduct interviews of the State's employees or contractors who are involved in the application and verification process, manufacture and production of driver's licenses or identification cards.

(b) *Preliminary DHS determination.* After DHS reviews a State's certification and related documents, DHS will make a preliminary determination on whether the State has satisfied the requirements of this part. If, after review, DHS makes a preliminary determination, either that the State has not submitted a complete certification, or that the State does not meet one or more of the minimum standards for compliance under this part, DHS will inform the State of this preliminary determination.

(c) *State reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented, or intends to implement, to correct the deficiencies cited in the preliminary determination or, alternatively, detail why the DHS preliminary determination is incorrect.

(1) The State must provide documentation of corrective action. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by DHS and the State.

(2) Upon request by the State, an informal conference will be provided during this time.

(d) *Final DHS determination.* If, after reviewing a timely response by the State to the preliminary determination, DHS makes a final determination that the

State is not in compliance with this part, DHS will notify the State of the final determination. In making its final determination, DHS will take into consideration the corrective action either implemented, or planned to be implemented, in accordance with the mutually agreed upon schedule.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

§ 37.61 Results of compliance determination.

(a) DHS will determine that a State is not in compliance with this part when it—

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of this part, as established in a final determination by DHS under this section.

(b) A State shall be deemed in compliance with this part when DHS issues a determination that the State meets the requirements of this part.

§ 37.63 Extension of deadline.

A State may request a deadline extension based on the lack of a final REAL ID regulation to guide its implementation by filing a request with the Secretary no later than October 1, 2007.

(a) The request for consideration shall state that the State needs sufficient time to consider the final rule and will not otherwise be in a position to comply with the final rule.

(b) The Secretary has determined that, in the absence of extraordinary circumstances, such an extension request will be deemed justified for a period lasting until, but not beyond, December 31, 2009, providing that the requesting State complies with the requirements of this section.

(c) Any State receiving an extension for expedited consideration shall submit to the Secretary no later than six months from the date on which the extension is granted a Compliance Plan detailing milestones, schedules, and budgets allowing it to meet the requirements of the final regulation.

(d) After the Compliance Plan is submitted, the Secretary may require such progress reports or other information as the Secretary determines to be necessary to evaluate the State's progress toward compliance by December 31, 2009.

§ 37.65 Effect of failure to comply with this part.

(a) After May 11, 2013, any driver's license or identification card issued by

any State that DHS determines was not in compliance with this part when the driver's license or identification card was issued, is not acceptable as identification by Federal agencies for official purposes.

(b) If a driver's license or identification card issued when a State was in compliance with these regulations is renewed, the renewed driver's license or identification card is acceptable by Federal agencies for official purposes, only if the State is in

compliance with these regulations at the time of renewal.

Subpart F—Non-REAL ID Driver's Licenses and Identification Cards

§ 37.67 Non-REAL ID driver's licenses and identification cards.

States that issue driver's licenses and identification cards that do not satisfy the standards of this part after May 11, 2008, must ensure that such driver's licenses and identification cards—

(a) Clearly state, on their face in bold lettering, as well as in the machine

readable zone if the card contains one, that they may not be accepted by any Federal agency for Federal identification or other official purpose; and

(b) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification cards that meet the standards of this part.

Michael Chertoff,
Secretary.

[FR Doc. 07-1009 Filed 3-8-07; 8:45 am]

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Federal Register

**Friday,
March 9, 2007**

Part III

Department of Veterans Affairs

**38 CFR Part 5
Special and Ancillary Benefits for
Veterans, Dependents, and Survivors;
Proposed Rule**

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900-AL84

Special and Ancillary Benefits for Veterans, Dependents, and Survivors

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language regulations concerning special and ancillary benefits for veterans, dependents, and survivors. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants and VA personnel in locating and understanding these provisions.

DATES: Comments must be received by VA on or before May 8, 2007.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AL84—Special and Ancillary Benefits for Veterans, Dependents, and Survivors." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

William F. Russo, Director of Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management (ORPM) to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing

VA regulations. The Project responds to a recommendation made in the October 2001 "VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs." The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It adds subpart H, which includes proposed rules regarding the special and ancillary benefits for veterans, dependents, and survivors. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization

Overview of Proposed Subpart H Organization

Table Comparing Current Part 3 Rules with Proposed Part 5 Rules

Content of Proposed Regulations

Special Benefits for Veterans, Dependents, and Survivors

5.580 Medal of Honor pension.

5.581 Awards of VA benefits based on special acts or private laws.

5.582 Naval pension.

5.583 Special allowance under 38 U.S.C. 1312.

5.584 Loan guaranty for surviving spouses; certification.

5.585 Certification for death gratuity.

5.586 Certification for dependents' educational assistance (DEA).

5.587 Minimum income annuity and gratuitous annuity.

5.588 Special allowance payable under section 156 of Public Law 97-377.

5.589 Monetary allowance for Vietnam veterans' children born with spina bifida.

5.590 Monetary allowance for female Vietnam veterans' children with certain birth defects.

5.591 Effective dates of awards for certain disabled children of Vietnam veterans.

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

5.603 Financial assistance to purchase a vehicle and adaptive equipment.

5.606 Clothing allowance.

Endnote Regarding Amendatory Language Paperwork Reduction Act

Regulatory Flexibility Act

Executive Order 12866

Unfunded Mandates

Catalog of Federal Domestic Assistance Numbers

List of Subjects in 38 CFR Part 5

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that all provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will allow claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, delegations of authority, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

"Subpart B—Service Requirements for Veterans" would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

"Subpart C—Adjudicative Process, General" would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRM)s due to its size. The first of these three separate NPRMs, concerning VA's duties and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680.

"Subpart D—Dependents or Survivors of Veterans" would inform readers how VA determines whether an individual is a dependent or a survivor of a veteran. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

"Subpart E—Claims for Service Connection and Disability Compensation" would define service-connected disability compensation,

including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published on July 27, 2004. *See* 69 FR 44614.

“Subpart F—Nonservice-Connected Disability Pensions and Death Pensions” would include information regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension, and the effective dates governing each pension. This subpart will be published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

“Subpart G—Dependency and Indemnity Compensation, Death Compensation, and Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary” would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart will be published as two separate NPRMs due to its size. The portion concerning accrued benefits, special rules applicable upon the death of a beneficiary, and several effective date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

“Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors” would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart is the subject of this document.

“Subpart I—Benefits for Certain Filipino Veterans and Survivors” would pertain to the various benefits available

to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

“Subpart J—Burial Benefits” would pertain to burial allowances.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain those provisions regarding bars to benefits, forfeiture of benefits, and renunciation of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

“Subpart L—Payments and Adjustments to Payments” would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, “Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries,” would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the **SUPPLEMENTARY INFORMATION**, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted “[regulation that will be published in a future Notice of Proposed Rulemaking]” where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both NPRMs.

Overview of Proposed Subpart H Organization

This NPRM pertains to the VA adjudication rules that concern special and ancillary benefits for veterans, dependents, and survivors. The document addresses the rules that govern special benefits, such as § 3.802 related to Medal of Honor, § 3.801 related to special acts of Congress, and § 3.814 related to children with spina bifida. We will also address the rules that govern ancillary benefits for which veterans with certain service-connected disabilities are eligible. These include the current § 3.808 related to certification for automobiles or other conveyances under 38 U.S.C. 3902; and § 3.810 related to the clothing allowance under 38 U.S.C. 1162. While these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive changes are proposed. We specifically note in the NPRM where the substantive changes occur.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or “New”)
Special Benefits	
5.580(a)–(b)	3.802(a)
(c)(1)–(2)	3.802(b).
5.580(c)(3)	3.802(c).
5.580(c)(4)	3.27(d).
5.580(d)–(e)	3.802(b).
5.581(a)–(b)	3.801(a).
5.581(c)(1)	3.801(c)(2).
5.581(c)(2)	3.801(d).
5.581(d)	3.801(b).
5.581(e)(1)	3.801(e).
5.581(e)(2)	New.
5.581(f)	3.801(c)(1).
5.582	3.803.
5.583	3.804.
5.584	3.805.
5.585	3.806.
5.586(a)	New.
5.586(b)	3.807(c).
5.586(c)	3.807(c).
5.586(d)	3.807(d).
5.587	3.811.
5.588	3.812.
5.589	3.814.
5.590	3.815.
5.591 (introductory paragraph)	New.

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.591(a) (introductory paragraph).	3.814(e) (introductory paragraph), 3.815(i) (introductory paragraph).
5.591(a)(1)	3.403(b).
5.591(a)(2)	3.403(c), 3.815(i) (introductory paragraph).
5.591(a)(3)	3.403(b), (c), 3.815(i).
5.591(a)(4)	3.400(g), 3.814(e)(2), 3.815(i)(2).
5.591(a)(5)	3.400(o)(2), 3.814(e)(1), 3.815(i)(1).
5.591(a)(6)	3.114(a), 3.815(i) (introductory paragraph), 3.403(c).
5.591(b) (introductory paragraph).	3.500(a), 3.814(f), 3.815(j).
5.591(b)(1)	3.500(b)(1), 3.814(f)(1), 3.815(j)(1).
5.591(b)(2)	3.500(b)(2), 3.814(f)(2), 3.815(j)(2).
5.591(b)(3)	3.503(b).
5.591(b)(4)	3.814(f) (introductory paragraph); 3.815(j) (introductory paragraph).

Ancillary Benefits

5.603(a)	New.
5.603(b)(1)	3.808(e).
5.603(b)(2)	New.
5.603(c)(1)	3.808(a), (b), and New.
5.603(c)(2)	3.808(b).
5.603(c)(3)	3.808(c).
5.603(d)(1)	New.
5.603(d)(2)	3.808(d) and 17.158.
5.603(e)	3.808(c) and New.
5.603(f)	New and 17.158.
5.606(a)	New.
5.606(b)(1)	3.810(a) (introductory paragraph), 3.810(a)(1).
5.606(b)(2) (introductory paragraph).	3.810(a)(1), (a)(2).
5.606(b)(2)(i)	3.810(a)(2).
5.606(b)(2)(ii)	3.810(a) (introductory paragraph).
5.606(b)(3)	3.810(a)(1), (a)(2) and New.
5.606(c)	3.810(b).
5.606(d)	3.810(c)(1).
5.606(e)(1)	3.810(c)(2).
5.606(e)(2)	New.
5.606(f)	New.
5.606(g)	New.
5.606(h)	3.810(d).

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in

each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances other portions of the part 3 sections that are contained in these proposed regulations appear in subparts of part 5 that will be published for public comment at a later time. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be carried forward to part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Rules

Special Benefits for Veterans, Dependents, and Survivors

Section 5.580 Medal of Honor Pension

Current § 3.802 and the authorizing statutes, 38 U.S.C. 1560(c), 1561(c), and 1562, use the phrase "special pension" to reference benefits payable under those provisions to Medal of Honor recipients. In order to make this regulation more specific, however, VA proposes to use the phrase "Medal of Honor pension" when referring to benefits paid under proposed § 5.580.

Proposed § 5.580 restates in plain language current § 3.802, regarding allocation of responsibilities between the service departments and VA with regard to Medal of Honor pension.

