



Federal Register

3-20-07

Vol. 72 No. 53

Tuesday

Mar. 20, 2007

Pages 12947-13162



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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 337 and 930

RIN 3206-AK86

Examining System and Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to revise the Administrative Law Judge Program. The purpose of these revisions is to remove procedures that appear in other parts of this chapter, update outdated information, and remove the internal examining processes from the regulations. Additionally, these revisions describe OPM and agency responsibilities concerning the Administrative Law Judge Program. These regulations continue the basic intent of making administrative law judges independent in matters of appointment, tenure and compensation.

DATES: This rule is effective April 19, 2007.

FOR FURTHER INFORMATION CONTACT:

Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at linda.watson@opm.gov.

SUPPLEMENTARY INFORMATION: On December 13, 2005, the Office of Personnel Management (OPM) published a proposed rule at 70 FR 73646, to revise the Administrative Law Judge Program. On December 21, 2005, OPM republished the proposed rule at 70 FR 75745 due to information that was inadvertently omitted.

The administrative law judge function was established by the Administrative Procedure Act (APA) (Act of June 11,

1946, 60 Stat. 237, as amended), which is codified, in relevant part, in title 5, United States Code (U.S.C.), at sections 556, 557, 1305, 3105, 3344, 4301(2)(D), 5372, and 7521. Administrative law judges preside in formal proceedings requiring a decision on the record after the opportunity for a hearing. The APA requires that this function be carried out in an impartial manner. To ensure objectivity of administrative law judges and to insulate them from improper pressure, the law made these positions independent of the employing agencies in matters of appointment, tenure, and compensation.

The goal of these revised regulations is to streamline the existing administrative law judge regulations as prescribed in title 5, Code of Federal Regulations (CFR), part 930, subpart B. The proposed regulations remove redundant procedures and outdated information, clarify bar membership requirements, and provide for the administrative law judge examination process to be established in a manner similar to other OPM competitive examinations.

During the comment period, OPM received written comments from six Federal agencies; five professional organizations; the exclusive bargaining representative of administrative law judges serving at the Social Security Administration (SSA) and the Department of Health and Human Services (HHS); and seventeen individuals. Based on these comments, OPM adopts several suggestions and clarifies areas where there appeared to be some confusion and misunderstanding. OPM is addressing the comments according to topics identified.

OPM's Authority To Administer the Administrative Law Judge Program

OPM's authority to administer the employment of administrative law judges (formerly called hearing examiners) was created by the APA. Text in section 11(1st) of the APA (5 U.S.C. 1010(1st)) stated that agencies must appoint "qualified and competent" administrative law judges. Although former section 1010(1st) was replaced by 5 U.S.C. 3105 when title 5 was enacted into positive law in 1966, the amendment was not substantive, and the requirement that administrative law judges be qualified and competent

continued to apply. See Pub. L. 89-554, sec. 7(a), 80 Stat. 631 (the purpose of sections 1-6 of the 1966 Act, codifying title 5, was "to restate, without substantive change, the laws replaced by those sections on the effective date of this Act [Sept. 6, 1966]"); H.R. Rep. No. 89-901, at 36 (1965) (replacement of 5 U.S.C. 1010(1st) with 5 U.S.C. 3105 did not effect a substantive amendment); S. Rep. No. 89-1380, at 55 (1966) (same). The APA's legislative history, commenting on this requirement, states that the Civil Service Commission, OPM's forerunner, must "fix appropriate qualifications" for administrative law judges and that the agencies must "seek fit persons." See S. Rep. No. 79-572 (1945), *reprinted in Administrative Procedure Act, Legislative History, 79th Congress, 1944-46*, S. Doc. No. 79-248, at 187, 215 (1946); H.R. Rep. No. 79-1980 (1946), *reprinted in S. Doc. No. 79-248*, at 235, 280.

The President has the authority to set standards for individuals entering into the Federal civil service in the executive branch, and to prescribe rules for competitive examinations. 5 U.S.C. 3301, 3304; *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 115 n.47 (1976); *Am. Fed'n of Govt. Employees v. Hoffman*, 543 F.2d 930, 938 (D.C. Cir. 1976). The President delegated his authority to the Director of OPM through Executive Order 10577, Rule II, codified as amended in 5 CFR 2.1(a). *Mow Sun Wong*, 426 U.S. at 111; *Am. Fed'n*, 543 F.2d at 938. *See also* 5 U.S.C. 1104(a)(1), reflecting the President's authority to delegate the authority for competitive examinations to the Director of OPM. Additionally, Congress required OPM to prescribe regulations for competitive service examinations, including the administrative law judge examination. 5 U.S.C. 1302. *See also Mow Sun Wong*, 426 U.S. at 115 n.47. Under the preceding authorities, OPM is responsible for regulating and conducting competitive examinations for administrative law judges, and for establishing qualification standards for administrative law judge candidates and incumbents that promote the efficiency of the competitive service.

Discussion of Comments

Many commenters challenge OPM's authority to modify the administrative law judge program. These commenters

claim that Congress established the administrative law judge position under the APA and only Congress can make the types of changes OPM is proposing. As noted above, we have identified authorities under which OPM administers the administrative law judge program.

Two commenters claim that OPM does not have the authority to approve non-competitive personnel actions for administrative law judges, including but not limited to promotions, transfers, reinstatements, restorations, reassignments, and pay adjustments and that by doing so, OPM violates 5 U.S.C. 7521. OPM's authority to approve movement of administrative law judges such as promotions, reassignments, transfers, reinstatements, restorations, and pay adjustments is prescribed in the existing regulations in §§ 930.204 through 930.210. These regulations are authorized by 5 U.S.C. 1305, which states that OPM may investigate and regulate to give effect to the provisions applicable to administrative law judges in 5 U.S.C. 3105, 3344, 4301, and 5372. OPM has not changed the procedures for approving non-competitive personnel actions, which ensure that such actions are consistent with the statutes cited above.

An agency suggests OPM consider giving agencies the authority to promote, transfer, and detail administrative law judges in excess of 120 days without obtaining OPM's approval. The agency is concerned about being able to bring back a specific judge with the in-depth knowledge of a case after he or she has separated from the agency. OPM is not adopting this suggestion. OPM is responsible for ensuring the independence of administrative law judges, and OPM believes it can best discharge this obligation if it continues to approve these requests. Accordingly, as prescribed in 5 CFR part 930, subpart B, OPM will continue to require agencies to obtain OPM's approval for non-competitive actions such as promotions, reassignments, transfers, reinstatements, restorations, pay adjustments, and details in excess of 120 days. OPM also will continue to work with agencies to fill their vacant administrative law judge positions with qualified administrative law judges as promptly as possible.

One commenter recognizes that OPM has the authority to administer the administrative law judge program; however, the commenter asserts that OPM does not have the authority to re-delegate to agencies the authority to assign an administrative law judge to cases in rotation so far as practicable

and to ensure the independence of the administrative law judge. Under the APA, OPM and the employing agencies have responsibilities related to administrative law judges. Although OPM also has the authority, pursuant to 5 U.S.C. § 1305, to issue regulations concerning the requirement in 5 U.S.C. 3105, the employing agency's obligation to assign its administrative law judges to cases in rotation, insofar as practicable, arises directly under the applicable statute, 5 U.S.C. 3105, not pursuant to any re-delegation from OPM. The language with which the commenter took issue was meant to be descriptive rather than prescriptive. OPM is revising § 930.201(e) and (f) to clarify this point.

Professional License Requirement

Background

Under the APA, administrative law judges preside in formal proceedings requiring a decision on the record after an opportunity for a hearing. Administrative law judges must be held to a high standard of conduct so that the integrity and independence of the administrative judiciary is preserved. OPM has a longstanding policy that an administrative law judge applicant or incumbent must have an active bar membership or a current license to practice law (i.e., must be both licensed and authorized to practice law). The purpose of a professional license is to ensure that administrative law judges, like attorneys, remain subject to a code of professional responsibility. These ethical requirements cannot be waived.

Under the current "OPM Examination Announcement No. 318, as amended, Opportunities in the Federal Government as an Administrative Law Judge," if an applicant wishes to apply for an administrative law judge position the applicant must possess a total of 7 years of experience as an attorney and must be duly licensed and authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Applicants must continue to be licensed and authorized to practice law throughout the selection process, including any period on the standing register of eligibles. At the time of appointment, the newly appointed administrative law judge is required to be duly licensed and authorized to practice law. Once appointed, the administrative law judge is expected to maintain the qualifying requirement for a professional license to practice law while serving as an administrative law judge in the Federal

competitive service. Additionally, if a retired administrative law judge wishes to return to Federal Service as a senior administrative law judge the retired judge must be duly licensed and authorized to practice law.

OPM is authorized to establish standards for competitive service applicants that will best promote the efficiency of the service. The requirement for administrative law judge applicants and incumbents to be both licensed and authorized to practice law was professionally developed, is supported by a job analysis, and is rationally related to performance in the position to be filled.

The bar license requirement is based on the results of three job analyses of the administrative law judge occupation conducted by OPM's Personnel Research Psychologists in 1990, 1999, and 2002. The job analyses were based on administrative law judge subject matter expert input, and developed and conducted in accordance with the *Uniform Guidelines on Employee Selection Procedures*.

The results of these studies show that Integrity/Honesty is fundamental for performing the duties of an administrative law judge. In particular, the 2002 study documents the usefulness and job-relatedness of requiring, as minimum qualifications, bar membership and seven (7) years of certain qualifying experience. Accordingly, OPM has determined to adhere to its long-standing position that an administrative law judge applicant must demonstrate he or she is an active member or has judicial status that authorizes the practice of law and requires adherence to his or her State's or jurisdiction's ethical requirements.

In meeting OPM's goal to establish the administrative law judge examination process in a manner similar to other OPM competitive examinations, the requirement that a bar membership applies to both applicants and employees is in accordance with all other OPM qualification standards for the competitive service. Failure at any time (applicant or incumbent) to meet a minimum qualification requirement means the individual is not qualified to perform the duties of the position.

In addition, the requirement for administrative law judge applicants and incumbents to be both licensed and authorized to practice law is historically grounded. The Federal Circuit has found that a qualification requirement's long-standing role in administrative law judge selection is an important factor in evaluating the standard's rationality. See *Meeker v. Merit Sys. Protection Bd.*, 319 F.3d 1368, 1378 (Fed. Cir. 2003),

affirming minimum qualification requirement of seven years of relevant legal experience, and noting "the important role that experience has always played in the selection of ALJs". At the time the APA was approved, most of the agencies and departments recommended to the Civil Service Commission, OPM's forerunner, that a law degree and bar membership be required of candidates for administrative law judge positions. In subsequent years, a report by the Committee on Hearing Officers of the President's Conference on Administrative Procedure contained recommendations that in addition to legal experience, a law degree and bar membership be required of all candidates. In the early 1960's, following the recommendations by the President's Administrative Conference, the Civil Service Commission established an Advisory Committee to review the entire program. Based on previous recommendations that bar membership be required and the nature of the work, the Advisory Committee made a similar recommendation indicating that the requirement would help ensure that candidates possessed the degree of expertise to perform satisfactorily in the job. The Civil Service Commission adopted the recommendation concerning bar membership and it has been a standard in the Program since 1964.

Minimum qualification requirements do not disappear after an individual is appointed as an administrative law judge. As described in the following discussion of comments, a standard for career-entry promotes the efficiency of the competitive service only if it applies continuously to applicants and incumbents alike.

Discussion of Comments

OPM received comments opposing the license requirement for incumbent administrative law judges. A few commenters claim that the license requirement is a new qualification requirement; therefore, the public must be given an opportunity to comment on it. As discussed above, the license requirement is not a new requirement and the **Federal Register** notice proposing these regulations is correct in stating that OPM was clarifying bar membership.

The first category of comments states that OPM exceeded its authority under authorizing statutes. This is incorrect. The President has the power to establish qualifications and conditions of employment in the competitive service under 5 U.S.C. 3301 and 3304, and has delegated this standard-setting authority

to OPM under Executive Order 10577, Rule II, codified as amended in 5 CFR 2.1(a). *See also* 5 U.S.C. 1104(a)(1). OPM is required by 5 U.S.C. 1302 to promulgate regulations for competitive service examinations implementing Rule II. The Supreme Court and the District of Columbia Circuit have ruled that where OPM promulgates a standard under 5 U.S.C. 3301 and 5 CFR 2.1(a), OPM requires no further statutory or executive authority for its action. *See Mow Sun Wong*, 426 U.S. at 113 (holding that where OPM promulgates a standard under 5 U.S.C. 3301 and Rule II, it "may either retain or modify the * * * requirement without further authorization from Congress or the President"); *Hoffman*, 543 F.2d at 941 n.17 (same). It is nonetheless notable that Congress also expressed its specific intent in the legislative history of section 11 of the APA that OPM be responsible for fixing standards to ensure that qualified and competent administrative law judges are appointed.

Several commenters state that while OPM has the statutory authority to establish qualifications for administrative law judge applicants and appointees, including "active" bar membership requirements, OPM's authority does not extend to incumbent administrative law judges. Under controlling District of Columbia Circuit case law, OPM's authority under 5 U.S.C. 3301 and 5 CFR 2.1(a) extends to establishing ongoing "conditions of employment for civil servants in the executive branch," not just appointment qualifications. *Hoffman*, 543 F.2d at 938. A standard for career entry promotes the efficiency of the competitive service only if it applies continuously to applicants and incumbents alike.

According to a second category of comments, even if OPM has the authority to impose a license requirement, its implementation is too broad and not rationally related to OPM's goals. These commenters assert that the representative licensing jurisdictions allow incumbent judges to take an inactive, judicial, or retired status on grounds that they are not actively engaged in the practice of law, so there is no rational basis for OPM to require "active" bar status or a current license to practice law. Some commenters assert that inactive, judicial, or retired status would continue to subject the incumbent to appropriate State bar disciplinary oversight while exempting them from potentially burdensome fees, continuing legal education requirements, and reexamination requirements. One

commenter asserts that by taking judicial status in lieu of "active" status, an administrative law judge appropriately remains subject to discipline under State codes of judicial conduct, even if the administrative law judge is no longer subject to rules of professional responsibility applicable to practicing attorneys. Another commenter asserts, conversely, that administrative law judges should be allowed to maintain an inactive status specifically so that they will not be subject to disciplinary oversight by State licensing authorities. Two commenters recommend that if the "active" bar membership or current license requirement is adopted, it should be phased in to allow all incumbent administrative law judges time to come into compliance because of the potential financial burden associated with a change in bar status in some jurisdictions.

We disagree with these comments and recommendations because application of the "active" bar membership or current license requirement to both applicant and incumbent administrative law judges promotes the efficiency of the competitive service. Moreover, as it is not a new requirement, a transition period is not needed.

According to a third category of comments, the license requirement will cause administrative law judges to violate State law. Several commenters state that requiring incumbent administrative law judges to maintain a current license to practice law may cause administrative law judges to violate a provision of the Model Code of Judicial Conduct that bars judges from the practice of law. This argument is misplaced. Canon 4G of the Model Code and related Commentary, when incorporated in the law of the relevant licensing jurisdiction, prohibits a judge only from practicing law "in a representative capacity," and does not prohibit, or in any way restrict, a judge from maintaining a current license to practice law. In addition, the final regulations accommodate State law by allowing an administrative law judge to take judicial status where he or she is prohibited by State law from taking "active" status.

A fourth category of comments raises a concern that the regulations subject administrative law judges to overlapping ethics and license requirements. The commenters state a concern that if incumbent administrative law judges are required to maintain "active" bar membership or a current license to practice law, they may, under 28 U.S.C. 530B(a), be subject to both the rules of professional

responsibility applicable to attorneys practicing in the jurisdiction where the administrative law judge conducts proceedings, and the rules of professional responsibility of the jurisdiction where the administrative law judge is licensed. Pursuant to 28 U.S.C. 530B(c) and the Department of Justice's implementing regulations in 28 CFR 77.2(a), 28 U.S.C. 530B(a) applies only to certain Department of Justice and Independent Counsel officials, and plainly does not apply to any administrative law judge performing a function under 5 U.S.C. 3105.

A fifth category of comments states that the license requirement violates Federalism principles. Two commenters assert that requiring incumbent administrative law judges to maintain a current license to practice law constitutes a Federal infringement on the States' regulation of the legal profession. OPM does not assert in these regulations the authority to preempt State laws governing the licensing of attorneys. Rather, OPM's regulations establish a minimum qualification requirement for an administrative law judge position in the Federal competitive service that incorporates relevant State license requirements. In fact, OPM's regulations avoid conflict with State license requirements by allowing administrative law judges to take a judicial status where State law prohibits an "active" status.

One commenter asserts that requiring incumbent administrative law judges to maintain a current license to practice law in essence gives OPM the authority to make licensing determinations currently made by the States. OPM is not asserting or exercising any authority to license the legal profession in these regulations.

Certain commenters express a concern that by requiring administrative law judges to maintain an "active" bar membership or license to practice law, OPM is defining administrative law judges as persons engaged in the practice of law while performing their official duties. This interpretation is not OPM's position and it is not supported by the text of these regulations.