Current § 3.802(a) consists of two sentences. The first sentence briefly explains that the Secretaries of the Armed Forces and of the Department of Transportation are responsible for determining whether an applicant has been placed on the Medal of Honor Roll and for delivering to VA a certified copy of the certificate noting that the applicant has been placed on the Medal of Honor Roll and has a right to the Medal of Honor pension. The second sentence states: "The special pension will be authorized on the basis of such certification." The current regulation does not clearly indicate that VA is authorized to pay the pension to a person placed on the Medal of Honor Roll.

We propose to divide current § 3.802(a) into two paragraphs. Proposed § 5.580(a) explains that the service departments are responsible for determining the eligibility of an

applicant to be entered on the Medal of Honor Roll, a determination in which VA has no role. We also propose in § 5.580 to refer to the Department of Homeland Security instead of the Department of Transportation. This change is needed because the United States Coast Guard now falls under the jurisdiction of the Department of Homeland Security. Homeland Security Act of 2002, Public Law 107-296, § 888(b), 116 Stat. 2249. Proposed § 5.580(b) clarifies that it is the responsibility of VA to award the Medal of Honor pension after it receives a certified copy of the certificate. The authorities for proposed § 5.580(a) and (b) are 38 U.S.C. 1560 and 38 U.S.C. 1561.

Proposed § 5.580(c) describes how VA calculates the amount and effective date of the Medal of Honor pension award and the retroactive lump sum payment associated with the pension award. Current § 3.802(b) provides, in part: "An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made as of the date of filing of the application [for placement on the Medal of Honor Roll] with the Secretary concerned." This sentence is split into proposed § 5.580(c)(1) and (c)(2) and restated in plain language.

Proposed § 5.580(c)(3) is a restatement in plain language of current § 3.802(c), with the exception of the last sentence of § 3.802(c). The last sentence states "VA will not make a retroactive lump sum payment under this section before October 1, 2003." We propose not to include this sentence in § 5.580(c) because, due to the passage of time, it no longer serves any useful purpose.

In keeping with our objective to consolidate material concerning the same benefit, we propose to repeat the content of current § 3.27(d) relating to automatic adjustments of Medal of Honor pension in proposed § 5.580(c)(4) without substantive change. We propose to title § 5.580(c)(4) "Automatic annual adjustment."

Proposed § 5.580(d) is based, in part, on current § 3.802(b). The first sentence of proposed § 5.580(d) is derived from the current rule. The second sentence of proposed § 5.580(d) restates 38 U.S.C. 1562(c): "Pensions payable under this section are not subject to any attachment, execution, levy, tax lien, or detention under any process whatever." We propose to add this statement to the regulation in order to emphasize the protections afforded the Medal of Honor pension.

Proposed § 5.580(e) restates the last sentence of current § 3.802(b) which explains that a veteran is entitled to only one Medal of Honor pension even

if the veteran is awarded more than one Medal of Honor.

Section 5.581 Awards of VA Benefits Based on Special Acts or Private Laws

Proposed § 5.581 restates current § 3.801, governing awards of VA benefits based on a special act of Congress, and adds language clarifying the existing rule.

Proposed § 5.581(a) restates the definition of a “special act” from current § 3.801(a), also called a “private law,” as an act of Congress that authorizes VA to pay benefits to a particular person.

Proposed § 5.581(b) clarifies the rule stated in current § 3.801(a) that VA will not award benefits based on a special act until a claimant-beneficiary has filed a formal application. The purpose of this provision is to ensure that VA has all of the necessary information (such as full name, address, military status, etc.), and that the information is current and accurate, in order to properly identify and make payments to the beneficiary.

Proposed § 5.581(c) restates current § 3.801(c)(2) and (d), with clarification. The rule pertains to a special act that modifies the dates of a veteran’s service or the character of a former servicemember’s discharge. We propose to restate current § 3.801(c)(2) in plain language as § 5.581(c)(1).

Current § 3.801(d) provides that a special act that shows a person commenced service in the active military service on a particular date and was honorably discharged on a subsequent date “is sufficient regardless of whether the service department has any record of such service.” In § 5.581(c)(2), we propose to characterize a special act as “conclusive” rather than “sufficient” proof of the period of service described in the special act. For VA purposes, Congress’ act on the matter is conclusive and no further investigation of the veteran’s period of service is authorized.

Proposed § 5.581(d) restates in plain language current § 3.801(b). Paragraph (d) states that VA will pay the benefit in accordance with the rate, effective date, and duration prescribed in a special act. If the special act does not provide for the rate, effective date, or duration of payments, VA will set them consistent with existing public law.

Proposed § 5.581(e) describes two situations where the rate of pension or disability compensation may be changed. Proposed paragraph (e)(1), based on current § 3.801(e), states that the rate of pension may be reduced when a payee is hospitalized. Proposed paragraph (e)(2) states that the rate of pension or disability compensation may

be reduced when a payee is incarcerated. This is a new provision based on section 1505 of Title 38, United States Code, and 38 CFR 3.666, which prohibit the payment of pension under private laws administered by VA to an individual who is imprisoned for more than 60 days in a Federal, State, or local penal institution. It is also based on section 5313 of Title 38, United States Code, and 38 CFR 3.365, which prohibit the payment of VA disability compensation to an individual who is imprisoned for more than 60 days in a Federal, State, or local penal institution. Although section 5313 and 38 CFR 3.365 do not specify that they are applicable to compensation paid under private law, there is no indication that they would apply only to compensation paid under public laws.

Proposed paragraph § 5.581(f) is based on current § 3.801(c)(1), which states that VA will not pay any other pension or disability compensation award other than the award authorized by the special act, unless the payee makes an election or unless the special act expressly authorizes VA to do so. We note that this provision might be problematic if it prohibits payment for a disability other than the disability for which payments are awarded under the special act. For example, if a special act awarded disability compensation for a back injury, VA should not be precluded from paying additional compensation for a different service-connected condition. Therefore, we have amended the provision to state that if VA is authorized to pay pension or disability compensation by a special act, it may not pay any other pension or disability compensation award to the extent that such award would be duplicative under section 5304 of Title 38, United States Code. Thus, the payee will be prevented from receiving more than one award for the same disability, but will not be prevented from receiving an award for a different disability or manifestation of disability. *See* Subpart L, Payments to Beneficiaries Who Are Eligible for More than One Benefit, §§ 5.740 through 5.769, which will be published in a future NPRM.

Sections 5.582, Naval Pension, 5.583, Special Allowance Under 38 U.S.C. 1312, and 5.584, Loan Guaranty for Surviving Spouses; Certification

We propose to repeat the content of current §§ 3.803 (Naval Pension), 3.804 (Special allowance under 38 U.S.C. 1312), and 3.805 (Loan guaranty for surviving spouses; certification), in §§ 5.582, 5.583, and 5.584, respectively, without making any substantive changes to the text of the rules. We note that

these sections do not have internal paragraph headings to identify the subject matter contained therein. Therefore, we propose to insert paragraph headings where appropriate to aid the reader in locating subject matter and to make these regulations easier to read.

Further, in proposed § 5.582, we inserted the word “disability” before the word “compensation” in each instance to be consistent with other regulations in this NPRM. For the purpose of clarity and to avoid confusion between naval pension and VA pension, we propose not to use the phrase “disability pension,” which appears in current § 3.803(b), in § 5.582. We propose to place the word “VA” before the phrase “pension or disability compensation” in order to distinguish the Department of Defense programs from the VA programs.

Proposed § 5.582(c) is based on current § 3.803(c), which states that new awards of naval pension may not be made concurrently with VA pension or compensation. We note that the meaning of “new” is ambiguous. It is actually referring to awards of naval pension made on or after July 14, 1943. *See* 38 U.S.C. 5304(a)(1). To make this clear to the reader, we have amended this provision to include this date.

Proposed § 5.583(b)(1) is based on current § 3.804(b)(1), which states that the special allowance under 38 U.S.C. 1312 is not payable where the veteran’s death resulted from VA hospitalization, treatment, examination, or training. The purpose of this provision is to exclude deaths treated “as if” service connected, because such deaths do not meet the criteria of 38 U.S.C. 1312(a)(2). Since § 3.804 was promulgated, however, the criteria of 38 U.S.C. 1151 (authorizing dependency and indemnity compensation for deaths treated “as if” service connected because death was due to VA treatment or vocational rehabilitation) have been expanded, and 38 U.S.C. 1318 (authorizing dependency and indemnity compensation for certain deaths treated “as if” service connected because the veteran was rated totally disabled at time of death) has been enacted. Therefore, current § 3.804(b)(1) has been rewritten in proposed § 5.583(b)(1) to encompass this expanded criteria for deaths that may be treated “as if” service connected. We have included a reference to proposed § 5.510(b)(2) and (3), which address deaths treated “as if” service connected under 38 U.S.C. 1151 and 1318. No substantive change is intended.

Proposed § 5.583(e)(1)(ii) is based on current § 3.804(e)(1)(ii), which states that the special allowance is payable for

death occurring as the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty under conditions other than dishonorable. We note that this provision does not incorporate the 2000 amendment to the statutory definition of "active military, naval, or air service." The amendment included as "active military, naval, or air service" any period of inactive duty training during which the individual concerned was disabled or died from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training. Rather than amend the regulatory provision to include this new language, we have decided to utilize the corresponding statutory language instead, which states simply "as the result of a service-connected disability incurred after September 15, 1940." See 38 U.S.C. 1312(a)(2)(B). The statutory definition of "service-connected" includes the requirement that the disability was incurred or aggravated in the line of duty in the active military, naval, or air service. See 38 U.S.C. 101(16). By using the statutory language in the regulation, it will not be necessary to amend the regulation every time there is an amendment to the statutory definition of "active military, naval, or air service." No substantive change to the regulatory provision is intended. The requirement that the veteran was discharged or released under conditions other than dishonorable, currently found in § 3.804(e)(1)(ii), is contained in proposed § 5.583(e)(2).

In proposed § 5.583(e)(2)(ii), the counterpart to current § 3.804(e)(2)(ii), we have replaced the reference to current § 3.1(m) with proposed § 5.660, which was published in Subpart K on May 31, 2006. See 71 FR 31056. Current § 3.804(e)(2)(ii) also includes a reference to the § 3.300 series. Therefore, we have included references to any published proposed Part 5 counterparts to regulations in the current § 3.300 series. These include §§ 5.661 and 5.662, which are the Part 5 counterparts to §§ 3.301 and 3.302. These were published in Subpart K on May 31, 2006. These also include proposed §§ 5.260 through 5.269, which are the Part 5 counterparts to §§ 3.307 through 3.309, 3.311, 3.316 and 317. These were published in Subpart E on July 27, 2004.

See 69 FR 44614. We have retained the reference to the current § 3.300 series, because the remaining regulations in that series have not yet been published in a Part 5 NPRM.

Section 5.585 Certification for Death Gratuity

We propose to reword the text of current § 3.806 for the sake of clarity. Current paragraph (a) refers to situations where VA makes a certification based on a claim filed with it, and current paragraph (b) refers to situations where VA makes a certification at the request of the Secretary concerned. As VA must go through the same determination criteria in either situation, we propose to combine paragraphs (a) and (b), as there is no need for them to be separate. Current paragraph (c) (which is proposed paragraph (b)) has also been slightly reorganized.

Section 5.586 Certification for Dependents' Educational Assistance (DEA)

Proposed § 5.586 is based on current § 3.807 relating to certification for DEA. We note that the current provisions of § 3.807(a) and (b) are redundant of provisions already contained in § 21.3021. The provisions of § 3.807(a) appear in § 21.3021(a). The provisions of § 3.807(b) appear in § 21.3021(b), with the exception of the sentence stating that service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 8-358). However, due to the passage of time, this date is no longer necessary and no longer needs to be included in this regulation. Further, the requirement that the service-connected disability or death must have been the result of active military, naval, or air service is necessarily implied in the eligibility requirements of § 21.3021(a), that the veteran has or had a service-connected disability. A service-connected disability or death is, by statutory definition, the result of active military, naval, or air service. See 38 U.S.C. 101(16).

Instead of repeating the same criteria already contained in § 21.3021, we propose to simply refer the reader to § 21.3021 for the eligibility criteria. This will prevent possibly conflicting substantive provisions, and will prevent the necessity of amending two regulations for the same provision. We have also added a brief description of DEA.

Proposed § 5.586(b) is based on the second sentence of § 3.807(c), which indicates that the standards and criteria for determining service connection,

either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated.

Proposed § 5.586(c)(1) is based on the first sentence of § 3.807(c), which states that a disability treated as if service connected under § 3.383(a) (paired organs and extremities) is included for purposes of determining eligibility for DEA. Proposed § 5.586(c)(2) is based on the third sentence of § 3.807(c), which states that a disability treated as if service connected under §§ 3.358, 3.361, or 3.800 (disability or death due to hospitalization or vocational rehabilitation) is not included for purposes of determining eligibility for DEA.

Proposed § 5.586(d) is based on current § 3.807(d), containing the definitions of child, spouse, and surviving spouse for purposes of determining eligibility for DEA. Paragraph (d)(1), pertaining to the definition of "child," remains essentially unchanged, since the definition is particular to eligibility for DEA. In paragraph (d)(2), we propose to add that a spouse means a person of the opposite sex. Currently, (d)(2) merely refers the reader to the appropriate regulation, § 3.50 (proposed § 5.190), for that definition. The reader is still referred to the appropriate regulation (old § 3.1(j); proposed § 5.190) for the requirements of a valid marriage. Paragraph (d)(3) is reworded but contains no substantive change.

Sections 5.587, Minimum Income Annuity and Gratuitous Annuity, and 5.588, Special Allowance Payable Under Section 156 of Public Law 97-377

We propose to repeat the content of current §§ 3.811 and 3.812 in §§ 5.587 and 5.588 without making any substantive changes to the text of these rules. We note that current § 3.811 is without internal paragraph headings in certain places to properly identify the subject matter. Therefore, we propose to insert paragraph headings in proposed § 5.587(b)(2)-(d) as appropriate guideposts to aid the reader in locating subject matter and to make the regulation easier to read. For the purpose of consistency in usage between the various NPRMs, we propose to substitute the terms "discontinue" and "discontinuance" in place of "terminate" and "termination" in §§ 5.587(e) and 5.588.

Sections 5.589, Monetary Allowance for Vietnam Veterans' Children Born With Spina Bifida, and 5.590, Monetary Allowance for Female Vietnam Veterans' Children With Certain Birth Defects

We propose to revise the titles of current §§ 3.814 and 3.815, respectively. We propose to revise the title of current § 3.814 (proposed § 5.589) to read, "Monetary allowance for Vietnam veterans' children born with spina bifida." We believe that this title more accurately and completely represents the content of the rule. For the same reason, we propose to amend the title of current § 3.815 (proposed § 5.590), to read, "Monetary allowance for female Vietnam veterans' children with certain birth defects." The proposed titles make the regulations easier to locate and identify in part 5.

We note that the second sentence of § 3.814(a), which indicates that a recipient of a monetary allowance under chapter 18 is not prevented from receiving other VA benefits, is substantively the same provision as found in § 3.815(b), which uses slightly different language. We think the provisions in each regulation should use the same language, however, because they are both based on the same statute, 38 U.S.C. 1823. Therefore, in proposed § 5.589, we have added paragraph (b), which is identical to the paragraph found in current § 3.815(b) and proposed § 5.590(b). For this reason, the second sentence of § 3.814(a) is not carried over to proposed § 5.589.

Current §§ 3.814 and 3.815 use the phrase "active military, naval, or air service" to refer to qualifying service for benefits under those regulations. VA has previously proposed, with regard to the regulations relating to service requirements for veterans, to use the term "active military service" in lieu of the longer term "active military, naval, or air service" in 38 U.S.C. 101(24) and current part 3. 69 FR 4820, 4822 (2004). In order to maintain consistency, we propose to use the same phrase in these regulations pertaining to special and ancillary benefits. Note that, as an equivalent to the longer "active military, naval, or air service," "active military service" is a broader term than "active duty." Compare 38 U.S.C. 101(21) with 38 U.S.C. 101(24).

Neither the authorizing statutes nor the current regulations concerning these monetary allowances define "service in the Republic of Vietnam". To promote consistency among VA adjudications and because we believe it reflects Congressional intent in enacting Chapter 18, we propose to cross

reference our proposed definition of the phrase as it applies to veterans seeking a presumption of exposure to herbicides, contained in § 5.262(a)(1). See 69 FR 44614, July 27, 2004.

We propose to move the effective date provisions of these rules, §§ 3.814(e) and (f) and 3.815(i) and (j), to a new regulation, § 5.591.

Section 5.591 Effective Dates of Awards for Certain Disabled Children of Vietnam Veterans

Pursuant to 38 U.S.C. 1805(a), VA is required to pay "a monthly allowance * * * to any child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child." Current §§ 3.403(b) and 3.814 implement 38 U.S.C. 1805. Similarly, VA is required by 38 U.S.C. 1815(a) to pay "a monthly allowance to any eligible child for any disability resulting from the covered birth defects of that child." The term "eligible child" is defined in 38 U.S.C. 1811 as a child of a "woman Vietnam veteran" who "was born with one or more covered birth defects." Current §§ 3.403(c) and 3.815 implement 38 U.S.C. 1815.

The effective date of awards (and discontinuances or reductions of awards) of the monthly allowances described above are governed by 38 U.S.C. 1832, which incorporates the provisions of 38 U.S.C. 5110(a), (b)(2), (g), and (i); and 5112(a) and (b)(1), (6), (9), and (10). Currently, the effective date rules that implement these statutory provisions are found in several part 3 regulations. The effective date rules for awards based on spina bifida under current § 3.814 appear in current §§ 3.814(e) and (f), 3.403(b), and 3.503(b). The effective date rules for awards based on birth defects under current § 3.815 appear in current §§ 3.815(i) and (j), 3.403(c), and 3.503(b). Much of the language in these rules is repetitive and can be simplified. We propose to reduce the repetition and increase the clarity in these rules by consolidating the effective date provisions located in current §§ 3.814 and 3.815 with the provisions located in current §§ 3.403 and 3.503, resulting in one comprehensive rule. We propose § 5.591 as that new comprehensive rule.

The introductory paragraph of proposed § 5.591 outlines the scope of the proposed rule. Proposed § 5.591(a) provides the general rule for determining the effective date of an award for the monetary allowances governed by the proposed rule. It restates content from current §§ 3.403(b) and (c), 3.814(e), and 3.815(i), all of which restate the general rule articulated in 38 U.S.C. 5110(a). The

general effective date statute, section 5110(a), is applicable to monthly allowances set forth in current §§ 3.814 and 3.815, pursuant to 38 U.S.C. 1832(b)(2).

Proposed § 5.591(a)(1) and (a)(2) each limit the effective date of a monetary allowance to no earlier than the effective dates of 38 U.S.C. 1805 and 1815. This limitation is required by 38 U.S.C. 5110(g), which states that the effective date of an award or increase in benefits pursuant to an Act or administrative issue "shall not be earlier than the effective date of the Act or administrative issue." Subsection (g) of section 5110 is made applicable to these monetary awards by 38 U.S.C. 1832(b)(2).

Proposed § 5.591(a)(3) restates material currently found in § 3.403(b) and (c) and § 3.815(i), which is that the effective date of a monetary allowance will be the child's date of birth if the claim is received within a year of the birth date.

Proposed § 5.591(a)(4) states that VA will apply the rule in § 3.400(g), which governs effective dates in cases where entitlement is established because of the correction of military records. This rule is applicable under 38 U.S.C. 1832(b)(2) and 5110(i). Currently, the rule is restated in §§ 3.814(e)(2) and 3.815(i)(2). We propose to simply refer the reader to the actual rule, § 3.400(g), instead of restating it.

Proposed § 5.591(a)(5) states that in a claim for increase of a monetary allowance, VA will apply the rule in § 3.400(o)(2), pertaining to the effective date of an increase of compensation due to an increase in disability. This rule is applicable pursuant to U.S.C. 5110(b)(2) and 1832(b)(2). Currently, §§ 3.814(e)(1) and 3.815(i)(1) restate the rule. We propose to simply refer the reader to the actual rule, § 3.400(o)(2), instead of restating it.

Proposed § 5.591(a)(6) states that VA will apply the rule in § 3.114(a), pertaining to a change of law or VA issue. Proposed § 5.591(a)(6) incorporates the reference to § 3.114(a) which appears in current §§ 3.403(c) and 3.815(i). The statutory authority for current § 3.114(a) is 38 U.S.C. 5110(g) and 1832(b)(2).

Proposed § 5.591(b) governs reductions and discontinuances of the monetary allowances. Pursuant to 38 U.S.C. 1832, the provisions of 38 U.S.C. 5112(a) and 5112(b)(1), (6), (9), and (10), governing effective dates of reductions and discontinuances, are applicable.

Currently, §§ 3.814(f) and 3.815(j) restate 38 U.S.C. 5112(a), which provides that the effective date of a reduction or discontinuance of certain

awards will be fixed according to the facts found, except as otherwise provided. This is implemented by current § 3.500(a). We have included a reference to § 3.500(a) in proposed § 5.591(b).

Proposed § 5.591(b)(1) and (b)(2) applies the rules regarding the reduction or discontinuance of erroneous awards based on beneficiary or administrative error, located in current § 3.500(b)(1) and (2). Currently, paragraphs (1) and (2) of § 3.814(f) and paragraphs (1) and (2) of § 3.815(j) repeat the language in paragraphs (1) and (2) of § 3.500(b). We propose to simply incorporate those rules by reference to reduce repetitiveness.

Proposed § 5.591(b)(3) governs the effective date of a discontinuance based on the beneficiary's death, and restates current § 3.503(b), which states that the last day of the month before the month in which a child's death occurs serves as the effective date of discontinuance. The statutory authority for this rule is 38 U.S.C. 5112(b)(1), which is made applicable to these benefits through 38 U.S.C. 1832(b)(4).