A sixth category of comments states that the license requirement will allow collateral attacks on administrative proceedings and actions against administrative law judges. Specifically, an agency is concerned that an incumbent administrative law judge's failure to meet the license requirement would encourage a disappointed litigant to collaterally attack the administrative proceedings over which the administrative law judge presides, and could subject the presiding

administrative law judge to State bar complaints related to official adjudicative duties, even though under Supreme Court case law, administrative law judges are immune from lawsuits related to the performance of their official duties. This comment is addressed to the commenter's perception of litigation risk associated with including this longstanding requirement in the revised regulations, rather than the merits or appropriateness of the requirement per se. Accordingly, OPM has disregarded this comment.

A seventh category of comments asserts that the requirement for "active" bar membership or a current license to practice law has a retroactive legal effect. OPM disagrees. As OPM has repeatedly stated, these regulations clarify an existing requirement. They have prospective legal effect, consistent with 5 U.S.C. 551(4) and *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

The final category of comments asserts that the license requirement is unconstitutional. Specifically, a commenter asserts that requiring an incumbent administrative law judge to maintain an "active" bar membership or current license to practice law potentially violates the 5th Amendment. OPM disagrees. The license requirement does not effect a deprivation of life, liberty, or property without due process of law. Further, this requirement does not raise an equal protection concern because it does not constitute a classification adversely affecting a category of regulated persons without a rational basis.

OPM has considered all the comments submitted by individuals, professional organizations, agencies, and the exclusive bargaining representative for administrative law judges at SSA and HHS. OPM has not received any compelling argument to change its policy on the professional license requirement for administrative law judges. As we have stated previously, this is not a new requirement but a clarification of a longstanding OPM policy that an administrative law judge must have an "active" bar membership or current license to practice law. The license requirement is a qualification requirement, in addition to the requirement for 7 years of attorney experience, which must be maintained for successful performance as an administrative law judge. It is an on-going permanent requirement for any individual serving in an administrative law judge position.

Consequently, to ensure that the professional license requirement is

maintained, OPM is incorporating the professional license requirement in § 930.204(b) of these regulations and as a Condition of Employment in the Qualification Standard for Administrative Law Judges, which applies to both applicants and incumbents. OPM will also incorporate the requirement in the new administrative law judge vacancy announcement. The final rule expressly reaffirms OPM's longstanding requirement that an administrative law judge possess a professional license to practice law and be authorized to practice law. The requirement attaches at the time of application. If the applicant is determined to be eligible, the requirement continues to apply while the applicant is on the administrative law judge competitive register and at the time of appointment. Following appointment, the requirement continues to apply for as long as the appointee continues to serve as an administrative law judge. The requirement would also apply at the time of application to serve and while serving as a senior administrative law judge.

OPM has provided two alternatives in lieu of "active" status, that is, "judicial" and "good standing" status. Judicial status is acceptable in States that prohibit sitting judges from maintaining an "active" status to practice law. Being in "good standing" is also acceptable in lieu of "active" status in States where the licensing authority construes "good standing" to mean having a current license to practice law.

Elimination of the Administrative Law Judge Examination Process

Background

A lengthy description of the administrative law judge examination and its procedures is contained in the existing § 930.203. The method by which examinations are conducted and administered, however, is subject to periodic changes. For that reason, OPM has decided to remove from the regulations the detailed language describing the internal examining process and procedures, such as the language concerning periodic open competition, minimum qualifications, supplemental qualifications, participation in examination procedures, and final rating. OPM has concluded, based upon its experience and expertise, that a better vehicle for addressing this type of information is the vacancy announcement, as prescribed in 5 U.S.C. 3330 and 5 CFR part 330, and as required in all other

competitive service vacancy announcements.

Sections 1104, 1302, 3301, and 3304 of title 5, U.S.C., authorize OPM to develop and administer the administrative law judge competitive examination. To maintain the relevance and validity of the examination, OPM has periodically conducted occupational studies of the administrative law judge occupation to revise and update elements of the administrative law judge examination. The administrative law judge examination should be allowed to evolve based on new technology and advances in the state of the art of examination methodology. In order to fulfill its responsibility to develop the administrative law judge examination in the optimal manner, OPM should be in a position to incorporate these advances promptly, without having to amend its regulations. Information on the examination process will be included in the new vacancy announcement for administrative law judge positions. The revised regulations, therefore, do not include detailed information about the examination and related processes.

Since 1963, 5 CFR 337.101(a) has prescribed a general process for scoring competitive examinations, while § 930.203 has prescribed a specialized process for scoring administrative law judge examinations, separate from the default process in § 337.101(a). Prior to 1987, the administrative law judge scoring process was codified in § 930.203(a), and § 337.101(a) contained a cross-reference to § 930.203(a). In 1987 and 1991, however, OPM amended § 930.203 to describe the examination process in additional paragraphs of that section, but OPM did not make a conforming amendment to the cross-reference in § 337.101(a). Because the cross-reference in § 337.101(a) has been out-of-date for several years, and because the revised regulations do not include a detailed description of the examination scoring process, we are replacing the cross-reference with a more general statement that § 337.101(a) applies “except as otherwise provided in this chapter.” Section 930.201(e)(1) of the revised regulations, in turn, states that the use of the examination scoring process published in § 337.101(a) is not required in scoring the administrative law judge examination, consistent with OPM’s and the Civil Service Commission’s regulatory policy, since 1963, of excepting the administrative law judge examination process from the requirements of § 337.101(a).

Discussion of Comments

Several commenters oppose the removal of the detailed description of the administrative law judge internal examination process and procedures from the regulations and incorporating the information in an administrative law judge vacancy announcement. The commenters assert that this action will weaken the administrative law judge rating and selection process to the detriment of the American public; may not provide uniformity of treatment or adequate opportunity for public review and comment, particularly where criteria may vary from notice to notice; and will be changeable at will without notice and comment by the public. The commenters suggest that OPM continue incorporating the examination process in the regulations to ensure public confidence, and that OPM publish any changes to the examination process for public comment, so that such changes can be fully evaluated.

OPM’s course of action, in laying out the detailed description of the examination process and procedures in the new vacancy announcement, is consistent with OPM’s practice for other competitive examinations. There has never been any suggestion, in the statutes governing the appointment of administrative law judges, that the examination process and procedures were required to be encompassed in regulations. The examination process and procedures information described in the existing regulations are also described in the current “OPM Examination Announcement No. 318, as amended, Opportunities in the Federal Government as an Administrative Law Judge.” Any significant changes to the administrative law judge examination or examination process will be publicly announced in the vacancy announcement. In addition, OPM is developing a stand-alone administrative law judge qualification standard that will be described and supplemented in the new administrative law judge vacancy announcement. OPM, therefore, is not adopting the suggestion to retain the descriptive language of the examination process and procedures in the regulations.

Several commenters express concern that OPM is eliminating the administrative law judge examination. OPM is not eliminating the administrative law judge examination; in fact, OPM is developing a new administrative law judge examination.

One commenter identifies several factors that the commenter believes are a prerequisite to being an excellent candidate for an administrative law

judge position such as decision-making, developing evidence, and assessing credibility. The commenter requests that OPM consider these factors in the examination process for selecting effective administrative law judge candidates. The commenter’s suggestion for specific criteria to be used for rating candidates in future administrative law judge examinations is outside the scope of this rulemaking and will not, therefore, be considered in the context of revising these regulations.

Two commenters express a concern related to the conforming revision. The first comment by an agency suggests that the change to 5 CFR 337.101(a) is in conflict with § 930.201(e)(1). OPM disagrees. Section 337.101(a) prescribes a scoring process while allowing alternatives. Section 930.201(e)(1) gives OPM the option to use this scoring process or an alternative, depending on the examining methodology used to develop the administrative law judge competitive examination. The second commenter did not clearly state an objection to the revision and we therefore do not address it.

Elimination of OPM Examination Announcement No. 318, as Amended

Background

The revised regulations remove any reference to “OPM Examination Announcement No. 318, as Amended, Opportunities in the Federal Government as an Administrative Law Judge” (Announcement). The Announcement is a vacancy announcement issued in 1993 and amended in 1996 to recruit individuals for administrative law judge positions in the Federal competitive service. It describes the duties of an administrative law judge, the rating process, qualifying education and experience requirements, the rating appeal process, and general information for the applicant. The Announcement is similar to other vacancy announcements used to recruit individuals for positions into the Federal Government, except that it was incorporated by reference in the existing regulations. In the existing regulations, the Announcement is referenced to the extent that it addresses meeting the examination or qualification requirements for an administrative law judge position.

Discussion of Comments

Several commenters oppose the removal of the reference to the Announcement from the regulations. The commenters claim OPM is removing the administrative law judge qualification requirements, omitting

qualifying military experience, and eliminating the administrative law judge examination. These commenters suggest OPM retain the Announcement in the regulations.

There appears to be a misunderstanding among commenters that by eliminating the Announcement from the regulations, OPM is eliminating the qualification requirements for administrative law judges. To the contrary, § 930.201(e)(3) of the revised regulations specifically authorizes OPM to issue a qualification standard for administrative law judges. The regulations also prescribe a qualification requirement for “active” bar membership or a current license to practice law. OPM has separately posted for comment, on its Web site, a stand-alone qualification standard prescribing the proposed minimum qualification requirements for administrative law judge positions, including the bar license requirement. When the qualification requirement is finalized, it will again be posted on OPM’s Web site, consistent with OPM’s practice in publishing other qualification standards. The new administrative law judge vacancy announcement will describe the minimum qualification requirements for administrative law judge positions and provide supplemental information, as needed.

OPM received a consolidated comment submission from the Departments of the Army, Air Force, and Navy; Headquarters, U.S. Marine Corps; and the Department of Homeland Security, U.S. Coast Guard, expressing concern that OPM omitted language to allow military experience as qualifying for an administrative law judge position. It was not OPM’s intent, in drafting its proposed qualification standard, to eliminate military experience as qualifying experience for an administrative law judge position. In order to make this principle more clear, OPM is adopting the military services’ comments to the extent necessary to reflect differences in terminology between military and civilian legal practice. For additional information, OPM has published on its Web site guidance on how to credit military experience, at <http://www.opm.gov/qualifications>, and on veterans’ preference, at <http://www.opm.gov/veterans>.

Definition of Superior Qualifications

OPM proposed to revise the definition of “superior qualifications” which is covered in the existing § 930.210(g)(2). The definition of “superior qualifications” is redesignated to § 930.202 in the final regulations.

Discussion of Comments

Several commenters oppose the proposed expanded definition for “superior qualifications.” The commenters state that OPM’s proposal to add the phrase “special skills that will meet a demonstrated need of the hiring agency” is equivalent to selective certification criteria and suggest OPM remove the phrase from the definition. OPM is adopting the suggestion and is removing this phrase from the superior qualifications definition.

Definition of Removal

OPM proposed to revise the definition of “removal” for clarity.

Discussion of Comments

Two commenters claim the proposed definition of “removal” violates 5 U.S.C. 7521 because it excludes the phrase “involuntary reassignment, demotion, or promotion to a position other than that of an administrative law judge.” The commenters suggest that OPM retain the existing definition for “removal.” OPM does not object to keeping the existing definition for “removal” and is adopting the suggestion.

Administrative Law Judge Pay System

OPM proposed to add a new paragraph (i) to § 930.205 to clarify that an agency may reduce the level or rate of basic pay of an administrative law judge for good cause after the Merit Systems Protection Board (MSPB) orders the action, as provided in § 930.211, or to reduce the level of basic pay of an administrative law judge if agreed upon by the administrative law judge with OPM’s prior approval. The reason for the proposal is that OPM periodically receives requests from agencies to reduce an administrative law judge’s level of basic pay, based on the administrative law judge’s voluntary request for personal reasons (e.g., the desire for a position of less responsibility). These requests are thoroughly documented by the agency prior to OPM’s approval.

Discussion of Comments

Two commenters oppose OPM’s proposed revisions of § 930.205(i), asserting that the revisions violate 5 U.S.C. 7521, Actions against administrative law judges. The commenters suggest that the revisions would allow an agency to negotiate a settlement agreement with the administrative law judge prior to an MSPB “good cause” hearing which may result in a voluntary request for a reduction in pay from the administrative law judge. OPM did not

intend such a result in proposing this revision. OPM’s regulations governing administrative law judges do not address settlement agreements.

In response to the comments, OPM is revising the proposed language to distinguish with greater precision between a reduction in an administrative law judge’s level or rate of basic pay following a disciplinary proceeding, governed by §§ 930.205(i) and 930.211, and a reduction in an administrative law judge’s level of basic pay based on a voluntary request for personal reasons. OPM is adding a new paragraph (j) to § 930.205 to describe a reduction in pay based on a voluntary request for personal reasons.

Priority Referral List

OPM proposed revising § 930.215(c)(5) of the existing regulations, redesignated as § 930.210(c)(3), in order to emphasize a hiring flexibility that allows an agency, with OPM’s approval, to fill its administrative law judge positions by reassigning administrative law judges within its workforce, in lieu of selecting a displaced administrative law judge on OPM’s priority referral list. The intent of this revision was to emphasize that an agency does have the option of selecting an administrative law judge from other than the OPM priority referral list.

Discussion of Comments

Three commenters oppose the proposed revisions of § 930.210(c)(3). The commenters state that the revisions will permit an agency to circumvent the use of the OPM priority referral list by intra-agency reassignment of administrative law judges or appointment of an administrative law judge from an OPM certificate of eligibles; that it will allow an agency to bypass an adversely affected administrative law judge who has very few opportunities for reappointment, yet who is qualified for appointment at all agencies and in any administrative law judge position at any agency; and that by removing the phrase “extraordinary circumstances” from the existing regulations, the proposed regulations might not allow adequate oversight. After reviewing these comments, OPM is not implementing the proposed hiring flexibility. The existing provision will be restored, except for clarifying language specifically explaining that OPM has the authority “under extraordinary circumstances” to allow an agency to fill a vacant position through competitive examining, promotion, transfer, reassignment, or reinstatement procedures instead of selecting a

displaced administrative law judge from OPM's priority referral list.

One commenter suggests that OPM allow administrative law judges on OPM's priority referral list to have two opportunities for declining an offer of full-time employment as an administrative law judge before the administrative law judge's eligibility on the OPM priority referral list terminates. OPM disagrees with this commenter and is not adopting the suggestion. With the limited number of administrative law judge positions open at any given time and the infrequency of vacancies, OPM does not believe it is appropriate for a displaced administrative law judge to have more than one opportunity to decline an offer of full-time employment as an administrative law judge at the pay level held at the time of reduction in force and in the geographical location indicated as acceptable. OPM will continue its long-standing practice of allowing only one full-time employment offer declination before an administrative law judge is terminated from OPM's priority referral list.

Suitability

OPM has published suitability regulations in 5 CFR part 731 and in the existing administrative law judge regulations in §§ 930.214(c) and 930.216(f). The revised regulations clarify the suitability requirements. The revised provisions appear in §§ 930.204(a), 930.209(b)(3) and 930.211(c)(1).

Discussion of Comments

Two commenters state that the suitability language in the revised § 930.211(c)(1) is a new requirement and object to it. The commenters imply that suitability actions against administrative law judge applicants and incumbents are not consistent with 5 U.S.C. 7521, governing adverse actions. OPM disagrees. Administrative law judge applicants, appointees, and employees, like other competitive service applicants, appointees, and employees, are subject to suitability investigations and determinations. The adverse action provisions in 5 U.S.C. 7521, and the suitability provisions in 5 CFR parts 2, 5, and 731 apply independently to administrative law judges. The suitability requirement is not new and the text of §§ 930.204(a), 930.209(b)(3) and 930.211(c)(1) include only clarifying changes.

Performance and Incentive Awards

The existing regulations state, at § 930.210(b), "An agency may not grant a monetary and honorary award under 5 U.S.C. 4503 for superior

accomplishment by an administrative law judge in the performance of adjudicatory functions." OPM removed the phrase "in the performance of adjudicatory functions" in redesignated § 930.206(b), and added references to 5 U.S.C. 4502 and 4504.

Discussion of Comments

One commenter claims OPM made a substantial change to the regulations on the granting of any award or financial incentives to an administrative law judge. The commenter insists that by eliminating the phrase "in the performance of adjudicatory functions," OPM strips all possibility of any awards or financial incentives for an administrative law judge, even if the administrative law judge performs executive and management functions in an exemplary manner, devises an innovative administrative technique, or makes a suggestion outside the duties of an administrative law judge that saves an agency thousands of dollars. The commenter claims this is discriminatory and, therefore, urges OPM to retain the existing language.

Under the APA, OPM has the responsibility to ensure the independence of an administrative law judge in matters of appointment, tenure, and compensation, as well as to ensure independent judgments from administrative law judges. *See* 5 U.S.C. 1305 (authorizing OPM to regulate and investigate agencies to give effect to 5 U.S.C. 3105, 3344, 4301(2)(D), and 5372); *Ramspeck v. Fed. Trial Examiners Conf.*, 345 U.S. 128, 139–142 (1953). An award or discretionary financial incentive of any kind poses an unacceptable risk of interfering with an administrative law judge's judicial independence, and could have the additional effect of circumventing the legal prohibition against performance appraisals. *See* 5 U.S.C. 4301(2)(D), § 930.211 of OPM's existing regulations, and § 930.206(a) of the final regulations published with this notice. By removing the phrase "in the performance of adjudicatory functions" from the regulations and adding specific references to 5 U.S.C. 4502 and 4504 to the regulations, OPM is clarifying that monetary or honorary awards or financial incentives of any kind, whether granted under Chapter 45 or other authority, are prohibited. OPM is not adopting the commenter's suggestion, and is adding clarifying language to state that honorary, as well as monetary awards and incentives are prohibited.