Proposed § 5.591(b)(4) restates the two cross references contained in the introductory paragraphs of current §§ 3.814(f) and 3.815(j). The current rules cross-reference current § 3.114(b), Discontinuance of Benefits based on a Change of Law or VA Issue.

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

Section 5.603 Financial Assistance To Purchase a Vehicle and Adaptive Equipment

Section 3902 of title 38, U.S.C., authorizes VA to assist certain veterans and servicemembers in acquiring a vehicle and adaptive equipment for a vehicle. Such assistance is available to claimants who have incurred certain disabilities as the result of injury sustained or disease contracted in or aggravated by active military service. See 38 U.S.C. 3901(1)(A). VA's implementing regulations for 38 U.S.C. 3902 are currently codified at § 3.808. It is our intent to rewrite the provisions currently in § 3.808 in plain language to improve readability. As proposed, we have changed the title of this section to "Financial assistance to purchase a vehicle and adaptive equipment" to better reflect the purpose of the regulation.

Proposed § 5.603(a) simply states in plain language the general nature of the benefit involved in this section.

Proposed § 5.603(b) provides definitions of applicable terms, namely "adaptive equipment" and "vehicle." No substantive change from current § 3.808 has been made to either term. We propose to include in § 5.603(b) the types of adaptive equipment to which an eligible person may be entitled under this section. We propose to use the term "vehicle" in lieu of "automobile or other conveyance" to make the regulation easier to read.

Proposed § 5.603(c) identifies the criteria that a claimant must satisfy to obtain a certification of eligibility for the purchase of a vehicle and adaptive equipment. This is a plain language rewrite of current § 3.808 criteria, and there is no change to the substantive provisions.

Proposed § 5.603(d), which is based on 38 CFR 17.158 and current VA practice, specifies certain limitations for eligibility for financial assistance to purchase a vehicle and/or adaptive equipment. It also states the limitations on how often an eligible person may take advantage of these benefits for the purchase of a vehicle and adaptive equipment, and states that payments may not be made for the repair, maintenance, or replacement of a vehicle, but payments may be made for the repair, replacement, or reinstallation of adaptive equipment.

We note that current § 3.808(d), which is entitled "additional eligibility criteria for adaptive equipment," states that claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.156, 17.157, and 17.158 of this chapter. We have not included this provision in proposed § 5.603 because the part 17 provisions do not state additional "eligibility criteria." Rather, they state additional details regarding the assistance VA may provide. However, we have added a reference to those part 17 provisions in proposed § 5.603(d)(2).

Proposed § 5.603(e) is based partly on current § 3.808(c). We have also added a few details regarding the procedure of certification. These provisions reflect current VA practice; no substantive changes are intended.

Proposed § 5.603(f) is based on 38 CFR 17.158 and current VA practice; no substantive change is intended.

Section 5.606 Clothing Allowance

Proposed § 5.606 is derived from current § 3.810 but is written in plain language to clarify certain provisions and to improve readability. We have reorganized the information in a logical format, addressing basic eligibility and applications, examinations, payments, and reduction for incarceration. We

have also included rules for Filipino veterans and veterans living abroad to ensure that all affected persons have the information necessary to file an annual clothing allowance claim.

Proposed § 5.606(a) states generally the nature of the regulation. It does not add any substantive material to the regulation, but is merely intended to familiarize the reader with the nature of the regulation.

Proposed § 5.606(b), based on current § 3.810(a), states the eligibility requirements for receiving benefits under this section. It is reorganized and rewritten in plain English. No substantive change from current § 3.810(a) is intended, except for the reference to § 3.326(c). The reference to § 3.326(c) is in current § 3.810(a)(1), which states that one of the eligibility criteria is a VA examination or hospital or examination report from a facility specified in § 3.326(c) which discloses that the veteran wears or uses certain prosthetic or orthopedic appliances (including a wheelchair) which tend to wear or tear clothing because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350(a), (b), (c), (d), or (f). The reference to § 3.326(c) is not completely correct. Current § 3.326(c) states:

"Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination." This provision does not refer to a "facility," as current § 3.810(a)(1) might suggest. Rather, current § 3.326(b) is the appropriate provision regarding reports from private facilities. Current § 3.326(b) states in pertinent part: "Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination." Both paragraph (b) and paragraph (c) of current § 3.326 are appropriate references, and therefore we have adjusted the reference to include both (b) and (c) of current § 3.326, which have been published as proposed § 5.91(a). See 70 FR 24680.

We note that we have not carried forward the provision in current § 3.810(a)(2) which states that VA's Chief Medical Director or designee will make the certification of eligibility. This provision addresses an internal administrative procedure within VA and does not need to be included in the regulation. Instead we have stated the provision in more general terms by indicating that VA will make the determination whether the service-

connected disability tends to wear out or tear the veteran's clothing or whether the prescribed medication causes irreparable damage to the veteran's outer garments. This is consistent with the language of the authorizing statute, 38 U.S.C. 1162, which indicates that such determinations are made by the Secretary. We have used the term "VA" instead of "Secretary," which is consistent with the meaning of the statute. It is understood that an employee of VA will make the actual determination on behalf of the Secretary, and therefore "VA" is a more appropriate term. Using more general language ("VA" instead of "Chief Medical Director") in the proposed regulation removes the necessity of amending the regulation every time there is a change in VA procedure.

Proposed § 5.606(c) is a new provision based on current VA practice. It describes the criteria required for continuing entitlement to the clothing allowance. If a veteran has continuing entitlement to the clothing allowance, the veteran is not required to reapply for the clothing allowance each year.

Proposed § 5.606(d), regarding the annual payment period and anniversary date, is based on current § 3.810(b). The first sentence of current § 3.810(b) states that effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. The August 1, 1972, date is the date that the clothing allowance was first effective. The first sentence of current § 3.810(b) means that if a veteran met the eligibility requirements for the clothing allowance as of August 1, 1972, the clothing allowance was due and payable as of August 1, 1972. Due to the passage of time, this date and this sentence are no longer necessary, and they have not been carried forward to proposed § 5.606.

The second sentence of current § 3.810(b) states that subsequent annual payments for those meeting the eligibility requirements of paragraph (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement. The phrase "subsequent annual payments" means payments after August 1, 1972. The "anniversary date" means August 1 of each year after 1972. The sentence merely establishes that the clothing allowance is due to eligible veterans on August 1 of each year. The August 1 date applies to initial claims for the clothing allowance, and for automatically recurring payments.

Proposed § 5.606(d) is a plain language rewrite of current § 3.810(b). We believe that the proposed language is clearer than the current version. In essence, current § 3.810(b) relies on a reference to the original August 1, 1972, effective date of the clothing allowance statute in order to explain that the clothing allowance is due on August 1 of each year. A simpler way of saying this is to state that the clothing allowance is paid annually following each 12-month period which begins August 1 and ends July 31. In addition, we have explained that the August 1 date is referred to as the anniversary date. It is helpful to keep the "anniversary date" terminology in order to easily explain the effective date provisions in proposed § 5.606(e). We have also added a definition of "initial anniversary date," which is a phrase used in proposed § 5.606(e). No substantive change from the current regulation is intended.

Proposed § 5.606(e), regarding the time for filing a claim for the clothing allowance, is based on current § 3.810(c). It is rewritten in plain English. In addition, examples have been added in order to more clearly illustrate the meaning of these provisions. No substantive change from the current regulation is intended.

Proposed § 5.606(f) and (g) discuss clothing allowance claims for Filipino veterans and veterans living abroad. These two rules reflect current VA practice. The appropriate VA medical center prosthetic and sensory aids service will process the annual clothing allowance payment for those claims under the jurisdiction of the VA medical center assigned the geographical area where the veteran maintains a permanent address. Claims filed by Filipino veterans not permanently residing in the U.S. are processed locally in Manila, Philippines. Claims authorized for veterans of the U.S. Army and Old Philippine Scouts are paid in dollars. Claims authorized for New Philippine Scouts, Commonwealth Army of the Philippines, and guerilla service, are paid at a rate in Philippine pesos equivalent to \$.50 for each dollar authorized under the law. See § 3.42 (proposed § 5.613).

Proposed § 5.606(h) restates current § 3.810(d) pertaining to reduction of the amount of the clothing allowance when a veteran is incarcerated for a period in excess of 60 days and is furnished clothing without charge by the penal institution. This regulation implements 38 U.S.C. 5313A. We propose to include a notation that the reduction applies to incarceration for any reason. We believe this brings focus to the controlling issue

of whether the veteran is being furnished clothing without charge during incarceration, and not the reason for the veteran's incarceration. The statutory language of 38 U.S.C. 5313A does not contain a requirement that a veteran be convicted of a felony for the reduction to occur. Proposed § 5.606(h) clarifies that the reduction applies to all veterans who are incarcerated for more than 60 days and are furnished clothing without charge, without regard to the nature of the crime for which the veteran was convicted.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information in 38 CFR 5.603 and 5.606 under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with these proposed rules. The information collection requirements for §§ 5.603 and 5.606 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0067, 2900–0188, and 2900–0198.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although these proposed amendments affect some small entities, specifically auto dealerships, the proposed amendments do not substantively change the current regulation (38 CFR 3.808) concerning auto dealerships. The current regulation does not have a significant economic impact on auto dealerships. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and title for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: November 30, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on March 5, 2007.

For the reasons set forth in the preamble, VA proposes to further amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart H to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors

Special Benefits for Veterans, Dependents, and Survivors

Sec.

- 5.580 Medal of Honor pension.
- 5.581 Awards of VA benefits based on special acts or private laws.
- 5.582 Naval pension.
- 5.583 Special allowance under 38 U.S.C. 1312.
- 5.584 Loan guaranty for surviving spouses; certification.
- 5.585 Certification for death gratuity.
- 5.586 Certification for dependents' educational assistance (DEA).
- 5.587 Minimum income annuity and gratuitous annuity.
- 5.588 Special allowance payable under section 156 of Public Law 97-377.
- 5.589 Monetary allowance for Vietnam veterans' children born with spina bifida.
- 5.590 Monetary allowance for female Vietnam veterans' children with certain birth defects.
- 5.591 Effective dates of awards for certain disabled children of Vietnam veterans.
- 5.592-5.599 [Reserved]

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

- 5.600-5.602 [Reserved]
- 5.603 Financial assistance to purchase a vehicle and adaptive equipment.
- 5.604-5.605 [Reserved]
- 5.606 Clothing allowance.
- 5.607-5.609 [Reserved]

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors

Special Benefits for Veterans, Dependents, and Survivors

§ 5.580 Medal of Honor pension.

(a) *Placement on the Medal of Honor Roll.* The Secretaries of the Departments

of the Army, Navy, Air Force, and Homeland Security determine entitlement to placement on the Medal of Honor Roll and issue certificates setting forth the right to receive Medal of Honor pension. After a person has been placed on the Medal of Honor Roll, and if such person has indicated a desire to receive the Medal of Honor pension, the Secretary concerned will provide VA with a certified copy of the certificate setting forth such person's right to the Medal of Honor pension.

(b) *Award of Medal of Honor pension by VA.* Medal of Honor pension will be awarded by VA once the certification under paragraph (a) of this section is provided to VA.

(c) *Amount of the Medal of Honor pension, the effective date of the pension, and entitlement to a retroactive lump-sum payment.* VA will pay a Medal of Honor pension and a retroactive lump-sum payment, as follows:

(1) *Effective date.* The effective date for payment of a Medal of Honor pension is the date the service department concerned received the person's application for placement on the Medal of Honor Roll.

(2) *Monthly rate.* VA will pay a Medal of Honor pension at the rate specified in 38 U.S.C. 1562, as adjusted under paragraph (c)(4) of this section.

(3) *Retroactive lump-sum payment.* VA will pay to each person who is receiving or who in the future receives a Medal of Honor pension, a retroactive lump sum payment for the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor, and ending on the last day of the month preceding the month in which the pension commenced under paragraph (c)(1) of this section. The lump sum payment will be based on the monthly Medal of Honor pension rates in effect during the period for which the lump sum payment is made.

(4) *Automatic annual adjustment.* VA will, effective December 1 of each year, increase the monthly Medal of Honor pension by the same percentage by which benefit amounts payable under Title II of the Social Security Act are increased effective December 1 of that year.

(d) *Medal of Honor pension exempt from offset, attachment, or other legal process.* The Medal of Honor pension is paid in addition to all other payments under laws of the United States. It is not subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(e) *Only one Medal of Honor pension is allowed.* VA will pay a person only

one Medal of Honor pension under this section, even if the person is awarded more than one Medal of Honor.

(Authority: 38 U.S.C. 1560, 1561, 1562)

§ 5.581 Awards of VA benefits based on special acts or private laws.

(a) *Special act* means an act of Congress that authorizes VA to pay benefits to a particular person. Special acts are also known as private laws.

(b) *Formal application must be filed.* VA will award benefits based on a special act only to an individual who files a formal application based on the special act, unless the individual:

- (1) Is currently receiving VA benefits;
- or
- (2) Has a pending formal application in the form prescribed by VA (a claim that has not been granted or finally denied by VA).

(c) *Special acts relating to military service*—(1) *Change to character of discharge.* If a special act changes the character of a former servicemember's discharge from military service so as to establish the former servicemember's status as a veteran, but the special act does not establish the former servicemember's entitlement to VA pension or disability compensation, the former servicemember will satisfy the discharge requirement for purposes of establishing status as a veteran and may apply for and be awarded VA benefits if otherwise eligible.

(2) *Special act as conclusive proof of service.* For VA purposes, a special act that states a veteran served on a particular date or dates and was discharged under conditions other than dishonorable on a particular date is conclusive proof of such service.

(d) *Rate, effective date, and duration of benefit.* (1) VA will apply and will not change, except as provided in paragraph (e) of this section, the rate, effective date, and discontinuance date that is specified in a special act.

(2) When a special act does not provide the rate, effective date, or discontinuance date, VA will award or continue the benefit consistent with applicable public laws.

(e) *Changes in rates*—(1) *Hospitalization.* VA will reduce pension payable under a special act pursuant to § 3.551 of this chapter (reduction of payments based on hospitalization), unless the special act expressly prohibits such reduction.

(2) *Incarceration.* VA will reduce disability compensation and pension payable under a special act pursuant to §§ 3.365 and 3.666 of this chapter (reduction of payments during incarceration), unless the special act expressly prohibits such reduction.

(f) *Prohibition against duplicate awards.* When pension or disability compensation is authorized by a special act, VA will not pay any other pension or disability compensation to the extent such awards would be duplicative under section 5304 of title 38, United States Code, unless the payee makes an election (see § 3.700 of this chapter), or unless the special act expressly authorizes VA to do so.

(Authority: 38 U.S.C. 501(a), 1505, 5313, 5503)

§ 5.582 Naval pension.

(a) *Certification.* VA will pay naval pension if the Secretary of the Navy certifies that the person is entitled to the pension.

(Authority: 10 U.S.C. 6160)

(b) *Concurrent receipt of awards in effect prior to July 14, 1943.* Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with VA pension or disability compensation; however, naval pension allowance under 10 U.S.C. 6160 may not exceed one-fourth of the rate of VA pension or disability compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.

(c) *No concurrent receipt of awards initially made on or after July 14, 1943.* Naval pension initially awarded on or after July 14, 1943, may not be paid concurrently with VA pension or disability compensation.

(Authority: 38 U.S.C. 5304(a))

(d) *Naval pension not payable as accrued benefit.* Naval pension remaining unpaid at the date of the veteran's death is not payable by VA as an accrued benefit.

(Authority: 10 U.S.C. 1414; 38 U.S.C. 5304)

§ 5.583 Special allowance under 38 U.S.C. 1312.

(a) *Allowance payable.* The provisions of this section are applicable to the payment of a special allowance by VA to the surviving dependents of a veteran who served after September 15, 1940, and who died after December 31, 1956, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.

(b) *Allowance not payable.* The special allowance is not payable:

- (1) Where the veteran's death is not service connected but is treated "as if" it were service connected under the provisions of this chapter. See § 5.510(b)(2) and (3) of this chapter;
- (2) Where the veteran's death was due to service rendered with the

Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the New Philippine Scouts under section 14, Public Law 190, 79th Congress.

(c) *Claims for special allowance.* A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is payable or where a specific inquiry concerning entitlement to the special allowance is received.

(d) *Certification by the Social Security Administration.* Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifications from the Social Security Administration.

(e) *Special allowance payable on death.* (1) The special allowance will be payable only if the death occurred:

- (i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or
- (ii) As the result of a service-connected disability incurred after September 15, 1940.

(2) Where the veteran died after separation from service:

(i) Discharge from service must have been under conditions other than dishonorable as outlined in § 5.30.

(ii) Line of duty and service connection will be determined as outlined in §§ 3.1(k), 3.1(m), §§ 3.300 through 3.344, §§ 5.260 through 5.269, and §§ 5.660 through 5.662.

(Authority: 38 U.S.C. 1312)

§ 5.584 Loan guaranty for surviving spouses; certification.

A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed after December 31, 1958, if:

(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time after September 15, 1940; and

(b) The veteran died in service; or

(c) The veteran died after separation from service and such separation was under conditions other than dishonorable, provided the veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty rendered after September 15, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of

death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The surviving spouse meets the requirements of the term "surviving spouse" as outlined in § 5.200(a); and

(e) The veteran's surviving spouse is unmarried or was remarried after age 57; and

(f) The applicant is not an eligible veteran.

§ 5.585 Certification for death gratuity.

(a) *Certification by VA to the Secretary concerned.* If VA determines either on the basis of a claim for VA benefits filed with it or at the request of the Secretary concerned, that a death occurred under the following circumstances, VA will certify that fact to the Secretary concerned:

(1) The veteran died after December 31, 1956;

(2) The veteran died during the 120-day period that began on the day following the day of his or her discharge or release from duty as described in 10 U.S.C. 1476;

(3) Death resulted from disease or injury incurred or aggravated while on such duty, or travel to or from such duty; and

(4) The deceased person was discharged or released from such service under conditions other than dishonorable.

(b) *VA law applies.* The standards, criteria, and procedures for determining the incurrence or aggravation of a disease or injury under paragraph (a) of this section are those applicable under disability and death compensation laws administered by VA, except that there is no requirement under this section that any incurrence or aggravation have been in the line of duty.

(Authority: 10 U.S.C. 1476, 38 U.S.C. 1323)

§ 5.586 Certification for dependents' educational assistance (DEA).

(a) *Eligibility for DEA.* DEA is an education benefit which VA is authorized to provide for certain classes, licenses, or certifications. See § 21.3020 through 21.3344 of this chapter. In addition to paragraphs (b) through (d) of this section, the provisions of § 21.3021 of this chapter will be applied in a determination of eligibility for DEA.

(b) *Service connection.* The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 3501(a)).

(c) *Disabilities treated as if service connected—(1) Paired organs or extremities.* For purposes of eligibility

for DEA, a "service-connected disability" includes a disability treated as if service-connected under the provisions of § 3.383(a) of this chapter (paired organs and extremities).

(2) *Disability due to hospitalization, etc.* For purposes of eligibility for DEA, a "service-connected disability" does not include a disability treated as if service connected under §§ 3.358, 3.361, or 3.800 of this chapter (disability or death due to hospitalization, etc.).

(d) *Relationship—(1) Child.* For the purposes of this section, the term "child" means a veteran's child who meets the requirements of § 5.220, except as to age and marital status.

(Authority: 38 U.S.C. 3501(a)(2))

(2) *Spouse.* For VA purposes, a "spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements for a valid marriage under § 5.191.

(3) *Surviving spouse.* For VA purposes, a "surviving spouse" is a person who meets the requirements of § 5.200.

(Authority: 1 U.S.C. 7; 38 U.S.C. 101(3), 103(c))

§ 5.587 Minimum income annuity and gratuitous annuity.

(a) *Eligibility for minimum income annuity.* The minimum income annuity authorized by Public Law 92–425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Homeland Security has determined meets the eligibility criteria of section 4(a) of Public Law 92–425 as amended other than section 4(a)(2) and (3); and

(2) Who is eligible for pension under subchapter III of 38 U.S.C. chapter 15, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment—(1) Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this chapter for beneficiaries receiving Improved Pension, or under §§ 5.472 through 5.474 of this part for beneficiaries receiving Old Law or Section 306 Pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) *Determining rate of annuity for persons entitled to Improved Pension.*

VA will determine the minimum income annuity payment for beneficiaries entitled to Improved Pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) *Determining rate of annuity for persons entitled to Old Law and Section 306 Pensions.* VA will determine the minimum income annuity payment for beneficiaries receiving Old Law and Section 306 Pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) *Recomputation.* VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.

(c) *Exception as to the requirement of pension eligibility.* An individual otherwise eligible for pension under subchapter III of 38 U.S.C. chapter 15, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92–425 as amended to any other countable income, no amount of pension is due.

(d) *Concurrent receipt of gratuitous annuity under Public Law 100–456.* If the Department of Defense or the Department of Homeland Security determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Public Law 100–456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.

(e) *Discontinuance.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will discontinue the minimum income annuity effective the same date.

(Authority: Sec. 4, Pub. L. 92–425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))

§ 5.588 Special allowance payable under section 156 of Public Law 97-377.

The provisions of this section apply to the payment of a special allowance to certain surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or who died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. This special allowance is a replacement for certain social security benefits which were either reduced or discontinued by provisions of the Omnibus Budget Reconciliation Act of 1981.

(a) *Eligibility requirements.* (1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

(2) Once a favorable determination has been made under paragraph (a)(1) of this section, determinations as to the age, relationship and school attendance requirements contained in paragraphs (a)(1) and (b)(1) of section 156 of Public Law 97-377 will be made. In making these eligibility determinations VA shall apply the provisions of the Social Security Act, and any regulations promulgated pursuant thereto, as in effect during the claimant's period of eligibility. Unless otherwise provided in this section, when issues are raised concerning eligibility or entitlement to this special allowance which cannot be appropriately resolved under the provisions of the Social Security Act, or the regulations promulgated pursuant thereto, the provisions of title 38, Code of Federal Regulations, are applicable.