OPM received two opposing views on the issue of pay for performance for administrative law judges. OPM did not

consider either view since the existing law does not permit administrative law judges to be rated on performance.

General Comments

One commenter suggests that all Federal administrative judges become administrative law judges for consistency and for the best interest of the public. This recommendation is both contrary to the requirements of the APA and outside the scope of these regulations, and cannot be considered.

OPM received several comments requesting the reestablishment of an Office of Administrative Law Judges within OPM. This comment cannot be considered, as it concerns OPM's internal management and organization, a matter outside the scope of these regulations.

Derivative Table Comparing New Section Numbers in Part 930, Subpart B With Current Section Numbers.

The following derivation table has been prepared to make it easier for readers to compare OPM's new rule in part 930, subpart B, with the current regulations.

DERIVATION TABLE FOR 5 CFR 930
SUBPART B

New section	Current section
930.201	930.201.
930.201(a)	930.201(a).
930.201(b)	930.201(b).
930.201(c)	930.203b.
930.201(d)	New.
930.201(e)(1) through (11).	New.
930.201(f)(1) through (4).	New.
930.201(f)(2)	930.212.
930.202	930.202.
Administrative Law Judge Position.	930.202(c).
Agency	930.202(a).
Detail	930.202(b).
	930.202(d) (Removed).
	930.202(e) (Removed).
Removal	930.202(f).
Senior Administrative Law Judge.	930.216(a)(2).
Superior Qualifications	930.210(g)(2).
930.203	930.201(c).
930.204	930.203a.
930.204(a)	930.203a(a) and (b).
930.204(b)	New.
930.204(c)	930.203a(c).
930.204(c)(1)	930.203a(c)(1).
930.204(c)(2)	930.203a(c)(2).
930.204(c)(3)	930.203a(c)(3) (Revised).
930.204(c)(4)	930.203a(c)(4) (Revised).
	930.203a(d) (Removed).
930.204(d)	930.203a(e).

DERIVATION TABLE FOR 5 CFR 930
SUBPART B—Continued

New section	Current section
930.204(e)	930.204 (Revised).
930.204(f)	930.205 (Revised).
930.204(g)	930.207 (Revised).
930.204(h)	930.206 (Revised).
	930.208 (Removed).
930.204(i)	New.
930.205	930.210.
930.205(f)(2)	930.210(g)(2).
930.205(i)	New.
930.205(j)	New.
	930.210(j) through
	(m) (Removed).
930.206	New title.
930.206(a)	930.211.
930.206(b)	930.210(b).
930.207	930.209.
930.208	930.213.
930.209	930.216.
930.210	930.215.
930.211	930.214.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies and employees.

List of Subjects in 5 CFR Parts 337 and 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM is amending 5 CFR parts 337 and 930 as follows:

PART 337—EXAMINING SYSTEM

■ 1. The authority citation for part 337 is revised to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; and 117 Stat 1392, 1665.

Subpart A—General Provisions

■ 2. Revise § 337.101 paragraph (a) to read as follows:

§ 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as otherwise provided in this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

■ 3. Revise Subpart B to read as follows:

Subpart B—Administrative Law Judge Program

Sec.

- 930.201 Coverage.
- 930.202 Definitions.
- 930.203 Cost of competitive examination.
- 930.204 Appointments and conditions of employment.
- 930.205 Administrative law judge pay system.
- 930.206 Performance rating and awards.
- 930.207 Details and assignments to other duties within the same agency.
- 930.208 Administrative Law Judge Loan Program—detail to other agencies.
- 930.209 Senior Administrative Law Judge Program.
- 930.210 Reduction in force.
- 930.211 Actions against administrative law judges.

Authority: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

Subpart B—Administrative Law Judge Program

§ 930.201 Coverage.

(a) This subpart applies to individuals appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557 and to administrative law judge positions.

(b) Administrative law judge positions are in the competitive service. Except as otherwise stated in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) The title “administrative law judge” is the official title for an administrative law judge position. Each agency must use only this title for personnel, budget, and fiscal purposes.

(d) The Director of OPM, or designee, shall prescribe the examination methodology in the design of each administrative law judge examination.

(e) OPM does not hire administrative law judges for other agencies but has the authority to:

(1) Recruit and examine applicants for administrative law judge positions, including developing and administering the administrative law judge examinations under 5 U.S.C. 3301, 3304, 1104(a), and 1302, and Executive Order 10577, as amended, except OPM is not required to use the examination scoring process in 5 CFR 337.101(a);

(2) Assure that decisions concerning the appointment, pay, and tenure of administrative law judges in Federal agencies are consistent with applicable laws and regulations;

(3) Establish classification and qualification standards for administrative law judge positions;

(4) Approve noncompetitive personnel actions for administrative law judges, including but not limited to promotions, transfers, reinstatements, restorations, and reassignments;

(5) Approve personnel actions related to pay for administrative law judges under § 930.205(c), (f)(2), (g), and (j);

(6) Approve an intra-agency detail or assignment of an administrative law judge to a non-administrative law judge position that lasts more than 120 days or when an administrative law judge cumulates a total of more than 120 days for more than one detail or assignment within the preceding 12 months;

(7) Arrange the temporary detail (loan) of an administrative law judge from one agency to another under the provisions of the administrative law judge loan program in § 930.208;

(8) Arrange temporary reemployment of retired administrative law judges to meet changing agency workloads under the provisions of the Senior Administrative Law Judge Program in § 930.209;

(9) Maintain and administer the administrative law judge priority referral program under § 930.210(c);

(10) Promulgate regulations for purposes of sections 3105, 3344, 4301(2)(D) and 5372 of title 5, U.S.C.; and

(11) Ensure the independence of the administrative law judge.

(f) An agency employing administrative law judges under 5 U.S.C. 3105 has:

(1) The authority to appoint as many administrative law judges as necessary for proceedings conducted under 5 U.S.C. 556 and 557;

(2) The authority to assign an administrative law judge to cases in rotation so far as is practicable;

(3) The responsibility to ensure the independence of the administrative law judge; and

(4) The responsibility to obtain OPM's approval before taking any of the personnel actions described in paragraphs (e)(4) through (8) of this section.

§ 930.202 Definitions.

In this subpart:

Administrative law judge position means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

Agency has the same meaning given in 5 U.S.C. 551(1).

Detail means the temporary assignment of an administrative law judge from one administrative law judge position to another administrative law judge position without change in civil service or pay status.

Removal means discharge of an administrative law judge from the position of an administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of an administrative law judge.

Senior administrative law judge means a retired administrative law judge who is reemployed under a temporary appointment under 5 U.S.C. 3323(b)(2) and § 930.209 of this chapter.

Superior qualifications means an appointment made at a rate above the minimum rate based on such qualifications as experience practicing law before the hiring agency; experience practicing before another forum in a field of law relevant to the hiring agency; or an outstanding reputation among others in a field of law relevant to the hiring agency.

§ 930.203 Cost of competitive examination.

Each agency employing administrative law judges must reimburse OPM for the cost of developing and administering the administrative law judge examination. Each agency is charged a pro rata share of the examination cost, based on the actual number of administrative law judges the agency employs. OPM computes the cost of the examination program on an annual basis and notifies the employing agencies of their respective shares after the calculations are made.

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only with prior approval of OPM, except when it makes its selection from the list of eligibles provided by OPM. An administrative law judge receives a career appointment and is exempt from

the probationary period requirements under part 315 of this chapter. An administrative law judge appointment is subject to investigation, and an administrative law judge is subject to the suitability requirements in part 731 of this chapter.

(b) *Licensure.* At the time of application and any new appointment and while serving as an administrative law judge, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of "active" status in States that prohibit sitting judges from maintaining "active" status to practice law. Being in "good standing" is also acceptable in lieu of "active" status in States where the licensing authority considers "good standing" as having a current license to practice law.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give an incumbent employee an administrative law judge career appointment if that employee is serving in the position when it is classified as an administrative law judge position on the basis of legislation, Executive order, or a decision of a court and if:

(1) The employee has competitive status or is serving in an excepted position under a permanent appointment;

(2) The employee is serving in an administrative law judge position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of an employee from a non-administrative law judge position.* Except as provided in paragraphs (a) and (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

(e) *Promotion.* (1) Except as otherwise stated in this paragraph, 5 CFR part 335 applies in the promotion of administrative law judges.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher level

classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(f) *Reassignment.* Prior to OPM's approval, the agency must provide a bona fide management reason for the reassignment.

(g) *Reinstatement.* An agency may reinstate a former administrative law judge who served under 5 U.S.C. 3105, passed an OPM administrative law judge competitive examination, and meets the professional license requirement in paragraph (b) of this section.

(h) *Transfer.* An agency may not transfer an individual from one administrative law judge position to another administrative law judge position within 1 year after the individual's last appointment, unless the gaining and losing agencies agree to the transfer.

(i) *Conformity.* Actions under this section must be consistent with § 930.201(f).

§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position to one of the three levels of basic pay, AL-3, AL-2 or AL-1 of the administrative law judge pay system established under 5 U.S.C. 5372 in accordance with this section. Pay level AL-3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the 1st day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL-3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL-2 and AL-1. Administrative law judge positions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position and placement in level AL-3, an administrative law judge is paid at the minimum rate A of AL-3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52- or 104-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to unformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL-3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for the higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an

administrative law judge certificate of eligibles; or

(ii) A former administrative law judge with superior qualifications who is eligible for reinstatement.

(g) With prior OPM approval, an agency, on a one-time basis, may advance an administrative law judge in an AL-3 position with added administrative and managerial duties and responsibilities one rate above the administrative law judge's current AL-3 pay rate, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL-2 or AL-1, an administrative law judge is paid at the established rate for the level.

(i) An employing agency may reduce the level or rate of basic pay of an administrative law judge under § 930.211.

(j) With prior OPM approval, an employing agency may reduce the level of basic pay of an administrative law judge if the administrative law judge submits to the employing agency a written request for a voluntary reduction due to personal reasons.

§ 930.206 Performance rating and awards.

(a) An agency may not rate the job performance of an administrative law judge.

(b) An agency may not grant any monetary or honorary award or incentive under 5 U.S.C. 4502, 4503, or 4504, or under any other authority, to an administrative law judge.

§ 930.207 Details and assignments to other duties within the same agency.

(a) An agency may detail an administrative law judge from one administrative law judge position to another administrative law judge position within the same agency in accordance with 5 U.S.C. 3341.

(b) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(c) An agency may assign an administrative law judge to perform non-administrative law judge duties only when:

(1) The other duties are consistent with administrative law judge duties and responsibilities;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had a total of more than 120 days of such assignments or details within the preceding 12 months.

(d) OPM may authorize a waiver of paragraphs (c)(2) and (c)(3) of this section if an agency shows that it is in the public interest to do so. In

determining whether a waiver is justified, OPM may consider, but is not restricted to considering, such factors as unusual case load or special expertise of the detailee.

§ 930.208 Administrative Law Judge Loan Program—detail to other agencies.

(a) In accordance with 5 U.S.C. 3344, OPM administers an Administrative Law Judge Loan Program that coordinates the loan/detail of an administrative law judge from one agency to another. An agency may request from OPM the services of an administrative law judge if the agency is occasionally or temporarily insufficiently staffed with administrative law judges, or an agency may loan the services of its administrative law judges to other agencies if there is insufficient work to fully occupy the administrative law judges' work schedule.

(b) An agency's request to OPM for the services of an administrative law judge must:

(1) Identify and briefly describe the nature of the case(s) to be heard;

(2) Specify the legal authority for which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(c) The services of an administrative law judge under this program are made from the starting date of the detail until the end of the current fiscal year, but may be extended into the next fiscal year with OPM's approval. Decisions for an extension are made by OPM on a case-by-case basis.

(d) The agency requesting the services of an administrative law judge under this program is responsible for reimbursing the agency that employs the administrative law judge for the cost of the service.

§ 930.209 Senior Administrative Law Judge Program.

(a) OPM administers a Senior Administrative Law Judge Program in accordance with 5 U.S.C. 3323(b)(2). The Senior Administrative Law Judge Program is subject to the requirements and limitations in this section.

(b) A senior administrative law judge must meet the:

(1) Annuitant requirements under 5 U.S.C. 3323;

(2) Professional license requirement in § 930.204(b); and

(3) Investigations and suitability requirements in part 731 of this chapter.

(c) Under the Senior Administrative Law Judge Program, OPM authorizes agencies that have temporary, irregular

workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy administrative law judge annuitants. If OPM is unable to identify an administrative law judge under § 930.208 who meets the agency's qualification requirements, OPM will approve the agency's request.

(d) An agency wishing to temporarily reemploy an administrative law judge must submit a written request to OPM. The request must:

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate the agency's temporary or irregular workload requirements for conducting proceedings;

(3) Specify the tour of duty, location, period of time, or particular cases(s) for the requested reemployment; and

(4) Describe any special qualifications the retired administrative law judge possesses that are required of the position, such as experience in a particular field, agency, or substantive area of law.

(e) OPM establishes the terms of the appointment for a senior administrative law judge. The senior administrative law judge may be reemployed either for a specified period not to exceed 1 year or for such time as may be necessary for the senior administrative law judge to conduct and complete the hearing and issue decisions for one or more specified cases. Upon agency request, OPM may reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(f) A senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105.

(g) A senior administrative law judge is paid the rate of basic pay for the pay level at which the position has been classified. If the position is classified at pay level AL-3, the senior administrative law judge is paid the lowest rate of basic pay in AL-3 that equals or exceeds the highest previous rate of basic pay attained by the individual as an administrative law judge immediately before retirement, up to the maximum rate F.

§ 930.210 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction in force regulations in part 351 of this chapter apply to administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency lists its administrative law judges by group and subgroup according to tenure of employment, veterans' preference, and service date as outlined in part 351 of this chapter. Because administrative law judges are not given performance ratings (see § 930.206), the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) An administrative law judge who is reached in an agency's reduction in force and receives a notification of separation is eligible for placement assistance under the agency's reemployment priority list established and maintained in accordance with subpart B of part 330 of this chapter.

(2) An administrative law judge who is reached by an agency in a reduction in force and who is notified of being separated, furloughed for more than 30 days, or demoted, is entitled to have his or her name placed on OPM's administrative law judge priority referral list for the level in which last served and for all lower levels.

(i) To have his or her name placed on the OPM priority referral list, a displaced administrative law judge must provide OPM with a request for priority referral placement, a resume or equivalent, a list of acceptable geographical locations, and a copy of the reduction in force notice at any time after the receipt of the specific reduction in force notice, but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion.

(ii) Eligibility on the OPM priority referral list expires 2 years after the effective date of the reduction in force action.

(iii) Referral and selection of administrative law judges are made without regard to selective certification or special qualification procedures.

(iv) Termination of eligibility on the OPM priority referral list takes place when an administrative law judge submits a written request to terminate eligibility, accepts a permanent full-time administrative law judge position, or declines one full-time employment offer as an administrative law judge at or above the level held when reached for reduction in force at geographic locations indicated as acceptable under paragraph (c)(2)(i) of this section.

(3) When there is no administrative law judge available on the agency's reemployment priority list, an agency may fill a vacant administrative law

judge position only from OPM's priority referral list, unless the agency obtains prior approval from OPM to fill the vacant position through competitive examining, promotion, transfer, reassignment, or reinstatement procedures. OPM will grant such approvals only under extraordinary circumstances. The agency must demonstrate that the potential administrative law judge candidate possesses experience and qualifications superior to any available displaced administrative law judge on OPM's priority referral list.

§ 930.211 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as prescribed in 5 U.S.C. 7521 and 5 CFR part 1201. Procedures for adverse actions by agencies under part 752 of this chapter do not apply to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, is detrimental to the interests of the Federal Government, the agency may:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these circumstances would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on annual leave, sick leave, leave without pay, or absence without leave, as appropriate, if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If the alternatives in paragraphs (b)(1) through (b)(3) of this section are not available, the agency may consider placing the administrative law judge in a paid non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in paragraphs (a) and (b) of this section do not apply:

(1) In making dismissals or taking other actions under 5 CFR part 731;

(2) In making dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532;

(3) To reduction in force actions taken by agencies under 5 U.S.C. 3502; or

(4) In any action initiated by the Office of Special Counsel under 5 U.S.C. 1215.

[FR Doc. E7-4959 Filed 3-19-07; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904-AB66

Alternative Fuel Transportation Program; Alternative Compliance

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to implement section 514 of the Energy Policy Act of 1992, as amended by section 703 of the Energy Policy Act of 2005, which allows States and alternative fuel providers to petition for a waiver of the alternative fueled vehicle (AFV) acquisition requirements. Today's final rule requires that for a State or alternative fuel provider to be granted a waiver, the State entity or alternative fuel provider must request a waiver to demonstrate that in lieu of complying with the applicable AFV acquisition requirement for a model year, it will take other actions to reduce its annual petroleum motor fuel consumption by an amount equal to 100 percent alternative fuel use in all of the fleet's AFVs, including AFVs that the State entity or alternative fuel provider would have been required to acquire if there was no waiver.