(b) *Computation of payment rate—(1) Basic entitlement rate.* A basic entitlement rate will be computed for each eligible claimant in accordance with the provisions of subparagraphs (a)(2) and (b)(2) of section 156 of Public Law 97-377 using data to be provided by the Social Security Administration. This basic entitlement rate will then be used to compute the monthly payment rate as described in paragraphs (b)(2) to (b)(6) of this section.

(2) *Original or reopened awards to surviving spouses.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each

legislative increase in dependency and indemnity compensation rates under 38 U.S.C. 1311 which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(3) *Original and reopened awards to children.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) *Subsequent legislative increases in rates.* The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 3531(b).

(5) *Amendment of awards.* Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) *Rounding of monthly rates.* Any monthly rate computed under the provisions of this paragraph (b), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) *Claimants not entitled to this special allowance.* The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The New Philippine Scouts under section 14, Public Law 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

(d) *Appellate jurisdiction.* VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) *Claims—formal and informal.* Formal claims for this special allowance must be filed on a form prescribed by the Secretary of Veterans Affairs. When informal claims or inquiries as to eligibility are received, the appropriate application form shall be provided. In such cases, the date of receipt of the informal claim or inquiry will be accepted as the date of claim for this special allowance if a formal claim on the prescribed form is received within 1 year from that date.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, the effective date for an award of benefits begins on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

(Authority: Sec. 156, Pub. L. 97-377, 96 Stat. 1830, 1920 (1982))

§ 5.589 Monetary allowance for Vietnam veterans' children born with spina bifida.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of

any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions*—(1) *Vietnam veteran*. For the purposes of this section, the term “Vietnam veteran” means a person who performed active military service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. For the definition of “service in the Republic of Vietnam,” see § 5.262(a)(1).

(2) *Individual*. For the purposes of this section, the term “individual” means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 5.180(b), VA will require the types of evidence specified in §§ 5.221 and 5.229 sufficient to establish in the judgment of the Secretary that a person is the biological son or daughter of a Vietnam veteran.

(3) *Spina bifida*. For the purposes of this section, the term “spina bifida” means any form and manifestation of spina bifida except spina bifida occulta.

(d) *Disability evaluations*. (1) Except as otherwise specified in this paragraph (d), VA will determine the level of payment as follows:

(i) *Level I*. The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairment of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

(ii) *Level II*. Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual: walks with braces or other external support as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires medication or other means to control the effects of urinary bladder impairment and no more than two times per week is unable to remain dry for at least 3 hours at a time during waking hours; or, requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require wearing of

absorbent materials at least 4 days a week; or, has a colostomy that does not require wearing a bag.

(iii) *Level III*. The individual uses a wheelchair as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for 3 hours at a time during waking hours; or, despite bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage severe or frequent enough to require wearing of absorbent materials at least 4 days a week; or, regularly requires manual evacuation or digital stimulation to empty the bowel; or, has a colostomy that requires wearing a bag.

(2) If an individual who would otherwise be paid at Level I or II has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida, or from treatment procedures for spina bifida, the Director of the Compensation and Pension Service may increase the monthly payment to the level that, in his or her judgment, best represents the extent to which the disabilities resulting from spina bifida limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home. A Level II or Level III payment will be awarded depending on whether the effects of a disability are of equivalent severity to the effects specified under Level II or Level III.

(3) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided the statements or reports are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section. In the absence of adequate medical information, VA will schedule an examination for the purpose of assessing the level of disability.

(4) VA will pay an individual eligible for a monetary allowance due to spina bifida at Level I unless or until it receives medical evidence supporting a higher payment. When required to reassess the level of disability under paragraph (d)(5) or (d)(6) of this section, VA will pay an individual eligible for this monetary allowance at Level I in the absence of evidence adequate to support a higher level of disability or if

the individual fails to report, without good cause, for a scheduled examination. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc.

(5) VA will pay individuals under the age of 1 year at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the individual from ambulating, grasping a pen, feeding himself or herself, performing self care, or from achieving urinary or fecal continence. If any of those deficits are present, VA will pay the individual at Level III. In either case, VA will reassess the level of disability when the individual reaches the age of 1 year.

(6) VA will reassess the level of payment whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it must reassess the level of payment at least every 5 years.

(e) *Effective dates*. See § 5.591.

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101)

§ 5.590 Monetary allowance for female Vietnam veterans' children with certain birth defects.

(a) *Monthly monetary allowance*. (1) *General*. VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era*. No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 5.589, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 5.589(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III, or IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions*—(1) *Vietnam veteran.* For the purposes of this section, the term “Vietnam veteran” means a person who performed active military service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. For the definition of “service in the Republic of Vietnam,” see § 5.262(a)(1).

(2) *Individual.* For the purposes of this section, the term “individual” means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 5.180(b), VA will require the types of evidence specified in §§ 5.221 and 5.229 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section, the term “covered birth defect” means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and

ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term “covered birth defect” does not include a condition due to a:

- (i) Familial disorder;
- (ii) Birth-related injury; or
- (iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph (d) are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

- (i) Achondroplasia;
- (ii) Cleft lip and cleft palate;
- (iii) Congenital heart disease;
- (iv) Congenital talipes equinovarus (clubfoot);
- (v) Esophageal and intestinal atresia;
- (vi) Hallerman-Streiff syndrome;
- (vii) Hip dysplasia;
- (viii) Hirschprung's disease (congenital megacolon);
- (ix) Hydrocephalus due to aqueductal stenosis;
- (x) Hypospadias;
- (xi) Imperforate anus;
- (xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
- (xiii) Poland syndrome;
- (xiv) Pyloric stenosis;
- (xv) Syndactyly (fused digits);
- (xvi) Tracheoesophageal fistula;
- (xvii) Undescended testicle; and
- (xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

- (i) Albinism;
- (ii) Alpha-antitrypsin deficiency;
- (iii) Crouzon syndrome;
- (iv) Cystic fibrosis;
- (v) Duchenne's muscular dystrophy;
- (vi) Galactosemia;
- (vii) Hemophilia;
- (viii) Huntington's disease;
- (ix) Hurler syndrome;
- (x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
- (xi) Marfan syndrome;
- (xii) Neurofibromatosis;
- (xiii) Osteogenesis imperfecta;
- (xiv) Pectus excavatum;
- (xv) Phenylketonuria;
- (xvi) Sickle cell disease;
- (xvii) Tay-Sachs disease;
- (xviii) Thalassemia; and
- (xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered

birth defects. These include, but are not limited to, the following:

- (i) Medulloblastoma;
- (ii) Neuroblastoma;
- (iii) Retinoblastoma;
- (iv) Teratoma; and
- (v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

- (i) Down syndrome and other Trisomies;
- (ii) Fragile X syndrome;
- (iii) Klinefelter's syndrome; and
- (iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

- (i) Brain damage due to anoxia during or around time of birth;
- (ii) Cerebral palsy due to birth trauma;
- (iii) Facial nerve palsy or other peripheral nerve injury;
- (iv) Fractured clavicle; and
- (v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

- (i) Asthma and other allergies;
- (ii) Effects of maternal infection during pregnancy, including maternal rubella, toxoplasmosis, or syphilis;
- (iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
- (iv) Hyaline membrane disease;
- (v) Maternal-infant blood incompatibility;
- (vi) Neonatal infections;
- (vii) Neonatal jaundice;
- (viii) Post-infancy deafness/hearing impairment (onset after the age of 1 year);
- (ix) Prematurity; and
- (x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

- (i) Attention deficit disorder;
- (ii) Autism;
- (iii) Epilepsy diagnosed after infancy (after the age of 1 year);
- (iv) Learning disorders; and
- (v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

- (i) Conditions rendered non-disabling through treatment;

(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;

(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;

(iv) Hemangiomas that have resolved with or without treatment; and

(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph (e) that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability*—(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that

frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);

(ii) Manual dexterity;

(iii) Stamina;

(iv) Speech;

(v) Hearing;

(vi) Vision (other than correctable refraction errors);

(vii) Memory;

(viii) Ability to concentrate;

(ix) Appropriateness of behavior; and

(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule

examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* See § 5.591.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101)

§ 5.591 Effective dates of awards for certain disabled children of Vietnam veterans.

This section provides the effective date for an award, reduction, or discontinuance of the monthly monetary allowance payable under § 5.589 to a Vietnam veteran's biological child who is suffering from spina bifida or under § 5.590 of this part to a woman Vietnam veteran's biological child who suffers from one or more covered birth defects.

(a) *Effective date of award.* Except as otherwise provided in this paragraph, an award of a monetary allowance based on an original claim, a claim reopened after final denial, or a claim for increase will be effective the date VA received the claim or the date entitlement arose, whichever is later.

(1) An allowance payable under § 5.589 will not be effective before October 1, 1997.

(2) An allowance payable under § 5.590 will not be effective before December 1, 2001.

(3) Subject to paragraphs (a)(1) and (2) of this section, the effective date will be the child's date of birth, if VA received the claim within 1 year of the birth date.

(4) Subject to paragraphs (a)(1) and (2) of this section, if a previously denied claim is reopened and granted based on corrected military records, VA will apply the rule in § 3.400(g) of this chapter.

(5) Subject to paragraphs (a)(1) and (2) of this section, if a claimant files a claim for increase of a monetary allowance due to increase in disability, VA will

apply the rule in § 3.400(o)(2) of this chapter.

(6) If the allowance is based on a change of law or VA issue, VA will apply the rule in § 3.114(a) of this chapter.

(b) *Effective dates of reductions or discontinuances.* Except as otherwise provided in this paragraph, the effective date of a reduction or discontinuance of a monetary allowance shall be fixed in accordance with § 3.500(a) of this chapter.

(1) If the monetary allowance was paid erroneously because of beneficiary error, VA will apply the rule in § 3.500(b)(1) of this chapter.

(2) If the monetary allowance was paid erroneously because of administrative error by VA, VA will apply the rule in § 3.500(b)(2) of this chapter.

(3) If a discontinuance is due to the beneficiary's death, VA will discontinue benefits effective the first day of the month of the beneficiary's death.

(4) If there is a change of law or VA issue, or change in interpretation of a law or VA issue, VA will apply the rule in § 3.114 of this chapter.

(5) If a reduction or discontinuance is warranted by a change in the beneficiary's physical condition, VA will apply the rule in § 3.105(g) of this chapter.

(Authority: 38 U.S.C. 1805, 1832, 5110, 5112)

§§ 5.592–5.599 [Reserved]

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

§§ 5.600–5.602 [Reserved]

§ 5.603 Financial assistance to purchase a vehicle and adaptive equipment.

(a) *General.* Certain persons with qualifying disabilities will be certified as eligible for financial assistance to purchase a vehicle and necessary adaptive equipment.

(b) *Definition of terms.* The following definitions apply to this section.

(1) *Adaptive equipment.* (i) "Adaptive equipment" means equipment manufactured for sale to the general public and added to a vehicle to:

(A) Make it safe for use by the eligible person, and

(B) Assist the eligible person in meeting applicable standards of licensure by the proper licensing authority.

(ii) Adaptive equipment includes:

(A) Automatic transmission as to an eligible person who has lost or lost the use of a limb

(B) Power steering, power brakes, power window lifts, and power seats

(C) Air conditioning equipment, if such equipment is necessary for the health and safety of the eligible person and to the safety of others

(D) Special equipment necessary to assist the eligible person in and out of the vehicle, regardless of whether the vehicle is to be operated by the eligible person or is to be operated for such person by another person

(E) Modification of the interior space if necessary for the eligible person to enter or operate the vehicle.

(F) Items the Under Secretary for Health or designee has deemed to be ordinarily necessary for a qualifying disability or combination of qualifying disabilities, or has deemed necessary in an individual case. Such specifications of equipment may include a limit on the financial assistance to be provided based on judgment and experience.

(2) *Vehicle* means an automobile, van, truck, jeep, tractor, golf cart, or other conveyance.

(c) *Eligibility criteria.* The claimant must meet all of the requirements of this paragraph (c).

(1) *Persons eligible.* The claimant must be:

(i) A veteran who is entitled to compensation under 38 U.S.C. chapter 11, including compensation under 38 U.S.C. 1151, for a qualifying disability described in paragraph (c)(2) of this section; or

(ii) A member of the Armed Forces serving on active duty who has a qualifying disability described in paragraph (c)(2) of this section that is the result of an injury incurred or disease contracted in or aggravated by active military service.

(2) *Qualifying disabilities.* The claimant must have one of the following disabilities:

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20° in the better eye.

(iv) For the purpose of eligibility for adaptive equipment only, ankylosis of one or both knees or one or both hips.

(3) *Claim for financial assistance to purchase a vehicle and/or adaptive equipment.* (i) The claimant must file an application form for financial assistance to purchase a vehicle or adaptive equipment, which includes a

certification by the claimant that the vehicle will be operated only by persons properly licensed.

(ii) A claim for financial assistance to purchase a vehicle will also be considered a claim for adaptive equipment necessary to operate the vehicle according to the safety standards of the licensing authority.

(iii) There is no time limit in which the claimant must apply for the benefits under this section.

(iv) For claimants applying while still on active military duty, the application form will be deemed filed with VA on the date it is shown to be in possession of military authorities for transmittal to VA.

(d) *Limitations on assistance—(1) Financial assistance for vehicles.* An eligible person is not entitled to benefits for the purchase of more than one vehicle under the provisions of this section. No payments may be made for the repair, maintenance, or replacement of the vehicle.

(2) *Financial assistance for adaptive equipment.* An eligible person is not entitled to adaptive equipment for more than two vehicles in a 4-year period unless one of the adapted vehicles is no longer available. Payments may be made for the repair, replacement, or reinstallation of adaptive equipment deemed necessary by the Under Secretary for Health or designee. See §§ 17.156 through 17.158 for additional limitations on assistance for adaptive equipment.

(e) *VA certification process for financial assistance to purchase a vehicle and/or adaptive equipment.* If a claim for financial assistance to purchase a vehicle or adaptive equipment is approved, VA will issue a certificate of eligibility to the claimant.

(f) *Eligible person's redemption of certificate of eligibility.* The eligible person must give the certificate of eligibility to the seller of the vehicle and/or adaptive equipment. The seller will send the purchase receipt certificate of eligibility to VA finance for reimbursement for the purchase price, or the statutory limit set in 38 U.S.C. 3902(a), whichever is less.

(Authority: 38 U.S.C. 3901, 3902, 3903)

§§ 5.604–5.605 [Reserved]

§ 5.606 Clothing allowance.

(a) *General.* Certain veterans with a qualifying disability will be certified eligible for a clothing allowance.

(b) *Eligibility criteria.* The claimant must meet all of the requirements of this paragraph (b).

(1) *Disabled veteran.* The claimant must be a veteran with a service-

connected disability, or a veteran with a disability compensable under 38 U.S.C. 1151.

(2) *Qualifying disability.* A qualifying disability must be shown by VA examination, or hospital or examination report from a facility specified in § 5.91(a).

(i) Due to the disability described in paragraph (b)(1) of this section, the veteran wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which VA determines tends to wear out or tear the veteran's clothing; or

(ii) The veteran uses prescription medication for a skin condition which is due to the disability described in paragraph (b)(1) of this section, and VA determines that the prescribed medication causes irreparable damage to the veteran's outer garments.

(3) *Application form for clothing allowance.* The veteran must file an application form for an annual clothing allowance. Except as provided in paragraph (c) of this section, the veteran must reapply for the clothing allowance each year.

(c) *Continuing entitlement.* VA will find that the veteran has continuing entitlement to the annual clothing allowance without the need to reapply each year if the following circumstances are met:

(1) Service connection has been established for the loss or loss of use of a hand or foot and the disability requires use of a prosthetic or orthopedic appliance that wears or tears clothing; or

(2) VA makes a finding that the disability for which the annual clothing allowance was awarded is static in nature and that future reevaluations of eligibility are unnecessary.

(d) *Annual payment period and anniversary date.* The clothing allowance will be paid annually following each 12-month period beginning August 1 and ending July 31. The "anniversary date" for any 12-month period is the August 1 following that 12-month period. The "initial anniversary date" is the August 1 that follows the date when entitlement is initially established. A veteran is entitled to a clothing allowance payment for the 12-month period during which the entitlement is initially established.

(e) *Time limits for application.* (1) If a veteran meets the requirements of

paragraphs (b)(1) and (b)(2) of this section as of August 1 (known as the "anniversary date") of a calendar year, the veteran is eligible to receive the annual clothing allowance for that year if he or she submits a timely application form. An application form is timely if it is received within 1 year of the veteran's anniversary date (unless the veteran receives notice of his or her eligibility subsequent to an anniversary date for which entitlement is established, in which case paragraph (e)(2) of this section applies). For example, if VA issues a decision on April 1, 2005 that establishes service connection for a qualifying disability effective February 1, 2005, the veteran is entitled to the 2005 clothing allowance if the veteran files an application form for the clothing allowance within 1 year of August 1, 2005 (the initial anniversary date).

(2) If an initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application form for clothing allowance may be filed within 1 year from the date of notice to the veteran of such determination. For example, if VA issues a decision on December 1, 2005, that establishes service connection for a qualifying disability effective May 1, 2005, the veteran is eligible for the 2005 clothing allowance if he or she files an application form within 1 year of the date he or she received notice of the December 1, 2005, decision.

(3) If the veteran does not file the application form within 1 year of the initial anniversary date or the date specified in paragraph (e)(2), the veteran will be entitled to payment of the clothing allowance for any following year for which entitlement is established, if the veteran files an application form within 1 year of the anniversary date for that year. For example, if VA issues a decision on April 1, 2005, that establishes service connection for a qualifying disability effective February 1, 2005, and the veteran does not file within 1 year of August 1, 2005 (his initial anniversary date), then he or she is not entitled to the 2005 clothing allowance. However, the veteran may be entitled to payment for any following year. For example, the veteran would be entitled to the 2006 clothing allowance if he or she files an

application form within 1 year of the August 1, 2006 anniversary date.

(4) If a veteran first meets the requirements of paragraphs (b)(1) and (b)(2) of this section after August 1 of a calendar year, the veteran is not eligible for that year's clothing allowance. The veteran may receive the clothing allowance for any subsequent year by submitting an application within 1 year of the anniversary date (August 1) of that subsequent year.

(f) *Filipino veterans.* Annual clothing allowance claims for Filipino veterans not permanently residing in the U.S. are processed locally in Manila, Philippines. Claims authorized for such veterans of the U.S. Army or Old Philippine Scouts are paid in dollars. Claims authorized for such veterans of the New Philippine Scouts, Commonwealth Army of the Philippines, or guerrilla service, are paid in Philippine pesos equivalent to \$0.50 for each dollar authorized under the law.

(Authority: 38 U.S.C. 107, 1162)

Cross-References: Eligibility based on service in Philippine and Insular Forces. See § 5.610. Compensation at the full-dollar rate for certain Filipino veterans residing in the United States. See § 5.614.

(g) *Other veterans living abroad.* The appropriate VA medical center will process the annual clothing allowance payment for those claims under its jurisdiction based on the geographical area where the veteran maintains a permanent address.

(h) *Reduction for incarceration.* Eligible veterans who are incarcerated for any reason for a period of more than 60 days in a Federal, State, or local penal institution and who are provided clothing without charge by the institution will not receive the full clothing allowance payment. The amount stated in 38 U.S.C. 1162 will be reduced by 1/365th of that amount for each day over 60 days that the veteran was incarcerated during the 12-month eligibility period beginning August 1 and ending July 31. No reduction will be made for the initial 60 days of a period of incarceration.

(Authority: 38 U.S.C. 5313A)

§§ 5.607–5.609 [Reserved]

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Federal Register

**Friday,
March 9, 2007**

Part IV

The President

**Executive Order 13427—Extending
Privileges and Immunities to the
Permanent Observer Mission of the Holy
See to the United Nations**

**Presidential Determination No. 2007-14 of
February 28, 2007—Presidential
Determination Under Section 490(b)(1)(A)
of the Foreign Assistance Act Relating to
the Largest Exporting and Importing
Countries of Certain Precursor Chemicals**

Presidential Documents

Title 3—

Executive Order 13427 of March 7, 2007

The President

Extending Privileges and Immunities to the Permanent Observer Mission of the Holy See to the United Nations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7(b) of the Department of State Authorities Act of 2006 (22 U.S.C. 2881), I hereby extend to the Permanent Observer Mission of the Holy See to the United Nations in New York, and to its members, the privileges and immunities enjoyed by the diplomatic missions of member states to the United Nations, and members of such missions, subject to corresponding conditions and obligations.

This extension of privileges and immunities is not intended to abridge in any respect privileges or immunities that the Permanent Observer Mission of the Holy See to the United Nations in New York and its members otherwise may have acquired or may acquire by law.



THE WHITE HOUSE,
March 7, 2007.

Presidential Documents

Presidential Determination No. 2007-14 of February 28, 2007

Presidential Determination Under Section 490(b)(1)(A) of the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Memorandum for the Secretary of State

Pursuant to section 490(b)(1)(A) of the Foreign Assistance Act, I hereby determine that the top five exporting and importing countries of pseudoephedrine and ephedrine in 2005 (Belgium, China, Germany, India, Indonesia, Mexico, Singapore, South Africa, South Korea, Switzerland, Taiwan, and the United Kingdom) have cooperated fully with the United States or have taken adequate steps on their own to achieve full compliance with the goals and objectives established by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

You are directed to publish this determination in the **Federal Register**, and are authorized and directed to transmit to the Congress the report under section 722 of the Combat Methamphetamine Epidemic Act.