DATES: *Effective Date:* The final rule is effective April 19, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bluestein, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, FreedomCAR and Vehicle Technologies Program, Mailstop EE-2G, Room 5F-034, 1000 Independence Avenue, SW., Washington, DC 20585-0121; (202) 586-6116 or linda.bluestein@ee.doe.gov, or Mr. Chris Calamita, U.S. Department of Energy, Office of General Counsel, GC-72, Room 6B-256, 1000 Independence Avenue, SW., Washington, DC 20585-0121; (202) 586-9507 or Christopher.calamita@hq.doe.gov.

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I. Introduction and Background

Title V of the Energy Policy Act of 1992 (Pub. L. 102-486; the Act) established requirements for covered alternative fuel providers ("covered persons") and States to acquire set percentages of AFVs. (42 U.S.C. 13251(a) and 13257(o)) As of 1999, 90 percent of light-duty motor vehicles acquired by a covered person must be AFVs. As of 2000, 75 percent of light-duty motor vehicles acquired for a State fleet¹ must be AFVs. Section 508

¹ Section 301 of the Act defines "fleet" as "a group of 20 or more light-duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

- (A) motor vehicles held for lease or rental to the general public;
- (B) motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;
- (C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;
- (D) law enforcement motor vehicles;
- (E) emergency motor vehicles;
- (F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

provides for the use of credits in complying with the AFV requirements. (42 U.S.C. 13258) Title V also provides for an exemption process from the AFV requirements. (42 U.S.C. 13251(a)(5) and 13257(i)) As directed by the Act, DOE issued regulations, 10 CFR part 490—Alternative Fuel Transportation Program, to implement the AFV provisions. (61 FR 10622; March 14, 1996).

On August 8, 2005, the Energy Policy Act of 2005, (Pub. L. 109-58; EPACT 2005) was signed into law. In part, EPACT 2005 provides additional flexibility for States and covered persons subject to AFV acquisition requirements under 10 CFR part 490. Specifically, section 703 of EPACT 2005 adds an alternative compliance program (entitled "Alternative Compliance") under section 514 of title V of the Act. (42 U.S.C. 13263a) Section 514 authorizes DOE to grant to covered persons and States a waiver from the AFV acquisition requirements under section 501 (42 U.S.C. 13251) and section 507(o) (42 U.S.C. 13257(o)), respectively. The statute provides that any State or covered person may apply for an alternative compliance waiver, and that DOE must grant the waiver if the State or covered person demonstrates that its fleet will reduce annual petroleum consumption by an amount equal to the amount of petroleum it would reduce if the fleet's cumulative inventory of AFVs operated 100 percent of the time on alternative fuel (42 U.S.C. 13263a(a) and (b)). (Under the AFV requirements, States are not required to operate AFVs on alternative fuel and covered persons are required to operate their AFVs on alternative fuel only when it is available. (42 U.S.C. 13251(a)(4)) In addition, the State or covered person requesting a waiver must be in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act.

On June 23, 2006, DOE issued a notice of proposed rulemaking (NPR) to establish procedures for the submission of, and action on, applications for alternative compliance waivers submitted by States and covered persons subject to AFV acquisition requirements under part 490, 71 FR 36034, June 23, 2006. In the NPR, DOE proposed to add a new subpart I to part 490, which would include provisions

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night[.]

regarding the timing of waiver requests and responses by DOE, waiver documentation and application requirements, annual reporting of petroleum reductions, use of credits to offset petroleum reduction shortfalls, rollover of excess petroleum reduction to future years, enforcement for violations, and record retention.

In addition, using its rulemaking authority under title V and section 644 of the DOE Organization Act (42 U.S.C. 7254), DOE proposed that States or covered persons may use vehicles that are not part of the "fleet," such as medium- and heavy-duty vehicles, and excluded light-duty motor vehicles (LDVs), to meet their petroleum reduction requirement. Under the same authority, DOE sought to address a discrepancy in the statutory language between the treatment of States that have section 508 credits versus those that do not. As such, DOE proposed that both States that have section 508 credits and States that do not have section 508 credits would be required to achieve comparable annual petroleum reduction.

II. Public Comments

DOE received nine sets of written comments from the public. DOE also held a public hearing at DOE headquarters in Washington, DC on July 12, 2006, where the NOPR was discussed and oral comments were received from four industry associations and two fuel provider utility companies subject to 10 CFR Part 490.

Written comments were received from the National Rural Electric Cooperative Association; the California Electric Transportation Coalition; the National Biodiesel Board; Florida Power and Light, a covered fuel provider utility; Southern California Edison, a covered fuel provider utility; the California Natural Gas Vehicle Coalition; NGV America, a natural gas vehicle association; the National Association of Fleet Administrators; and El Paso Electric, a covered fuel provider utility.

Generally, the oral and written comments were supportive of the proposed rulemaking because of the increased flexibility for covered fleets and increased emphasis on petroleum reduction. Commenters, however, provided a variety of suggestions for incorporation into the final rule including comments on how to determine a State's or covered person's cumulative inventory of AFVs, the petroleum reductions eligible for consideration under the alternative compliance program, and the information required for a complete waiver application. The specific issues

raised by commenters are addressed in the discussion below.

III. Discussion of the Final Rule

A. Eligibility for Alternative Compliance Waiver

Under section 514(a) of the Act, any covered person subject to AFV acquisition requirements of section 501 and any State subject to AFV acquisition requirements in 507(o) may petition the Secretary of Energy for a waiver from those requirements. (42 U.S.C. 13263a(a)) Section 514(b)(1)(A) of the Act provides DOE *shall* grant a waiver for a covered person if the covered person demonstrates a reduction in petroleum consumption equal to the reduction that would result under 100 percent cumulative compliance with the fuel use required in section 501 of the Act. (42 U.S.C. 13263a(b)(1)(A)) Section 514(b)(1)(B) of the Act provides that DOE shall grant a waiver for a State entity granted credits under section 508, if that State demonstrates a reduction in petroleum motor fuel consumption equal to the amount of petroleum the fleet's² cumulative inventory of AFVs would reduce if the AFVs operated 100 percent of the time on alternative fuel. (42 U.S.C. 13263(b)(1)(B)) In addition, the party seeking a waiver must be in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act.

Relying on rulemaking authority under title V of the Act and section 644 of the DOE Organization Act (42 U.S.C. 7254), DOE proposed that State fleets, regardless of whether they earned section 508 credits, would be eligible for a waiver if they demonstrated a reduction in petroleum motor fuel consumption equal to the amount of petroleum the fleet's cumulative inventory of required AFV acquisitions would reduce if those required acquisitions operated 100 percent of the time on alternative fuel. The proposed regulation would treat States equally regardless of whether a State was granted credits.

DOE did not receive any comments regarding which entities would be eligible to apply for a waiver. As such, today's final rule permits covered persons, States that have been issued credits, and States that have not been issued credits to apply for a waiver and meet the same requirements.

² The term "fleet" is defined in title V of the Act to include only covered LDVs (42 U.S.C. 13211(9)).

B. Petroleum Reduction Calculation

1. Cumulative Inventory

Consistent with section 514, the proposed rule required both covered persons and State entities to reduce petroleum fuel consumption by an amount equal to the petroleum the fleet's cumulative inventory of AFVs, including required AFV acquisitions in waiver years, would reduce if those vehicles operated 100 percent of the time on alternative fuel. Under the proposal, a fleet's cumulative inventory is equal to the number of previously required AFVs actually in the current fleet, plus the number of AFVs acquisitions that would be required if a waiver were not granted. The inclusion of AFV acquisitions in waiver years when calculating the necessary petroleum reduction is consistent with the statute's purpose of providing States and covered persons compliance flexibility in exchange for achieving the maximum level of petroleum fuel reduction.

If AFV requirements for waiver years were not included in the cumulative AFV count, a waiver in successive years would have rapidly diminishing petroleum reduction requirements, because a fleet granted successive waivers would have fewer and fewer AFVs in its fleet as vehicles are retired. Fewer AFVs in the fleet would result in a lower required petroleum reduction. This result would be unreasonable in light of the petroleum replacement goal of the statute.

DOE received two sets of supportive comments on its interpretation of "cumulative." A fuel provider association, however, objected to the proposed rule with regard to what is counted toward a State or covered person's baseline for petroleum reduction. The commenter recommended that "cumulative" should mean all the AFVs that a covered person or State would have had in its fleet if it had purchased all the AFVs it was required to purchase—without consideration of previously used vehicle credits or exemptions granted. Otherwise, the commenter stated, a covered person or State that has not previously relied on credits or exemptions would be required to achieve a fuel reduction greater than a comparable covered person or State that previously relied on credits or exemptions.

Consideration of all AFVs, including those requirements addressed through credits and exemptions, is overly restrictive. In employing credits and exemptions, States and covered persons were relying upon part 490. States and

covered persons typically rely on credits or exemptions because it is extremely difficult or impossible for them to comply through AFV purchases. If AFV requirements that were previously satisfied through credits or exemptions were included in the waiver calculation, the waiver option would likely be prohibitive for these States and covered persons. The advantage of compliance under the waiver program is that States and covered persons are typically required to reduce petroleum consumption by a greater amount than would occur through compliance with credits or exemptions. Additionally, going forward the alternative compliance option should lead to greater petroleum reduction in fleets that previously relied on exemptions and credits because alternative compliance takes into account AFV purchase requirements waived under the program. Moreover, under a waiver, fleets will not be eligible for exemptions and credits are limited. DOE, therefore, is adopting the eligibility provisions and baseline calculation provision as proposed.

One fleet association requested DOE be more specific about the AFVs required to be used in calculating a fleet's petroleum reduction baseline. Specifically, it requested wording that specifies that the AFVs to be counted are those "acquired for EPA Act compliance and included in a prior Annual AFV Acquisition Report for State and Alternative Fuel Provider Fleets (Form DOE/FCVT/101)." DOE recognizes that some fleets may have purchased AFVs outside of the AFV requirements. To address this issue the final rule specifies inclusion of previously required AFVs in a fleet's inventory during the model year for which a waiver is being requested (section 490.803(a)(1)), and AFVs that would have been required in the model year for which a waiver is requested and in previous model years in which a waiver was granted (section 490.803(a)(2)).

2. Calculation Procedure

As proposed, and as adopted today, calculation of the necessary petroleum reduction is essentially a three step procedure. To calculate the petroleum reduction necessary to obtain a waiver, the State or covered person first calculates the amount of alternative fuel necessary to operate existing required AFVs in a fleet's inventory, assuming operation on alternative fuel 100 percent of the time. Second, the State or covered person calculates the additional amount of fuel that would have been used by AFVs under the requirements

for which a waiver is currently being requested plus, calculate any additional amount that would have been used if any previous waivers were not granted. The State or covered person then adds the first and second calculations together. Third, the State or covered person subtracts the fuel use attributed to any existing required AFVs and LDVs acquired in lieu of AFVs under a waiver that are being retired. Again, all calculations are based on alternative fuel use 100 percent of the time. A detailed example of how this works is provided below.

In year 1, a covered person has 25 AFVs in its fleet and has an AFV acquisition requirement of 9. The AFV requirement is based on the number of LDVs that the fleet anticipates acquiring during the waiver year. In this example, the covered person anticipates acquiring 10 LDVs, and has an AFV acquisition requirement of 9 AFVs (10 vehicles $\times$ 90 percent fuel provider requirement). Thus, the cumulative total of AFVs for the purpose of the waiver request is 34. If the covered person's LDVs have an average fuel consumption of 500 gasoline gallon equivalents³ (gge)/year, the total amount of petroleum that the covered person must reduce in the first waiver year is 17,000 gge (34 AFVs and AFV requirements combined, multiplied by 500 gge).

In year 2, the fleet has retired 10 of the original required AFVs from its inventory, which leaves a total of 15 of the 25 AFVs originally counted in year 1. The fleet again plans to acquire 10 LDVs, thus generating a requirement to acquire 9 AFVs in year 2. Since the average number of years that this fleet keeps an AFV is 4 years, the 9 AFVs for which a waiver was granted in year 1 are included in the calculation of the year 2 required petroleum reduction. This results in a total of 33 AFVs (15 + 9 + 9) and a total petroleum reduction requirement of 16,500 gge for year 2 (assuming the same average fuel consumption of 500 gge per vehicle).

In year 3, the fleet has retired 10 more of the original required AFVs, leaving 5 in its inventory, and it is again required to acquire 9 AFVs. The calculation of the year 3 petroleum reduction includes the 9 AFVs required for each of years 1 and 2. Therefore, the total AFV count for year 3 is 32 (5 + 9 + 9 + 9), and the petroleum reduction requirement for year 3 is 16,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

In year 4, the fleet has retired the last 5 of the original required AFVs and plans to acquire 10 LDVs, generating a requirement of 9 AFVs. A total of 36 AFVs are included in the calculation (9 + 9 + 9 + 9), and the petroleum reduction requirement for year 4 is 18,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

In year 5, the fleet retires the 9 LDVs that were acquired in lieu of AFVs under the first year's waiver (the fleet retires LDVs after 4

years). The fleet acquires 10 more LDVs, generating 9 AFV requirements. Therefore, the total AFV count for year 5 is 36 (9 + 9 + 9 + 9) and the total petroleum requirement for year 5 is 18,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

The same approach is used to determine the reduction for a State entity, but the applicable AFV acquisition percentage (75 percent) in section 507(o) would be used.

C. Eligible Reductions in Petroleum Consumption

1. Light-Duty Vehicles

Section 514(b) of the Act states that DOE shall grant a waiver of the AFV acquisition requirements on a showing that a fleet owned, operated, leased or otherwise controlled by a covered person or State entity will achieve a specified petroleum reduction. The term "fleet" is defined to include only covered LDVs. (42 U.S.C. 13211.) However, consistent with the petroleum fuel reduction goals of title V of the Act, DOE also proposed to include petroleum reductions in previously excluded LDVs listed in section 490.3 toward a State's or covered person's annual petroleum reduction target. This provision of the proposal was based on DOE's rulemaking authority under title V and section 644 of the DOE Organization Act (42 U.S.C. 7254). No comments were received with regard to this, and DOE in today's final rule permits covered persons and States to consider reductions in petroleum consumption from LDVs excluded for purposes of calculating a fleet requirement under 10 CFR 490.3.

2. Medium- and Heavy-Duty Vehicles

DOE also proposed to exercise its rulemaking authority under title V and section 644 of the DOE Authorization Act to permit consideration of reductions in fuel consumption from vehicles with a gross vehicle weight rating (gvwr) greater than 8,500 lb, for the purpose of complying with a waiver. DOE received a comment from an industry association saying that adding medium- and heavy-duty vehicles was desirable, while another industry association argued that allowing consideration of petroleum reductions from larger vehicles reduces the momentum of replacing petroleum use in LDVs.

DOE believes that because of limited availability of original equipment manufacturer (OEM) light-duty models for some alternative fuels, particularly gaseous fuels, flexibility provided through the consideration of medium- and heavy-duty vehicles will make the

³ "Gasoline gallon equivalent" equates the energy content, in British thermal units (BTUs), in a gallon of an alternative fuel to that of a gallon of gasoline.

alternative compliance option attractive to more fleets. This, in turn, is likely to lead to somewhat greater petroleum displacement and support of infrastructure for replacement fuels.

For example, in model year 2007 OEM light-duty gaseous fuel offerings are currently limited to just one dedicated natural gas compact sedan. No propane LDVs currently are being offered by an OEM. There are, however, medium- and heavy-duty propane and natural gas OEM offerings and certified conversions from several manufacturers. Encouraging the use of gaseous fuel in medium- and heavy-duty vehicles potentially will also facilitate the use of gaseous fuel in the LDV fleet.

3. Nonroad Vehicles

In the NOPR, DOE explained its intent to allow use of reductions in petroleum consumption from excluded vehicles listed in section 490.3 to achieve the requirement, but inclusion of nonroad vehicles was not specifically proposed by DOE. Several of the organizations that participated in DOE's public hearing asked to specifically include petroleum reductions attributable to nonroad vehicles.

Five of the written comments urged DOE to allow the inclusion of nonroad vehicles. One fleet association stated that nonroad vehicles share infrastructure with AFVs and that consideration of nonroad vehicles would further promote replacement fuels. One commenter pointed out that nonroad vehicles can reduce much more petroleum over a vehicle's lifetime than a typical light-duty AFV in a utility fleet. Two other commenters stated that the expansion to nonroad vehicles would be consistent with the regulatory language in part 490 that permits States and covered persons to obtain credits using medium- and heavy-duty vehicles once LDV requirements are met.

Two fuel provider groups were opposed to the consideration of nonroad vehicles. These commenters stated that inclusion of such vehicles would not promote increased use of replacement fuels in on-road motor vehicles, as was the original intent of the statute.

Limited consideration of nonroad vehicles presents an opportunity to reduce petroleum and provide States and covered persons additional compliance flexibility, while also contributing to the development of infrastructure for replacement fuels used by LDVs. In the final rule, DOE is permitting limited consideration of replacement fuels in nonroad vehicles towards petroleum reduction requirements.

Section 490.804(b) of the final rule permits consideration of reductions in petroleum consumption of nonroad vehicles acquired during a waiver year in instances in which the refueling infrastructure established or upgraded during a waiver year that provides replacement fuel for nonroad vehicles also serves to increase the use of replacement fuels in a fleet's light-duty vehicles. For example, during a waiver year if a State or covered person adds new or upgrades existing refueling infrastructure for nonroad vehicles and shows DOE that existing or planned LDV acquisitions will also use the upgraded or new infrastructure, then the petroleum reductions from nonroad vehicles acquired as a result of those additions and upgrades may be used for meeting petroleum reduction requirements.

Generally, DOE views petroleum reductions from nonroad vehicles as a supplemental way for a State or covered person to expand its use of replacement fuel in on-road vehicles, particularly its LDVs. DOE does not view replacement fuel use in nonroad vehicles as a complete or even substantial substitution for a State's or covered person's annual petroleum reduction in its on-road vehicles. As provided in section 490.804(b)(2), DOE will recognize reductions attributable to nonroad vehicles in instances in which a State or covered person has taken reasonable steps to comply with the waiver requirement through reductions of petroleum in on-road motor vehicles.

4. Rollover of Excess Petroleum Reduction

One fuel provider association and one fuel provider wrote comments supportive of language in the proposed rule that permits applying petroleum reductions achieved in excess of the requirement in one model year to the requirement in a later model year. One fuel association, however, commented that while agreeing with the provision, excess petroleum reduction amounts should not be tradable. It was not DOE's intention to make excess petroleum reductions tradable but rather to provide a fleet further flexibility under the waiver program. To clarify its intent, DOE has added language to the final rule stating that petroleum reduction gallons are not tradable.

Section 490.804 in the final rule requires application by the State or covered person prior to receiving the benefit of rolling over petroleum reductions to satisfy annual requirements. DOE does not intend for a State's or covered person's entire petroleum reduction, or even a

substantial amount of annual petroleum reduction, to be met by petroleum reduction rollovers alone. The rollover provision is intended to add compliance flexibility to States or covered persons, particularly those that may have difficulty meeting their annual requirements because of unusual circumstances or circumstances beyond their control. For example, a State or covered person asking for a substantial petroleum rollover would have to show DOE it was subject to technology failures, delivery delays by manufacturers, weather-related disasters, emergencies or other such unusual circumstances that led or may lead to the need for a substantial petroleum reduction rollover. Other reasons for using the petroleum reduction rollovers to meet a substantial percentage of annual petroleum reduction requirements will be considered on a case-by-case basis.

D. Waiver Applications

Proposed section 490.803 set forth the minimum information that a State or covered person must provide DOE as part of a waiver application. A reasonable amount of information is needed for DOE to understand the calculation of an applicant's annual petroleum reduction target and the methods that will be used to reduce petroleum. A waiver application must include verifiable data that is sufficient to enable DOE to determine whether a State's or covered person's fleet will achieve the amount of petroleum reduction required for alternative compliance. Information required as proposed includes the model year for the waiver required; numbers of required AFVs existing in the fleet and number of acquisition requirements for the waiver year and previous waiver years; amount of petroleum and non-petroleum fuel, calculated in gges to be used in covered LDVs in the fleet for the waiver year including average fuel use per vehicle; and certification that Clean Air Act requirements are met.

In addition, DOE proposed that an application must include a plan with sufficient information to demonstrate that planned actions are verifiable, involve a reduction in petroleum in the fleet's vehicles, and show a net petroleum reduction equal to the required annual petroleum reduction. Today's final rule adopts the proposed application requirements in § 490.805.

One fuel provider and one fleet association argued that a State or covered person applying for a waiver should not be required to include the amount of fuel used by all of the light-duty vehicles in the fleet because it is

overly burdensome and is not a statutory requirement. In response to these commenters, DOE provides in the final rule that States and covered persons need only report fuel used by "covered light-duty vehicles." A State or covered person need only report fuel use in the vehicles that have been used to calculate the baseline amounts in waiver applications or in AFVs that the fleet acquired for meeting requirements under part 490 previous to the waiver. It should be noted, however, that if DOE needs to verify information or use its enforcement authority, DOE does have the authority to require a fleet to submit such information to obtain an overall perspective on the activities of the fleet related to compliance with subpart I.

DOE also intended by its proposal that a plan provide for petroleum reduction in a State's or covered person's vehicles and not include incentives for third parties. A fleet association and a fuel provider both commented that in proposed section 490.803(d)(2), which would exclude consideration of third party incentives in a reduction plan, use of the phrase "State's or covered person's own vehicles" could be interpreted to preclude leased vehicles. DOE agrees with these commenters. Today's final rule adopts § 490.804 to clarify the reductions of petroleum consumption that are eligible and ineligible for consideration under the waiver program.

E. Application Deadlines

As proposed, waiver applications would be required to be submitted to DOE by March 31 in the model year prior to which a waiver is requested. One fleet association and two fuel provider associations stated that the proposed deadline was not sufficient to prepare a waiver request because typically OEMs do not announce availability of new model year vehicles until late summer. Without knowing what vehicle models will be available, States and covered persons cannot project fuel consumption and potential fuel savings. In response to this concern the final rule establishes a March 31 deadline for a State or covered person to register its intent to submit a waiver application to DOE. Fleets that need the new model information may submit their applications to DOE no later than July 31 prior to the model year for which a waiver is sought. If the waiver is not dependent on such OEM information, DOE requires the State or covered person to submit a preliminary intent to apply for a waiver by March 31 and its application for a waiver no later

than June 30 prior to the model year for which it seeks a waiver.

Given the timing of today's final rule DOE will consider registrations of intent to submit a waiver received before May 31, 2007. This extension of the registration of intent deadline applies only to applications for MY 2008.

F. Use of Credits

One fuel provider and one fuel provider association commented that the proposed language regarding the use of credits was too restrictive and would prevent use of subpart F credits to offset a shortfall in meeting the petroleum reduction required for a waiver. After carefully considering this issue, DOE has amended the wording in section 490.808 of the final rule to require that a State or covered person "provide documentation that shows a good faith effort to meet the requirements." DOE has determined that this language provides States and covered persons a reasonable bar for applying for credits to offset a petroleum reduction shortfall, while still promoting the goals of the program.

G. Reporting Requirement

Consistent with section 514(c) of the Act, DOE proposed a reporting requirement by December 31 following a model year for which a waiver is granted. A State or covered person would meet this requirement by providing DOE a statement certifying the number of petroleum gallons and alternative fuel in gges used by its covered light-duty vehicles and the amount of petroleum reduced in the waiver year due to alternative compliance. In the final rule, DOE eliminates the proposed requirement to report "a baseline quantity of the petroleum motor fuel reduction of the State or covered person during the following model year, if the State or covered person intends to request alternative compliance for that model year." DOE determined that this information would be redundant with previously collected information. No comments were received on the other aspects of the proposed reporting requirements.

H. Sanctions for Violations

The proposed sanctions for violating a granted waiver reflected the statutory language of section 514(d) of the Act that states that DOE shall revoke the waiver of a State or covered person that fails to comply with the alternative compliance petroleum reduction or reporting requirements. DOE may also impose a civil penalty for any such violation (42 U.S.C. 13264(d)). No

comments were received on this, and no changes were made in corresponding provisions in the final rule regarding sanctions.

I. Exemptions

DOE proposed that it would not grant exemptions to a State under § 490.204 or to a covered person under § 490.308 if the State or covered person has been granted an alternative compliance waiver. Exemptions are based upon lack of alternative fuels and AFVs. The waivers provide sufficient flexibility by allowing States and covered persons to consider a wider range of options for meeting their petroleum reduction requirements. If a State or covered person is granted a waiver, the flexibility provided should alleviate any need for an exemption. DOE did receive a supportive comment on this issue from one industry association but no comments from any others. DOE is not making a change in its position on exemptions in the final rule.

J. Record Retention

Under proposed § 490.809, a State or covered person would be required to keep all documents pertaining to its application and compliance with a waiver for a minimum of three years following the end of the waiver year. No comments were received on this section and the proposed record retention provision is adopted in the final rule § 490.810.

K. Other Comments

DOE focused its response to comments on those that are directly relevant to the proposed rule. Other comments included areas that may be covered in future guidance such as a request that DOE standardize inputs and outputs to help with the application process. Yet other comments were clearly outside the scope of this rule and/or DOE's authority, including providing extra credits for light-duty zero emission vehicles; requiring OEMs to make more alternative fuel vehicle products available; and applying petroleum reduction in lieu of the vehicle acquisition requirements in part 490.

IV. Regulatory Review

A. Executive Order 12866

Today's final rule has been determined to not be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory

Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended. Under the final rule, a State entity or alternative fuel provider requesting an alternative compliance waiver must show that in lieu of acquiring AFVs for its covered light-duty vehicle fleet, it would use alternative fuel and/or other replacement fuels in various types of motor vehicles to reduce petroleum fuel consumption by an amount that equals 100 percent alternative fuel use in the fleet's AFVs, including AFVs that would be required in waiver years. The final rule, as authorized by the statute, grants the waiver applicant greater compliance flexibility in exchange for achieving the maximum level of petroleum reduction that would occur if the State or covered person were to comply with the Act's AFV acquisition requirements. Because the amount of petroleum displaced would be the same, the final rule would not change the environmental effect of compliance with part 490. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The requirements in 10 CFR part

490 apply only to alternative fuel providers with fleets containing at least 50 LDVs (20 of which are centrally fueled or capable of being centrally fueled) and to like-size State fleets in metropolitan statistical areas with a population of more than 250,000. The owners and operators of fleets of this size are not small entities. In addition, the final rule establishes optional procedures for State entities and covered persons that wish to receive a waiver from otherwise applicable AFV acquisition requirements. Alternative compliance does not impose any additional burdens on the entities subject to sections 501 and 507(o) of the Energy Policy Act of 1992. On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Section 490.805 ("Application for waiver"), section 490.807 ("Reporting requirement"), and § 490.810 (Record retention) contain information collection requirements. DOE did not receive any comments on the information collection requirements of this final rule.

OMB Control Number 1910-5101 is assigned to the alternative fuel transportation program.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal

governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This final rule provides an alternative compliance option for States and alternative fuel providers subject to AFV acquisition requirements in 10 CFR part 490. The final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The final rule will not impact the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB).

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

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

V. Approval by the Office of Secretary

The Secretary of Energy has approved the issuance of this final rule.

List of Subjects in 10 CFR Part 490

Energy, Energy conservation, Fuel, Motor vehicles, Petroleum, and Recordkeeping and reporting requirements.

Issued in Washington, DC, on March 12, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department of Energy is amending chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 1. The authority citation for part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191 *et seq.*; 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*

■ 2. Section 490.600 is revised to read as follows:

§ 490.600 Purpose and scope.

This subpart sets forth the rules applicable to investigations under titles III, IV, V, and VI of the Act and to enforcement of sections 501, 503(b), 507, 508, or 514 of the Act, or any regulation issued under such sections.

■ 3. Section 490.603 is revised to read as follows:

§ 490.603 Prohibited acts.

It is unlawful for any person to violate any provision of sections 501, 503(b), 507, 514 of the Act, or any regulations issued under such sections.

■ 4. A new subpart I is added to read as follows:

Subpart I—Alternative Compliance

Sec.

490.801 Purpose and scope.

490.802 Eligibility for alternative compliance waiver.

490.803 Waiver requirements.

490.804 Eligible reductions in petroleum consumption.

490.805 Application for waiver.

490.806 Action on an application for waiver.

490.807 Reporting requirement.

490.808 Use of credits to offset petroleum reduction shortfall.

490.809 Violations.

490.810 Record retention.

Subpart I—Alternative Compliance

§ 490.801 Purpose and scope.

This subpart implements section 514 of the Act (42 U.S.C. 13263a) which permits States and alternative fuel providers to petition for alternative compliance waivers from the alternative fueled vehicle acquisition requirements in subparts C and D of this part, respectively.

§ 490.802 Eligibility for alternative compliance waiver.

Any State subject to subpart C of this part and any covered person subject to subpart D of this part may apply to DOE for a waiver from the applicable alternative fueled vehicle acquisition requirements.

§ 490.803 Waiver requirements.

DOE grants a State or covered person a waiver:

(a) If DOE determines that the State or covered person will achieve a reduction in petroleum consumption, through eligible reductions as specified in § 490.804 of this subpart, equal to the amount of alternative fuel used if the following vehicles were operated 100 percent of the time on alternative fuel during the model year for which a waiver is requested:

(1) Previously required alternative fueled vehicles in the fleet's inventory at the start of the model year for which a waiver is requested;

(2) Alternative fueled vehicles that the State or covered person would have been required to acquire in the model year for which a waiver is requested, and in previous model years in which a waiver was granted, absent any waivers;

(b) The State or covered person is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(c) The State or covered person is in compliance with all applicable requirements of this subpart.

§ 490.804 Eligible reductions in petroleum consumption.

(a) *Motor vehicles.* Demonstrated reductions in petroleum consumption during the model year for which a waiver is requested that are attributable to motor vehicles owned, operated, leased or otherwise under the control of a State or covered person are applicable towards the petroleum fuel reduction required in § 490.803(a) of this subpart.

(b) *Qualified nonroad vehicles.* Demonstrated reductions in petroleum consumption during the model year for which a waiver is requested that are attributable to nonroad vehicles owned, operated, leased or otherwise under the control of a State or covered person acquired during waiver years are applicable towards the petroleum fuel reduction required in § 490.803(a) of this subpart:

(1) If acquisition of the nonroad vehicles leads directly to the establishment or upgrading of refueling or recharging infrastructure during a waiver year that would also allow for increased petroleum replacement by serving the fleet's on-road light-duty vehicles; and

(2) To the extent that additional reductions attributable to motor vehicles are not reasonably available.

(c) *Rollover of excess petroleum reductions.* (1) Petroleum reductions achieved by a fleet in excess of the amount required for alternative compliance in a previous model year are applicable towards the petroleum fuel reduction requirements for that fleet under § 490.803(a) of this subpart upon approval by DOE.

(2) Requests for approval to apply rollover reductions to future model years for which a waiver is requested must be made to DOE in writing as part of the reporting requirement specified in § 490.807 of this subpart.

(3) DOE will apply approved rollover reductions to a model year for which a waiver was granted but the required reduction in petroleum use was not achieved only to the extent that additional reductions attributable to motor vehicles were not reasonably available.

(4) Following receipt of a request to roll over excess petroleum reduction, DOE notifies the State or covered person of the amount of petroleum reduction that may be applied to a future model year's petroleum reduction requirement.

(5) Excess petroleum reductions are not tradable.

(d) *Ineligible reductions.* The petroleum reduction plan required by paragraph (c)(4) of this section must not include reductions in petroleum attributable to incentives for third parties to reduce their petroleum use, petroleum reductions that are not transportation-related, or petroleum reductions attributable to non-qualified nonroad vehicles.

§ 490.805 Application for waiver.

(a) A State or covered person must apply for a waiver applicable to an entire fleet for a full model year in accordance with the deadlines specified in paragraph (b) of this section. DOE will not grant a waiver for less than an entire fleet or less than a full model year.

(b)(1) A State or covered person must register a preliminary intent to apply for a waiver by March 31 prior to the model year for which a waiver is sought.

(2) If a complete waiver application is dependent on information regarding the availability of motor vehicle models to be released by motor vehicle manufacturers, the waiver application must be received by DOE no later than July 31 prior to the model year for which a waiver is sought.

(3) If a complete waiver application is not dependent on information regarding the availability of motor vehicle models to be released by motor vehicle manufacturers, the waiver application must be received by DOE no later than June 30 prior to the model year for which a waiver is sought.

(c) A waiver application must include verifiable data that is sufficient to enable DOE to determine whether the State or covered person is likely to achieve the amount of petroleum reduction required for alternative compliance and whether the fleet is in compliance with Clean Air Act vehicle emission standards. At a minimum, the State entity or covered person must provide DOE with the following information:

(1) The model year for which the waiver is requested;

(2) The total number of required alternative fueled vehicle acquisitions in the fleet including:

(i) The number of alternative fueled vehicle acquisitions that the State or covered person would, without a waiver, be required to acquire during the model year for which the waiver is requested;

(ii) The number of alternative fueled vehicle acquisitions that the State or covered person would, without a waiver, have been required to acquire during the model years for which waivers were previously granted;

(iii) The number of required alternative fueled vehicles existing in the fleet that were acquired during years in which no waiver was in force; and excluding

(iv) Any required alternative fuel vehicles acquired during a waiver or non-waiver year or light-duty vehicles acquired in lieu of alternative fuels vehicles during a waiver year that are to be retired before the beginning of the waiver year;

(3) The anticipated amount of gasoline and diesel and alternative fuel (calculated in gasoline gallon equivalents (gge)) to be used by the covered light-duty vehicles in the fleet for the waiver year including an estimate of per vehicle average fuel use in these vehicles;

(4) A petroleum reduction plan as described in paragraph (d) of this section; and

(5) Documents, or a certification by a responsible official of the State or covered person, demonstrating that the fleet is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act.

(d) The petroleum reduction plan required by paragraph (c)(4) of this section must contain a documented explanation as to how the State or covered person will meet the reduction in petroleum consumption required by § 490.803(a) of this subpart.

(1) The planned actions must:

(i) Be verifiable;

(ii) Demonstrate a reduction in petroleum use by motor vehicles or qualified nonroad vehicles owned, operated, leased or otherwise controlled by the State or covered person;

(iii) Provide for a net reduction in petroleum consumption as specified in § 490.803(a) of this subpart.