Reader Aids

Federal Register

Vol. 72, No. 46

Friday, March 9, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6064**Public Laws Update Service (numbers, dates, etc.) **741-6043**TTY for the deaf-and-hard-of-hearing **741-6086**

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FEDERAL REGISTER PAGES AND DATE, MARCH

9233-9432.....	1
9433-9650.....	2
9651-9840.....	5
9841-10032.....	6
10033-10338.....	7
10339-10592.....	8
10593-10882.....	9

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

376.....	9233
601.....	10033
3369.....	9235

3 CFR

Proclamations:	
6641 (See	
Proclamation	
8111).....	10025
8031 (Amended by	
Proclamation	
8112).....	10031
8107.....	9431
8108.....	9641
8109.....	9643
8110.....	9649
8111.....	10025
8112.....	10031
Executive Orders:	
11651 (See	
Proclamation	
8111).....	10025
13288 (See Notice of	
February 28,	
2007).....	9645
13391 (See Notice of	
February 28,	
2007).....	9645
13426.....	10589
13427.....	10879
Administrative Orders:	
Notices:	
Notice of February 28,	
2007.....	9645
Presidential	
Determinations:	
No. 2007-14 of	
February 28, 2007.....	10881

15 CFR	
740.....	9847
742.....	9847
744.....	9433
774.....	9847
16 CFR	
0.....	9434
17 CFR	
Proposed Rules:	
240.....	9412
249.....	9412
18 CFR	
Proposed Rules:	
Ch. I.....	9281
358.....	10433
19 CFR	
12.....	10004
163.....	10004
361.....	10004
20 CFR	
404.....	9239
416.....	9239
Proposed Rules:	
404.....	9709
416.....	9709
21 CFR	
14.....	9674
71.....	10356
73.....	10356
74.....	10356
170.....	10356
171.....	10356
172.....	10356
180.....	10356
184.....	10356
310.....	9849

2 CFR	
745.....	10593
747.....	10593
14 CFR	
39.....	9237, 9652, 9655, 9657, 9658, 9660, 9662, 9666, 9843, 10049, 10052, 10054, 10057, 10342, 10344, 10346, 10348, 10349, 10350
71.....	9238, 9239, 10059, 10353, 10354
91.....	9845
97.....	9846, 10354
Proposed Rules:	
25.....	9273
39.....	9276, 9475, 9877, 9880, 10093, 10429, 10431, 10620, 10622, 10624

358.....9849	Proposed Rules:	52 ...9263, 9441, 10380, 10608,	33.....10419
520.....9242, 10595	1910.....9716	10610, 10613	74.....9233
522.....9242, 9243, 10596	30 CFR	70.....10613	76.....9233
524.....10597	942.....9616	180.....9834, 10074	1169.....9235
558.....9244, 9245, 10357	Proposed Rules:	300.....10078	Proposed Rules:
22 CFR	250.....9884	Proposed Rules:	98.....9491
41.....10060	920.....10433	51.....10445	
99.....9852	32 CFR	52.....10445, 10453, 10626,	47 CFR
133.....10033	706.....10603	10627	Proposed Rules:
137.....10033	Proposed Rules:	60.....9903	76.....9289
145.....10033	903.....10436	63.....9718	
Proposed Rules:	33 CFR	70.....10627	48 CFR
51.....10095	117 ...9435, 9854, 9855, 10358,	81.....9285	Ch. 44.....9445
25 CFR	10605	300.....10105	
61.....9836	165 9436, 10358, 10359,	41 CFR	
26 CFR	10360	102-35.....10084	49 CFR
1.....9245, 9262	Proposed Rules:	42 CFR	211.....10086
Proposed Rules:	100.....9477	121.....10616	393.....9855
1.....9284	110.....10438, 10440	Proposed Rules:	Proposed Rules:
301.....9712	165.....9901, 10443	405.....9479	229.....9904
27 CFR	34 CFR	424.....9479	
9.....10598	280.....10605	498.....9479	50 CFR
28 CFR	36 CFR	43 CFR	229.....9446, 9448
0.....10064	228.....10308, 10608	3160.....10308, 10608	622.....10088, 10089
5.....10064	38 CFR	Proposed Rules:	648.....10426
12.....10064	9.....10362	4.....10454	665.....10090
17.....10064	17.....10365	44 CFR	679 9272, 9450, 9451, 9676,
65.....10064	Proposed Rules:	65.....10382	10428
73.....10064	5.....10860	67 9675, 10391, 10392	Proposed Rules:
29 CFR	40 CFR	Proposed Rules:	17.....9913, 10477
2530.....10070	51.....10367	67 10466, 10470, 10474	223.....9297
		45 CFR	622.....9499
		30.....10404	635.....10480
			648.....9719
			665.....9500, 10628

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 9, 2007**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
Karnal bunt; published 3-9-07

**COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration**

Fishery conservation and management:
Atlantic highly migratory species—
Commercial shark management measures; published 2-7-07

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
California; published 1-8-07
Virginia; published 1-8-07

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Animal drugs, feeds, and related products:
Enrofloxacin; implantation or injectable dosage form; published 3-9-07
Fenbendazole paste; published 3-9-07
Oxfendazole suspension; published 3-9-07

HEALTH AND HUMAN SERVICES DEPARTMENT**Health Resources and Services Administration**

Health resources development:
Organ Procurement and Transplantation Network—
Intestines; published 3-9-07

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Drawbridge operations:
California; published 3-6-07
Delaware; published 2-7-07

RULES GOING INTO EFFECT MARCH 10, 2007**COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration**

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Sablefish; published 2-20-07

RULES GOING INTO EFFECT MARCH 11, 2007**TRANSPORTATION DEPARTMENT**

Standard time zone boundaries:
Indiana; published 2-9-07

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:
Bovine spongiform encephalopathy; minimal-risk regions; importation of live bovines and products derived from bovines; comments due by 3-12-07; published 1-9-07 [FR 07-00017]
Cattle export; pre-export tuberculosis and brucellosis testing requirement; elimination; comments due by 3-12-07; published 1-10-07 [FR E7-00111]

**COMMERCE DEPARTMENT
Industry and Security Bureau**

Export administration regulations:
License exceptions; destinations of diversion concern; Country Group C designation; comments due by 3-12-07; published 2-26-07 [FR E7-03252]

CONSUMER PRODUCT SAFETY COMMISSION

Federal Hazardous Substances Act:
Children's jewelry containing lead; injury risk; comment request; comments due by 3-12-07; published 1-9-07 [FR E7-00109]

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Distribution transformers; comments due by 3-12-07; published 2-9-07 [FR E7-02168]

**ENERGY DEPARTMENT
Federal Energy Regulatory Commission**

Natural Gas Policy Act:
Interstate natural gas pipelines; capacity release policies; comment request; comments due by 3-12-07; published 1-10-07 [FR E7-00128]
Standards of conduct:
Natural gas pipeline transmission providers; comments due by 3-15-07; published 1-29-07 [FR E7-01118]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
Electric utility steam generating units and industrial-commercial-institutional steam generating units; comments due by 3-12-07; published 2-9-07 [FR E7-01881]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 3-12-07; published 2-8-07 [FR E7-02117]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California; comments due by 3-16-07; published 2-14-07 [FR E7-02538]

Air quality implementation plans; approval and promulgation; various States:
West Virginia; comments due by 3-12-07; published 2-8-07 [FR E7-02126]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Beauveria Bassiana HF23; comments due by 3-12-07; published 1-10-07 [FR E7-00170]

Toxic substances:

Significant new uses—
2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione; comments due by 3-16-07; published 1-30-07 [FR E7-01413]

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit insurance coverage; large-bank deposit insurance determination modernization proposal; comments due by 3-13-07; published 12-13-06 [FR E6-21143]

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Human and animal drugs:
Cattle material; prohibited use in medical products for humans and drugs intended for use in ruminants; comments due by 3-13-07; published 1-12-07 [FR E6-22329]
Human drugs:
Investigational drugs; sale; comments due by 3-14-07; published 12-14-06 [FR 06-09685]

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Pollution:
Mandatory ballast water management reporting and recordkeeping requirements; comments due by 3-16-07; published 11-8-06 [FR E6-18903]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Sacramento River, CA; comments due by 3-14-07; published 3-6-07 [FR E7-03804]
Savannah River, Savannah GA; comments due by 3-12-07; published 1-9-07 [FR 07-00038]

INTERIOR DEPARTMENT**Indian Affairs Bureau**

Indian trust management reform; comments due by 3-12-07; published 1-25-07 [FR 07-00325]

INTERIOR DEPARTMENT

Indian trust management reform; comments due by 3-12-07; published 1-25-07 [FR 07-00325]

PERSONNEL MANAGEMENT OFFICE

Civil service regulations:
Student loans repayment; comments due by 3-12-07; published 1-9-07 [FR E7-00101]

SECURITIES AND EXCHANGE COMMISSION

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Interactive data voluntary reporting program; mutual fund risk/return summary information data tagging; comments due by 3-14-07; published 2-12-07 [FR E7-02254]

Securities:

Credit Rating Agency Reform Act of 2006; implementation—
Nationally recognized statistical rating organizations; comments due by 3-12-07; published 2-9-07 [FR 07-00548]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 3-12-07; published 2-8-07 [FR E7-01883]

Boeing; comments due by 3-13-07; published 1-12-07 [FR E7-00220]

British Aerospace Regional Aircraft; comments due by 3-14-07; published 2-12-07 [FR E7-02312]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-12-07; published 1-10-07 [FR E7-00147]

Latinoamericana de Aviacion S.A.; comments due by 3-16-07; published 2-14-07 [FR E7-02508]

Robinson Helicopter Co.; comments due by 3-12-07; published 1-9-07 [FR 07-00026]

Airworthiness standards:

Special conditions—

Aviation Technology Group Javelin Model 100 airplane; comments due by 3-12-07; published 2-8-07 [FR E7-02097]

Quest Aircraft Co. Kodiak Model 100 airplane; comments due by 3-12-07; published 2-8-07 [FR E7-02098]

Class D airspace; comments due by 3-15-07; published 1-9-07 [FR 07-00008]

Class E airspace; comments due by 3-15-07; published 2-26-07 [FR 07-00804]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Federal nontax payments to collect delinquent debts owed to States; comments due by 3-12-07; published 1-11-07 [FR E7-00127]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Medical care or services; reasonable charges; comments due by 3-15-07; published 2-13-07 [FR E7-02391]

LIST OF PUBLIC LAWS

This is 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>.

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H.R. 49/P.L. 110-7

To designate the facility of the United States Postal Service located at 1300 North Frontage Road West in Vail, Colorado, as the "Gerald R. Ford, Jr. Post Office Building". (Mar. 7, 2007; 121 Stat. 62)

H.R. 335/P.L. 110-8

To designate the facility of the United States Postal Service located at 152 North 5th Street in Laramie, Wyoming, as the "Gale W. McGee Post Office". (Mar. 7, 2007; 121 Stat. 63)

H.R. 433/P.L. 110-9

To designate the facility of the United States Postal Service located at 1700 Main Street in Little Rock, Arkansas, as the "Scipio A. Jones Post Office

Building". (Mar. 7, 2007; 121 Stat. 64)

H.R. 514/P.L. 110-10

To designate the facility of the United States Postal Service located at 16150 Aviation Loop Drive in Brooksville, Florida, as the "Sergeant Lea Robert Mills Brooksville Aviation Branch Post Office". (Mar. 7, 2007; 121 Stat. 65)

H.R. 577/P.L. 110-11

To designate the facility of the United States Postal Service located at 3903 South Congress Avenue in Austin, Texas, as the "Sergeant Henry Ybarra III Post Office Building". (Mar. 7, 2007; 121 Stat. 66)

Last List February 28, 2007

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