(2) The documentation for the plan may include, but is not limited to, published data on fuel efficiency, Government data, letters from

manufacturers, and data on actual usage.

(e) A State or covered person must send its report, and two copies, to DOE on official company or agency letterhead, and the report must be signed by a responsible company or agency official. Send to: Regulatory Manager, Alternative Fuel Transportation Program, FreedomCAR and Vehicle Technologies Program, EE-2G/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

§ 490.806 Action on an application for waiver.

(a) DOE grants or denies a complete waiver application within 45 business days after receipt of a complete application.

(b) If DOE determines that an application is not complete in that sufficient information is not provided for DOE to make a determination, DOE notifies the State or covered person of the information that must be submitted to complete the application.

(c) If DOE denies a waiver, and the State or covered person wishes to exhaust administrative remedies, the State or covered person must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 1003, subpart C, to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. DOE's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.807 Reporting requirement.

(a) By December 31 following a model year for which an alternative compliance waiver is granted, a State or covered person must submit a report to DOE that includes:

(1) A statement certifying:

(i) The total number of petroleum gallons and/or alternative fuel gge used by the fleet during the waiver year in its covered light-duty vehicles; and

(ii) The amount of petroleum motor fuel reduced by the fleet in the waiver year through alternative compliance.

(b) A State or covered person must send its report to DOE on official company or agency letterhead, and the report must be signed by a responsible company or agency official. Send to: Regulatory Manager, Alternative Fuel Transportation Program, FreedomCAR and Vehicle Technologies Program, EE-2G/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

§ 490.808 Use of credits to offset petroleum reduction shortfall.

(a) If a State or covered person granted a waiver under this subpart wants to use alternative fueled vehicle credits purchased or earned pursuant to subpart F of this part to offset any shortfall in meeting the petroleum reduction required under § 490.803(a) of this subpart, it must make a written request to DOE.

(1) The State or covered person must provide details about the particular circumstances that led to the shortfall and provide documentation that shows a good faith effort to meet the requirements.

(2) DOE may request that a State or covered person supply additional information about the fleet and its operations if DOE deems such information necessary for a decision on the request.

(b) If DOE grants the request, it notifies the State or covered person of the credit amount required to offset the shortfall. DOE derives the credit amount using the fleet's fuel use per vehicle data.

(c) DOE gives the State entity or covered person until March 31 following the model year for which the waiver is granted, to acquire the number of credits required for compliance with this subpart.

§ 490.809 Violations.

If a State or covered person that receives a waiver under this subpart fails to comply with the petroleum motor fuel reduction or reporting requirements of this subpart, DOE will revoke the waiver. DOE may impose on the State or covered person a penalty under subpart G of this part.

§ 490.810 Record retention.

A State or covered person that receives a waiver under this subpart must retain documentation pertaining to its waiver application and alternative compliance, including petroleum fuel reduction by its fleet, for a period of three years following the model year for which the waiver is granted.

[FR Doc. E7-5021 Filed 3-19-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26495; Directorate Identifier 2006-CE-80-AD; Amendment 39-14997; AD 2007-06-16]

RIN 2120-AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI references Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, which describes the unsafe condition as:

Development of the New Zealand produced Alpha 160A aircraft identified an issue with the fuel shut-off valve, where it may not be possible to switch the valve ON once the valve has been placed in the OFF position. This is due to friction in the shut-off system.

The fuel shut-off valve, which is normally ON, is a safety feature to allow the pilot to stop fuel flow to the engine in an emergency situation such as a forced landing without power. The fuel shut-off control is guarded and requires a deliberate action by the pilot to operate.

Notwithstanding this, a hazardous situation is possible if the fuel shut-off valve is inadvertently switched OFF in flight and the pilot is not able to switch it back ON.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 24, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 24, 2007.

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA,

Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 8, 2007 (72 FR 674). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI references Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, which states that:

Development of the New Zealand produced Alpha 160A aircraft identified an issue with the fuel shut-off valve, where it may not be possible to switch the valve ON once the valve has been placed in the OFF position. This is due to friction in the shut-off system.

The fuel shut-off valve, which is normally ON, is a safety feature to allow the pilot to stop fuel flow to the engine in an emergency situation such as a forced landing without power. The fuel shut-off control is guarded and requires a deliberate action by the pilot to operate.

Notwithstanding this, a hazardous situation is possible if the fuel shut-off valve is inadvertently switched OFF in flight and the pilot is not able to switch it back ON.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$300 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$5,400, or \$540 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-06-16 Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by APEX Aircraft and AVIONS PIERRE ROBIN): Amendment 39-14997; Docket No. FAA-2006-26495; Directorate Identifier 2006-CE-80-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model R2160 airplanes, serial numbers 001 through 191, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) references Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, which states that:

Development of the New Zealand produced Alpha 160A aircraft identified an issue with the fuel shut-off valve, where it may not be possible to switch the valve ON once the valve has been placed in the OFF position. This is due to friction in the shut-off system.

The fuel shut-off valve, which is normally ON, is a safety feature to allow the pilot to stop fuel flow to the engine in an emergency situation such as a forced landing without power. The fuel shut-off control is guarded and requires a deliberate action by the pilot to operate.

Notwithstanding this, a hazardous situation is possible if the fuel shut-off valve is inadvertently switched OFF in flight and the pilot is not able to switch it back ON.

Actions and Compliance

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

(1) To prevent the shut-off valve from remaining partially closed when the selector is turned to the ON position, due to the possibility of excess friction in the fuel shut-off valve causing deflection of the push pull cable, accomplish the inspection and rework instructions in Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, within 25 hours time-in-service (TIS) after the effective date of this AD.

(2) If the fuel shut-off valve cable is bent, replace the cable per Alpha Aviation Service Bulletin AA-SB-28-002, before further flight.

(3) If the force required to operate the fuel shut-off valve exceeds the limits specified in Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, rework or replace the valve as required, per Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, before further flight.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; 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

(g) Refer to MCAI Airworthiness Authority of New Zealand AD DCA/R2000/39, dated August 31, 2006; and Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, for related information.

Material Incorporated by Reference

You must use Alpha Aviation Service Bulletin AA-SB-28-002 (Service Bulletin number is indicated at top of page), dated June 28, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Alpha Aviation Design Ltd., Ingram Road, Hamilton Airport, R.D.2, Hamilton 3282, New Zealand.

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

Issued in Kansas City, Missouri, on March 9, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-4861 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9264]

RIN 1545-BG49

Guidance Necessary To Facilitate Business Electronic Filing and Burden Reduction; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction notice.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9264) that were published in the **Federal Register** on Tuesday, May 30, 2006 (71 FR 30591) affecting taxpayers that file Federal income tax returns. They simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns.

DATES: The correction is effective May 30, 2006.

FOR FURTHER INFORMATION CONTACT: Grid Glycer, (202) 622-7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final and temporary regulations that are the subject of the correction are under sections 279, 302, 331, 332, 338, 351, 355, 368, 381, 382, 1081, 1221, 1502, 1563, and 6012 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9264) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9264), which were the subject of FR Doc. 06-4873, is corrected as follows:

On page 30591, in the document heading, the language "RIN 1545-BF26" is corrected to read "RIN 1545-BG49".

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E7-4962 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9317]

RIN 1545-BF56

Computer Software Under Section 199(c)(5)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations concerning the application of section 199 of the Internal Revenue Code, which provides a deduction for income attributable to domestic production activities. The final regulations are necessary to provide guidance regarding certain transactions involving online software and to clarify the rules regarding the application of section 199 to certain cooperatives. The regulations will affect taxpayers engaged in certain domestic production activities involving computer software and taxpayers engaged in certain domestic production activities in cooperative form.

DATES: *Effective Date:* These regulations are effective March 20, 2007.

Applicability Date: For dates of applicability, see § 1.199-8(i)(4) and (i)(7).

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren Ross Taylor, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document amends 26 CFR part 1 to provide rules relating to the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code (Code). Section 199 was added to the Code by section 102 of the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 25) and section 514 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. 109-222, 120 Stat. 345). On June 1, 2006, the IRS and Treasury Department published in the **Federal Register** final regulations under section 199 (71 FR 31268). Also on June 1, 2006, the IRS and Treasury Department published in the **Federal Register** temporary and proposed regulations under section 199 providing guidance on certain transactions

involving computer software (71 FR 31074 and 71 FR 31128, respectively). Written and electronic comments responding to the temporary and proposed regulations were received. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision.

General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) the qualified production activities income (QPAI) of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income (AGI)).

Qualified Production Activities Income

Section 199(c)(1) defines QPAI for any taxable year as an amount equal to the excess (if any) of (A) the taxpayer's domestic production gross receipts (DPGR) for such taxable year, over (B) the sum of (i) the cost of goods sold (CGS) that are allocable to such receipts; and (ii) other expenses, losses, or deductions (other than the deduction under section 199) that are properly allocable to such receipts.

Section 199(c)(4)(A)(i) defines DPGR, in part, to mean the taxpayer's gross receipts that are derived from any lease, rental, license, sale, exchange, or other disposition of qualifying production property (QPP) that was manufactured, produced, grown, or extracted (MPGE) by the taxpayer in whole or in significant part within the United States. Section 199(c)(5) defines QPP to mean: (A) Tangible personal property; (B) any computer software; and (C) any property described in section 168(f)(4) (certain sound recordings).

Patrons of Certain Cooperatives

Section 199(d)(3)(A) provides that any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under section 199(a) equal to the portion of the deduction allowed under section 199(a) to such cooperative which is (i) allowed with respect to the portion of the QPAI to which such payment is attributable, and (ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

Section 199(d)(3)(B) provides that the taxable income of a specified

agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under section 199(d)(3)(A) with respect to such payment.

Section 199(d)(3)(C) provides that, for purposes of section 199, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under section 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

Section 199(d)(3)(E) provides that, for purposes of section 199(d)(3), the term *qualified payment* means, with respect to any person, any amount that (i) is described in section 1385(a)(1) or (3), (ii) is received by such person from a specified agricultural or horticultural cooperative, and (iii) is attributable to QPAI with respect to which a deduction is allowed to such cooperative under section 199(a).

Authority To Prescribe Regulations

Section 199(d)(8) authorizes the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199, including regulations that prevent more than one taxpayer from being allowed a deduction under section 199 with respect to any activity described in section 199(c)(4)(A)(i).

Temporary Regulations

Section 1.199-3T(i)(6)(ii) provides that gross receipts derived from customer and technical support, telephone and other telecommunication services, online services (such as Internet access services, online banking services, providing access to online electronic books, newspapers, and journals), and other similar services do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software.

However, § 1.199-3T(i)(6)(iii) provides two exceptions under which gross receipts derived by a taxpayer from providing computer software to customers for the customers' direct use while connected to the Internet will be treated as being derived from the lease, rental, license, sale, exchange, or other disposition of such computer software. Such gross receipts will be treated as DPGR if all the other requirements of section 199 are met (for example, the taxpayer MPGE computer software in whole or in significant part within the United States).

The exception in § 1.199-3T(i)(6)(iii)(A) applies to a taxpayer that derives gross receipts from providing computer software to customers for the customers' direct use while connected to the Internet (online software) and also derives gross receipts from customers that are unrelated to the taxpayer from the lease, rental, license, sale, exchange, or other disposition of computer software affixed to a tangible medium or downloaded from the Internet. The exception in § 1.199-3T(i)(6)(iii)(B) applies if a taxpayer derives gross receipts from providing online software and an unrelated person derives, on a regular and ongoing basis in the unrelated person's business, gross receipts from the lease, rental, license, sale, exchange, or other disposition of substantially identical software to its customers affixed to a tangible medium or by allowing its customers to download the substantially identical computer software from the Internet.

Section 1.199-3T(i)(6)(iv) defines substantially identical software as computer software that, from a customer's perspective, has the same functional result as the online software and has a significant overlap of features or purpose with the online software. Section 1.199-3T(i)(6)(iv)(B) provides a safe harbor under which all computer software games are deemed to be substantially identical software.

The exceptions outlined in § 1.199-3T(i)(6)(iii) permit gross receipts derived from providing online software to be treated as gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of software. However, because the rules for online software are exceptions, all other provisions of the temporary and final regulations do not necessarily apply to online software. Specifically, § 1.199-3T(i)(6)(iv)(E) provides that the computer software maintenance agreement exception provided in § 1.199-3(i)(4)(i)(B)(5) does not apply to online software. Section 1.199-3(i)(4)(i)(B)(5) provides that a taxpayer may include in DPGR, the gross receipts derived from services performed pursuant to a qualified computer software maintenance agreement.

Summary of Comments and Explanation of Provisions

A commentator suggested that the online software exceptions should apply to transactions where access to computer software is provided over any public or private communications network and not just the Internet. The final regulations adopt this suggestion.

A commentator suggested that the final regulations provide an example

where computer software would not be considered substantially identical software. This suggestion has been adopted.

Commentators noted that, in the future, some computer software will only be available over the Internet. In addition, newly developed computer software provided over the Internet may not have a substantially identical counterpart. The IRS and Treasury Department recognize that the computer software industry is evolving and current industry trends may result in a more limited applicability of the online software exceptions provided in the final regulation. However, there are significant differences between transactions which provide customers with access to online software and transactions involving the transfer of software to customers affixed to a tangible medium or by download. Accordingly, in order to give meaning to the statutory language requiring a lease, rental, license, sale, exchange, or other disposition, the online software exceptions have been narrowly tailored and are intended to apply only to gross receipts derived from providing customers access to computer software for the customers' direct use while connected to the Internet and only when the taxpayer (or another person) also derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of the computer software (or substantially identical software) affixed to a tangible medium or by download. The final regulations clarify that, with respect to online software, taxpayers are providing customers with access to the taxpayers' software as opposed to actually transferring the software to customers either affixed to a tangible medium or by allowing them to download the computer software from the Internet.

Commentators suggested that the rule in § 1.199-3T(i)(6)(iv)(E), precluding the application of the qualified computer software maintenance provision to online software, be deleted because it places taxpayers providing access to online software at a competitive disadvantage with taxpayers providing computer software to customers either affixed to a tangible medium or by allowing them to download the computer software from the Internet. In addition, commentators suggest that the advertising exception in § 1.199-3(i)(5) should be extended to include online software. The final regulations do not adopt these suggestions. As previously noted, the online software exceptions have been narrowly tailored and the IRS and Treasury Department do not believe the exceptions should be extended

beyond gross receipts derived from providing customers access to computer software for the customers' direct use. Therefore, the final regulations do not extend the exception for qualified computer software maintenance agreements in § 1.199-3(i)(4)(i)(B)(5) or the advertising exception in § 1.199-3(i)(5) to online software.

The final regulations in § 1.199-3(i)(5)(ii)(B) do, however, extend the advertising exception to computer software that is provided to customers either affixed to a tangible medium (for example, a disk or DVD) or by allowing them to download the computer software from the Internet. However, the advertising exception only applies to software that is either affixed to a tangible medium or provided through download and does not apply to advertising incorporated into online software. In addition, the IRS and Treasury Department have clarified that, except as otherwise provided in § 1.199-3(i)(5)(ii), gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of QPP, a qualified film, or utilities do not include advertising income or product-placement income.

A commentator expressed concern that the exception for qualified computer software maintenance agreements in § 1.199-3(i)(4)(i)(B)(5) does not apply if the taxpayer separately offers maintenance in subsequent years. The mere fact that a taxpayer separately offers maintenance in subsequent years does not preclude eligibility for the exception.

A commentator interpreted the rule in § 1.199-3T(i)(6)(iii)(E) as possibly treating gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of future updates, cyclical releases, and rewrites of the underlying software as non-DPGR if the underlying software is online software. The rule in § 1.199-3T(i)(6)(iii)(E) only provides that the qualified computer software maintenance agreement exception does not apply to online software. Therefore, to the extent a taxpayer providing online software derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of future updates, cyclical releases, and rewrites of the underlying software, the gross receipts are DPGR assuming all the other requirements of § 1.199-3 are met.

A commentator noted that Example 6 in the temporary regulations concludes that the gross receipts derived from storage of customers' data and telephone support are non-DPGR. Example 6 is silent as to the amount of gross receipts

derived from the storage of customers' data and telephone support and does not address whether the de minimis exception in § 1.199-3(i)(4)(i)(B)(6) is available. Numerous examples in the final regulations under section 199 also conclude that gross receipts are non-DPGR without reference to the de minimis exception in § 1.199-3(i)(4)(i)(B)(6). However, assuming all the requirements are met, the *de minimis* exception in § 1.199-3(i)(4)(i)(B)(6) can apply when an example concludes the gross receipts are non-DPGR.

The IRS and Treasury Department received a comment letter on the application of section 199 to agricultural and horticultural cooperatives under § 1.199-6 of the final regulations (71 FR 31312) published on June 1, 2006. The commentator noted that the sentence in § 1.199-6(h) stating that the cooperative may not apply section 199(d)(3) and § 1.199-6 to any portion of the section 199 deduction that is not passed through to its patrons is inconsistent with section 199(d)(3) which has no such limitation. These final regulations amend § 1.199-6(h) to remove the sentence.

In addition, consistent with the change to § 1.199-6(h), these final regulations amend § 1.199-6(l) to remove the phrase, "To the extent a cooperative passes through the section 199 deduction to a patron" and add the phrase, "by the patron."

The final regulations also amend § 1.199-6(c) to clarify that a cooperative's QPAI is computed without taking into account any deduction allowable under section 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

Effective Date

Section 199 applies to taxable years beginning after December 31, 2004. These final regulations are applicable for taxable years beginning on or after March 20, 2007. In addition, § 1.199-8(i)(1) provides that, in certain circumstances, a taxpayer may rely on the guidance in Notice 2005-14 (2005-7 IRB 498), see § 601.602(d)(2), the proposed regulations under section 199 that were published in the **Federal Register** on November 4, 2005 (70 FR 67220), or the final regulations under section 199 that were published in the **Federal Register** on June 1, 2006 (71 FR 31268). Regardless of which guidance a taxpayer applies, the taxpayer may apply these final regulations to taxable years beginning after December 31, 2004, and before March 20, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Paul Handleman and Lauren Ross Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.199-0 is amended by:

■ 1. Revising the entries for §§ 1.199-3(i)(5)(i) and (ii), 1.199-3(i)(6)(ii) through (v), 1.199-6(c), and 1.199-8(i)(4).

■ 2. Adding a new entry for § 1.199-8(i)(7).

The revisions and addition read as follows:

§ 1.199-0 Table of contents.

* * * * *

§ 1.199-3 Domestic production gross receipts.

* * * * *

(i) * * *

(5) * * *

(i) In general.

(ii) Exceptions.

(A) Tangible personal property.

(B) Computer software.

(C) Qualified film.

* * * * *

(6) * * *

(ii) Gross receipts derived from services.

(iii) Exceptions.

(iv) Definitions and special rules.

(A) Substantially identical software.

(B) Safe harbor for computer software games.

(C) Regular and ongoing basis.

(D) Attribution.

(E) Qualified computer software maintenance agreements.

(F) Advertising income and product-placement income.

(v) Examples.

* * * * *

§ 1.199-6 Agricultural and horticultural cooperatives.

* * * * *

(c) Determining cooperative's qualified production activities income and taxable income.

* * * * *

§ 1.199-8 Other rules.

* * * * *

(i) * * *

(4) Computer software.

* * * * *

(7) Agricultural and horticultural cooperatives.

* * * * *

■ **Par. 3.** Section 1.199-3 is amended by:

■ 1. Revising paragraphs (i)(5)(i) and (i)(5)(ii).

■ 2. Removing the language "(i)(5)(ii)" each place it appears in paragraph (i)(5)(iii) and adding the language "(i)(5)(ii)(C)" in its place.

■ 3. Revising paragraphs (i)(6)(ii), (i)(6)(iii), (i)(6)(iv), and (i)(6)(v).

The revisions read as follows:

§ 1.199-3 Domestic production gross receipts.

* * * * *

(i) * * *

(5) * * *

(i) *In general.* Except as provided in paragraph (i)(5)(ii) of this section, gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of QPP, a qualified film, or utilities do not include advertising income and product-placement income.

(ii) *Exceptions—(A) Tangible personal property.* A taxpayer's gross receipts that are derived from the lease, rental, license, sale, exchange, or other disposition of newspapers, magazines, telephone directories, periodicals, and other similar printed publications that are MPGE in whole or in significant part within the United States include advertising income from advertisements placed in those media, but only if the gross receipts, if any, derived from the

lease, rental, license, sale, exchange, or other disposition of the newspapers, magazines, telephone directories, or periodicals are (or would be) DPGR.

(B) *Computer software.* A taxpayer's gross receipts that are derived from the lease, rental, license, sale, exchange, or other disposition of computer software that is MPGE in whole or in significant part within the United States include advertising income and product-placement income with respect to that computer software, but only if the gross receipts, if any, derived from the lease, rental, license, sale, exchange, or other disposition of computer software are (or would be) DPGR. For this purpose, advertising income and product-placement income mean compensation for placing or integrating advertising or a product into the computer software. This paragraph (i)(5)(ii)(B) does not extend to the exceptions provided in paragraph (i)(6)(iii) of this section. See paragraph (i)(6)(iv)(F) of this section.

(C) *Qualified film.* A taxpayer's gross receipts that are derived from the lease, rental, license, sale, exchange, or other disposition of a qualified film include advertising income and product-placement income with respect to that qualified film, but only if the gross receipts, if any, derived from the lease, rental, license, sale, exchange, or other disposition of a qualified film are (or would be) DPGR. For this purpose, advertising income and product-placement income mean compensation for placing or integrating advertising or a product into the qualified film.

* * * * *

(6) * * *

(ii) *Gross receipts derived from services.* Gross receipts derived from customer and technical support, telephone and other telecommunication services, online services (such as Internet access services, online banking services, providing access to online electronic books, newspapers, and journals), and other similar services do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software.

(iii) *Exceptions.* Notwithstanding paragraph (i)(6)(ii) of this section, if a taxpayer derives gross receipts from providing customers access to computer software MPGE in whole or in significant part by the taxpayer within the United States for the customers' direct use while connected to the Internet or any other public or private communications network (online software), then such gross receipts will be treated as being derived from the lease, rental, license, sale, exchange, or

other disposition of computer software only if—

(A) The taxpayer also derives, on a regular and ongoing basis in the taxpayer's business, gross receipts from the lease, rental, license, sale, exchange, or other disposition to customers that are not related persons (as defined in paragraph (b)(1) of this section) of computer software that—

(1) Has only minor or immaterial differences from the online software;

(2) Has been MPGE by the taxpayer in whole or in significant part within the United States; and

(3) Has been provided to such customers either affixed to a tangible medium (for example, a disk or DVD) or by allowing them to download the computer software from the Internet; or

(B) Another person derives, on a regular and ongoing basis in its business, gross receipts from the lease, rental, license, sale, exchange, or other disposition of substantially identical software (as described in paragraph (i)(6)(iv)(A) of this section) (as compared to the taxpayer's online software) to its customers pursuant to an activity described in paragraph (i)(6)(iii)(A)(3) of this section.

(iv) *Definitions and special rules—*(A) *Substantially identical software.* For purposes of paragraph (i)(6)(iii)(B) of this section, *substantially identical software* is computer software that—

(1) From a customer's perspective, has the same functional result as the online software described in paragraph (i)(6)(iii) of this section; and

(2) Has a significant overlap of features or purpose with the online software described in paragraph (i)(6)(iii) of this section.

(B) *Safe harbor for computer software games.* For purposes of paragraph (i)(6)(iv)(A) of this section, all computer software games are deemed to be substantially identical software. For example, computer software sports games are deemed to be substantially identical to computer software card games.

(C) *Regular and ongoing basis.* For purposes of paragraph (i)(6)(iii) of this section, in the case of a newly-formed trade or business or a taxpayer in its first taxable year, the taxpayer is considered to be engaged in an activity described in paragraph (i)(6)(iii) of this section on a regular and ongoing basis if the taxpayer reasonably expects that it will engage in the activity on a regular and ongoing basis.

(D) *Attribution.* For purposes of paragraph (i)(6)(iii)(A) of this section—

(1) All members of an expanded affiliated group (as defined in § 1.199–

7(a)(1)) are treated as a single taxpayer; and

(2) In the case of an EAG partnership (as defined in § 1.199–3T(i)(8)), the EAG partnership and all members of the EAG to which the EAG partnership's partners belong are treated as a single taxpayer.

(E) *Qualified computer software maintenance agreements.* Paragraph (i)(4)(i)(B)(5) of this section does not apply if the computer software is online software under paragraph (i)(6)(iii) of this section.

(F) *Advertising income and product-placement income.* Paragraph (i)(5)(ii)(B) of this section does not apply if the computer software is online software under paragraph (i)(6)(iii) of this section. If a taxpayer provides a customer with access to online software in conjunction with providing computer software to such customer either affixed to a tangible medium or by download, paragraph (i)(5)(ii)(B) of this section will only apply to compensation for the placement or integration of advertising or a product into the computer software transferred to such customer either affixed to the tangible medium or by download.

(v) *Examples.* The following examples illustrate the application of this paragraph (i)(6):

Example 1. L is a bank and produces computer software within the United States that enables its customers to receive online banking services for a fee. Under paragraph (i)(6)(ii) of this section, gross receipts derived from online banking services are attributable to a service and do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software. Therefore, L's gross receipts derived from the online banking services are non-DPGR.

Example 2. M is an Internet auction company that produces computer software within the United States that enables its customers to participate in Internet auctions for a fee. Under paragraph (i)(6)(ii) of this section, gross receipts derived from online auction services are attributable to a service and do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software. M's activities constitute the provision of online services. Therefore, M's gross receipts derived from the Internet auction services are non-DPGR.

Example 3. N provides telephone services, voicemail services, and e-mail services. N produces computer software within the United States that runs all of these services. Under paragraph (i)(6)(ii) of this section, gross receipts derived from telephone and related telecommunication services are attributable to a service and do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software. Therefore, N's gross receipts derived from the telephone and other telecommunication services are non-DPGR.

Example 4. O produces tax preparation computer software within the United States. O derives, on a regular and ongoing basis in its business, gross receipts from both the sale to customers that are unrelated persons of O's computer software that has been affixed to a compact disc as well as from the sale to customers of O's computer software that customers have downloaded from the Internet. O also derives gross receipts from providing customers access to the computer software for the customers' direct use while connected to the Internet. The computer software sold on compact disc or by download has only minor or immaterial differences from the online software, and O does not provide any other goods or services in connection with the online software. Under paragraph (i)(6)(iii)(A) of this section, O's gross receipts derived from providing access to the online software will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of this section are met).

Example 5. The facts are the same as in **Example 4**, except that O does not sell the tax preparation computer software to customers affixed to a compact disc or by download. In addition, one of O's competitors, P, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of P's substantially identical tax preparation computer software that has been affixed to a compact disc as well as from the sale to customers of P's substantially identical tax preparation computer software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, O's gross receipts derived from providing access to its tax preparation online software will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of this section are met).

Example 6. Q produces payroll management computer software within the United States. For a fee, Q provides customers access to the payroll management computer software for the customers' direct use while connected to the Internet. This is Q's sole method of providing access to its payroll management computer software to customers. In conjunction with the payroll management computer software, Q provides storage of customers' data and telephone support. One of Q's competitors, R, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of R's substantially identical payroll management software that has been affixed to a compact disc as well as from the sale to customers of R's substantially identical payroll management software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, Q's gross receipts derived from providing access to its payroll management online software will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of this section are met).

However, Q's gross receipts derived from the fees that are properly allocable to the storage of customers' data and telephone support are non-DPGR.

Example 7. The facts are the same as in **Example 6**, except that R produces inventory computer software, not payroll management computer software. R's inventory computer software is not substantially identical software as defined in paragraph (i)(6)(iv)(A) of this section because R's inventory software, from a customer's perspective, does not have the same functional result as Q's payroll management computer software and does not have significant overlap of features or purpose with Q's payroll management computer software. No other person provides substantially identical software to customers affixed to a compact disc or by download. Under paragraph (i)(6)(ii) of this section, gross receipts derived from providing access to Q's payroll online software do not constitute gross receipts derived from a lease, rental, license, sale, exchange or other disposition of payroll computer software. Therefore, Q's gross receipts derived from the payroll management computer software are non-DPGR.

Example 8. S produces computer software games within the United States. S derives, on a regular and ongoing basis in its business, gross receipts from both the sale to customers that are not related to S of S's computer software games that have been affixed to a compact disc as well as from the sale to customers of S's computer software games that customers have downloaded from the Internet. S also derives gross receipts from providing customers access to the computer software games for the customers' direct use while connected to the Internet (online software games). The computer software games sold on compact disc or by download have only minor or immaterial differences from the online software games, and S does not provide any other goods or services in connection with the online software games. Under paragraph (i)(6)(iii)(A) of this section, S's gross receipts derived from providing customers access to its online software games will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of this section are met).

Example 9. The facts are the same as in **Example 8**, except S's gross receipts also include advertising income from integrating advertisers' logos into the computer software games. Under paragraph (i)(5)(ii)(B) of this section, for S's computer software games sold affixed to a compact disc or by download, S's advertising income is treated as gross receipts derived from the sale of the computer software games and, therefore, is DPGR (assuming all the other requirements of this section are met). However, under paragraphs (i)(5)(i) and (i)(6)(iv)(F) of this section, for S's online software games, S's advertising income is not derived from the lease, rental, license, sale, exchange, or other disposition of computer software and, therefore, is non-DPGR.

■ **Par. 4.** Section 1.199–3T is amended by revising paragraphs (i)(1), (i)(2),

(i)(3), (i)(4), (i)(5), and (i)(6) to read as follows:

§ 1.199–3T Domestic production gross receipts (temporary).

* * * * *

(i) *Derived from the lease, rental, license, sale, exchange or other disposition.*

(1) through (6) [Reserved]. For further guidance, see § 1.199–3(i)(1) through (6).

* * * * *

■ **Par. 5.** Section 1.199–6 is amended by:

- 1. Revising paragraphs (c) and (l).
- 2. Removing the language “qualified production activities income (QPAI) (as defined in § 1.199–1(c))” from paragraph (e) and adding “QPAI” in its place.
- 3. Removing the language “However, the cooperative may not apply section 199(d)(3) and this section to any portion of the section 199 deduction that is not passed through to its patrons.” from paragraph (h).

The revisions read as follows:

§ 1.199–6 Agricultural and horticultural cooperatives.

* * * * *

(c) *Determining cooperative's qualified production activities income and taxable income.* For purposes of determining its section 199 deduction, the cooperative's qualified production activities income (QPAI) (as defined in § 1.199–1(c)) and taxable income are computed without taking into account any deduction allowable under section 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

* * * * *

(l) *No double counting.* A qualified payment received by a patron of a cooperative is not taken into account by the patron for purposes of section 199.

■ **Par. 6.** Section 1.199–8 is amended by:

- 1. Revising paragraph (i)(4).
- 2. Adding new paragraph (i)(7).

The revision and addition read as follows:

§ 1.199–8 Other rules.

* * * * *

(i) * * *

(4) *Computer software.* Section 1.199–3(i)(5)(ii)(B) and (i)(6)(ii) through (v) are applicable for taxable years beginning on or after March 20, 2007. A taxpayer may apply § 1.199–3(i)(5)(ii)(B) and (i)(6)(ii) through (v) to taxable years beginning after December 31, 2004, and before March 20, 2007.

* * * * *

(7) *Agricultural and horticultural cooperatives.* Section 1.199–6(c) is

applicable for taxable years beginning on or after March 20, 2007. A taxpayer may apply § 1.199–(6)(c) to taxable years beginning after December 31, 2004, and before March 20, 2007.

■ **Par. 7.** Section 1.199–8T is amended by revising paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) to read as follows:

§ 1.199–8T Other rules (temporary).

* * * * *

(i) *Effective dates.* (1) through (4) [Reserved]. For further guidance, see § 1.199–8(i)(1) through (4).

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 14, 2007.

Eric Solomon,

Assistant Secretary of the Treasury.

[FR Doc. 07–1354 Filed 3–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9316]

RIN 1545–BG14

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance regarding the satisfaction of the continuity of interest requirement for corporate reorganizations. These regulations affect corporations and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective March 20, 2007.

Applicability Date: For dates of applicability, see § 1.368–1T(e)(8)(ii).

FOR FURTHER INFORMATION CONTACT: Lisa S. Dobson at (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Internal Revenue Code of 1986 (Code) provides general nonrecognition

treatment for reorganizations described in section 368 of the Code. In addition to complying with the statutory and certain other requirements, to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization.

On August 10, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG–129706–04) in the **Federal Register** (69 FR 48429) (2004 proposed regulations) identifying certain circumstances in which the determination of whether a proprietary interest in the target corporation is preserved would be made by reference to the value of the issuing corporation's stock on the day before there is an agreement to effect the potential reorganization. On September 16, 2005, the IRS and Treasury Department published final regulations in the **Federal Register** (TD 9225, 70 FR 54631) (2005 final regulations) which retained the general framework of the 2004 proposed regulations but made several modifications in response to the comments received regarding the proposed regulations. Specifically, the 2005 final regulations provide that in determining whether a proprietary interest in the target corporation is preserved, the consideration to be exchanged for the proprietary interests in the target corporation pursuant to a contract to effect the potential reorganization is valued on the last business day before the first date such contract is a binding contract (the signing date), if the contract provides for fixed consideration (the signing date rule).

After consideration of comments relating to the 2005 final regulations, the IRS and Treasury Department are revising those regulations as set forth in this Treasury decision. These temporary regulations provide guidance for measuring whether the COI requirement is satisfied. The following sections specifically describe the revisions.

A. Applicability of the Signing Date Rule

For purposes of determining whether COI is satisfied, the 2005 final regulations require the consideration to be exchanged for the proprietary interests in the target corporation to be valued on the last business day before the first date such contract is a binding contract, if such contract provides for fixed consideration. As noted in the preamble to the 2005 final regulations, the signing date rule is based on the

principle that, where a binding contract provides for fixed consideration, the target corporation shareholders can generally be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date. However, if the contract does not provide for fixed consideration, the signing date value of the issuing corporation stock is not relevant for purposes of determining the extent to which a proprietary interest in the target corporation is preserved.

These temporary regulations continue to apply the signing date rule where the contract provides for fixed consideration. If the contract does not provide for fixed consideration, the temporary regulations provide that the signing date rule is not applicable. Further, these temporary regulations clarify that where fixed consideration includes other property that is identified by value, that specified value is the value of such other property to be used in determining whether COI is satisfied.

B. Definition of Fixed Consideration

As noted above, the temporary regulations provide that the signing date rule only applies to contracts that provide for fixed consideration. These temporary regulations modify the definition of fixed consideration.

The 2005 final regulations provide four circumstances in which a contract will be treated as providing for fixed consideration. Generally, under the 2005 final regulations, a contract provides for fixed consideration if (1) the contract states the number of shares of the issuing corporation plus the amount of money and any other property to be exchanged for all proprietary interests in the target corporation; (2) the contract states the number of shares of the issuing corporation plus the amount of money and any other property to be exchanged for each proprietary interest in the target corporation; (3) the contract states the percentage of proprietary interests in the target corporation to be exchanged for stock of the issuing corporation; or (4) the contract states the percentage of each proprietary interest in the target corporation to be exchanged for stock of the issuing corporation.

These temporary regulations combine the first two circumstances into one sentence that defines fixed consideration. No substantive change to these two definitions of fixed consideration is intended with this amendment.

The target corporation shareholders are generally subject to the economic fortunes of the issuing corporation as of

the signing date only if the contract specifies the number of shares of the issuing corporation to be exchanged for all or each proprietary interest in the target corporation. Accordingly, the temporary regulations provide that the signing date rule is applicable in these situations. The IRS and Treasury Department request comments regarding whether it is appropriate to include in the definition of fixed consideration a contract that specifies a fixed percentage of the shares of the issuing corporation to be exchanged for all or each proprietary interest in the target corporation.

The temporary regulations eliminate the third and fourth circumstances described in the 2005 final regulations from the definition of fixed consideration. Because these types of transactions do not specify the number of shares of the issuing corporation to be received in the exchange, the target corporation shareholders are not subject to the economic fortunes of the issuing corporation as of the signing date. These provisions were removed because, in such situations, applying the signing date rule may produce inappropriate results.

A commentator noted that a transaction in which a fixed percentage of target corporation shares is exchanged for issuing corporation shares could inappropriately be precluded from satisfying COI due to the application of the signing date rule. For example, if the number of the issuing corporation shares to be received by the target corporation shareholders depends on the value of the issuing corporation shares on the closing date, and the issuing corporation shares appreciate significantly between the signing date and the closing date, the signing date rule could prevent a transaction from satisfying COI notwithstanding the fact that a substantial part of the value of the proprietary interests in the target corporation is exchanged for proprietary interests in the issuing corporation.

Further, the temporary regulations continue to treat a contract that provides for a shareholder election between shares of the issuing corporation stock and the money or other property to be exchanged for the proprietary interests in the target corporation as a contract that provides for fixed consideration in the circumstances described below.

C. Shareholder Elections

The 2005 final regulations contain a rule generally stating that a contract that permits the target corporation shareholders to elect to receive stock and/or money and/or other property

with respect to their target corporation stock will be treated as providing for fixed consideration if the contract also provides the minimum number of shares of the issuing corporation stock and the maximum amount of money or other property to be exchanged for all of the proprietary interests in the target corporation, the minimum percentage of the number of shares of each class of proprietary interests in the target corporation to be exchanged for stock of the issuing corporation, or the minimum percentage (by value) of the proprietary interests in the target corporation to be exchanged for stock of the issuing corporation. The 2005 final regulations further include two special rules prescribing certain assumptions to be made in the determination of whether COI is satisfied in shareholder election cases. For example, in the case in which the contract states the minimum number of shares of the issuing corporation stock and the maximum amount of money or other property to be exchanged for all of the proprietary interests in the target corporation, the determination of whether a proprietary interest in the target corporation is preserved is made by assuming the issuance of the minimum number of shares of each class of stock of the issuing corporation and the maximum amount of money or other property allowable under the contract and without regard to the number of shares of each class of stock of the issuing corporation and the amount of money or other property actually exchanged for proprietary interests in the target corporation.

These temporary regulations treat certain transactions that allow for shareholder elections as providing for fixed consideration regardless of whether the agreement specifies the maximum amount of money or other property, or the minimum amount of issuing corporation stock, to be exchanged in the transaction. As noted above, if the target corporation shareholders can generally be viewed as subject to the economic fortunes of the issuing corporation as of the signing date, it is appropriate to treat the contract as providing for fixed consideration and to apply the signing date rule. The IRS and Treasury Department believe that these circumstances exist in cases where the target corporation shareholders may elect to receive issuing corporation stock in exchange for their target corporation stock at an exchange rate based on the value of the issuing corporation stock on the signing date. For example, if the issuing corporation

stock has a value of \$1 per share on the last business date before the first date on which the contract is binding, and the agreement provides that the target corporation shareholders may exchange each share of target corporation stock for either \$1 or issuing corporation stock (based on the signing date value), the target corporation shareholders that choose to exchange their target corporation stock for stock of the issuing corporation are subject to the economic fortunes of the issuing corporation with respect to such stock as of the signing date. Accordingly, the IRS and Treasury Department believe that it is appropriate in such a case to apply the signing date rule to value the stock of the issuing corporation for purposes of testing whether the transaction satisfies the COI requirement.

Additionally, the IRS and Treasury Department are concerned that the assumptions in the shareholder election rule in the 2005 final regulations may create confusion about whether COI is satisfied based on the delivery of stock that does not in fact preserve the target corporation shareholders' proprietary interest in the target corporation when such result was not intended. For example, the rule might appear to suggest that stock that is redeemed in connection with the potential reorganization will nonetheless be treated as preserving the target corporation shareholders' proprietary interests in the target corporation, although this result would be contrary to Treas. Reg. 1.368-1(e)(1). Further, these assumptions could prevent a transaction from satisfying COI even though a substantial part of the value of the proprietary interests in the target corporation is actually exchanged for proprietary interests in the issuing corporation.

Because of this potential for confusion, and because these assumptions are not relevant to the revised shareholder election provision, the temporary regulations remove the assumptions so that the determination of whether COI is preserved depends on the actual consideration exchanged. Example 9 of the Temporary Regulations has been modified to illustrate the revised rules regarding shareholder elections.

D. Contract Modifications

The 2005 final regulations generally provide that a modification of the contract results in a new signing date. However, the 2005 final regulations provide that a modification that has the sole effect of providing for the issuance of additional shares of issuing corporation stock to the target

corporation shareholders will not be treated as a modification if the execution of the transaction pursuant to the original agreement would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if there had been no modification. One commentator suggested that this rule be broadened to include modifications that decrease the money or other property that will be delivered to the target corporation shareholders. These temporary regulations reflect this broadening.

Further, the IRS and Treasury Department believe that the signing date rule should also apply to provide certainty regarding the value of the issuing corporation stock used for purposes of testing COI if the transaction fails to qualify as a tax-free reorganization. For this reason, the IRS and Treasury Department believe that the exception to the modification rule should also be available for certain types of modifications if the transaction fails to satisfy COI at the time of the execution of the contract. Accordingly, these temporary regulations provide that certain contract modifications will not result in a new signing date if the terms of the original contract would have prevented the transaction from qualifying as a reorganization.

E. Contingent Consideration

The 2005 final regulations provide that contingent consideration will generally prevent a contract from being treated as providing for fixed consideration. However, the 2005 final regulations provide for a limited exception to that general rule. The exception applies to cases in which the contingent consideration consists solely of stock of the issuing corporation and the execution of the potential reorganization would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if none of the contingent consideration was delivered to the target shareholders. The IRS and Treasury Department received a number of comments regarding the effect of contingent consideration on the application of the signing date rule.

A number of commentators suggested that the scope of the exception should be expanded to include cases in which the delivery of the contingent consideration to the target corporation shareholders does not decrease the ratio of the value of the shares of issuing corporation stock to the value of the money or other property (determined as

of the last business day before the first date there is a binding contract) to be delivered to the target corporation shareholders relative to the ratio of the value of the shares of the issuing corporation stock to the value of the money or other property (determined as of the last business day before the first date there is a binding contract) to be delivered to the target corporation shareholders if none of the contingent consideration were delivered to the target corporation shareholders. These temporary regulations modify and expand the applicability of the signing date rule to certain transactions that provide for contingent adjustments (i.e., increases or decreases) to the consideration.

As described above, the signing date rule is based on the principle that, where a binding contract provides for fixed consideration, the target corporation shareholders can generally be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date. The IRS and Treasury Department believe that where this principle holds true, the signing date rule should apply regardless of whether the transaction potentially qualifies as a reorganization, and regardless of whether the contract provides for certain contingent adjustments to the otherwise fixed consideration. Accordingly, these temporary regulations provide that, generally, a contract that otherwise qualifies as providing for fixed consideration will be treated as providing for fixed consideration even if it provides for contingent adjustments to the consideration, and regardless of whether the transaction would have satisfied COI in the absence of any contingent adjustments. However, if the terms of the contingent adjustments potentially prevent the target corporation shareholders from being subject to the economic fortunes of the issuing corporation as of the signing date, the contract will not be treated as providing for fixed consideration.

Accordingly, these temporary regulations provide that a contract will not be treated as providing for fixed consideration if it provides for contingent adjustments to the consideration that prevent (to any extent) the target shareholders from being subject to the economic benefits and burdens of ownership of the issuing corporation as of the signing date. For example, a contract will not be treated as providing for fixed consideration if it provides for contingent adjustments in the event that the value of the stock of the issuing corporation, the value of the assets of the issuing corporation, or the

value of any surrogate for either the value of the stock of the issuing corporation or the assets of the issuing corporation increase or decrease after the last business day before the first date there is a binding contract, or if the terms of the contingent adjustment provide that any increase or decrease in the number of shares of the issuing corporation will be computed using any value of the issuing corporation shares after the last business day before the first date the contract is a binding contract.

F. Anti-Dilution Provisions

These temporary regulations also clarify that if the issuing corporation's capital structure is altered and the number of shares of the issuing corporation to be issued to the target corporation shareholders is altered pursuant to a customary anti-dilution clause, the signing date value of the issuing corporation's shares must be adjusted to take this alteration into account.

G. Other Issues

The IRS and Treasury Department continue to study other issues related to the determination of whether the COI requirement is satisfied.

Effective Date

These temporary regulations are effective March 20, 2007 and apply to transactions occurring pursuant to a binding contract entered into after September 16, 2005. These temporary regulations provide transitional relief for certain transactions occurring pursuant to a binding contract entered into after September 16, 2005, and on or before March 20, 2007. Parties to transactions within the scope of the transitional relief may elect to apply the 2005 final regulations instead of these temporary regulations. Certain parties must adopt consistent treatment to obtain this relief.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b) and (d) do not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lisa S. Dobson of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.368–1 is amended by:

- 1. Revising paragraph (e)(2).
- 2. Redesignating the text of paragraph (e)(8) as paragraph (e)(8)(i) and revising it.
- 3. Adding paragraph (e)(8)(ii).

The revisions and addition read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see § 1.368–1T(e)(2).

* * * * *

(8) *Effective dates*—(i) *In general.* Paragraphs (e)(1) and (e)(3) through (e)(7) of this section apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. Paragraph (e)(1)(ii) of this section, however, applies to transactions occurring after August 30, 2000, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter. Taxpayers who entered into a binding agreement on or after January 28, 1998, and before August 30, 2000, may request a private letter ruling permitting them to apply the final regulations to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for Federal tax purposes, with respect to the

applicability of the final regulations to the transaction.

(ii) *Signing date rule.* [Reserved]. For further guidance, see § 1.368–1T(e)(8)(ii).

■ **Par. 3.** Section 1.368–1T is added to read as follows:

§ 1.368–1T Purpose and scope of exception of reorganization exchanges (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see § 1.368–1(a) through (e)(1).

(e)(2) *Measuring continuity of interest*—(i) *In general.* In determining whether a proprietary interest in the target corporation is preserved, the consideration to be exchanged for the proprietary interests in the target corporation pursuant to a contract to effect the potential reorganization shall be valued on the last business day before the first date such contract is a binding contract, if such contract provides for fixed consideration. If a portion of the consideration provided for in such a contract consists of other property identified by value, then this specified value of such other property is used for purposes of determining the extent to which a proprietary interest in the target corporation is preserved. If the contract does not provide for fixed consideration, this paragraph (e)(2)(i) is not applicable.

(ii) *Binding contract*—(A) *In general.* A binding contract is an instrument enforceable under applicable law against the parties to the instrument. The presence of a condition outside the control of the parties (including, for example, regulatory agency approval) shall not prevent an instrument from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, shall not prevent an instrument from being a binding contract.

(B) *Modifications*—(1) *In general.* If a term of a binding contract that relates to the amount or type of the consideration the target shareholders will receive in a potential reorganization is modified before the closing date of the potential reorganization, and the contract as modified is a binding contract, the date of the modification shall be treated as the first date there is a binding contract.

(2) *Modification of a transaction that preserves continuity of interest.* Notwithstanding paragraph (e)(2)(ii)(B)(1) of this section, a modification of a term that relates to the amount or type of consideration the target shareholders will receive in a transaction that would have resulted in

the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if there had been no modification will not be treated as a modification if—

(i) The modification has the sole effect of providing for the issuance of additional shares of issuing corporation stock to the target corporation shareholders;

(ii) The modification has the sole effect of decreasing the amount of money or other property to be delivered to the target corporation shareholders; or

(iii) The modification has the effect of decreasing the amount of money or other property to be delivered to the target corporation shareholders and providing for the issuance of additional shares of issuing corporation stock to the target corporation shareholders.

(3) *Modification of a transaction that does not preserve continuity of interest.* Notwithstanding paragraph (e)(2)(ii)(B)(1) of this section, a modification of a term that relates to the amount or type of consideration the target shareholders will receive in a transaction that would not have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if there had been no modification will not be treated as a modification if—

(i) The modification has the sole effect of providing for the issuance of fewer shares of issuing corporation stock to the target corporation shareholders;

(ii) The modification has the sole effect of increasing the amount of money or other property to be delivered to the target corporation shareholders; or

(iii) The modification has the effect of increasing the amount of money or other property to be delivered to the target corporation shareholders and providing for the issuance of fewer shares of issuing corporation stock to the target corporation shareholders.

(C) *Tender offers.* For purposes of this paragraph (e)(2), a tender offer that is subject to section 14(d) of the Securities and Exchange Act of 1934 [15 U.S.C. 78n(d)(1)] and Regulation 14D (17 CFR 240.14d–1 through 240.14d–101) and is not pursuant to a binding contract, is treated as a binding contract made on the date of its announcement, notwithstanding that it may be modified by the offeror or that it is not enforceable against the offerees. If a modification (not pursuant to a binding contract) of such a tender offer is subject to the provisions of Regulation 14d–6(c) (17 CFR 240.14d–6(c)) and relates to the

amount or type of the consideration received in the tender offer, then the date of the modification shall be treated as the first date there is a binding contract.

(iii) *Fixed Consideration*—(A) *In general.* A contract provides for fixed consideration if it provides the number of shares of each class of stock of the issuing corporation, the amount of money, and the other property (identified either by value or by specific description), if any, to be exchanged for all the proprietary interests in the target corporation, or to be exchanged for each proprietary interest in the target corporation. A contract that provides a target corporation shareholder with an election to receive a number of shares of stock of the issuing corporation and/or money and/or other property in exchange for all of the shareholder's proprietary interests in the target corporation, or each of the shareholder's proprietary interests in the target corporation, provides for fixed consideration if the determination of the number of shares of issuing corporation stock to be provided to the target corporation shareholder is determined using the value of the issuing corporation stock on the last business day before the first date there is a binding contract.

(B) *Contingent adjustments to the consideration*—(1) *In general.* Except as provided in paragraph (e)(2)(iii)(B)(2) of this section, a contract that provides for contingent adjustments to the consideration will be treated as providing for fixed consideration if it would satisfy the requirements of paragraph (e)(2)(iii)(A) of this section without the contingent adjustment provision.

(2) *Exceptions.* A contract will not be treated as providing for fixed consideration if the contract provides for contingent adjustments to the consideration that prevent (to any extent) the target corporation shareholders from being subject to the economic benefits and burdens of ownership of the issuing corporation stock after the last business day before the first date the contract is a binding contract. For example, a contract will not be treated as providing for fixed consideration if the contract provides for contingent adjustments to the consideration in the event that the value of the stock of the issuing corporation, the value of the assets of the issuing corporation, or the value of any surrogate for either the value of the stock of the issuing corporation or the assets of the issuing corporation increase or decrease after the last business day before the first date there

is a binding contract; or in the event the contract provides for contingent adjustments to the number of shares of the issuing corporation stock to be provided to the target corporation shareholders computed using any value of the issuing corporation shares after the last business day before the first date there is a binding contract.

(C) *Escrows.* Placing part of the consideration to be exchanged for proprietary interests in the target corporation in escrow to secure target's performance of customary pre-closing covenants or customary target representations and warranties will not prevent a contract from being treated as providing for fixed consideration.

(D) *Anti-dilution clauses.* The presence of a customary anti-dilution clause will not prevent a contract from being treated as providing for fixed consideration. However, the absence of such a clause will prevent a contract from being treated as providing for fixed consideration if the issuing corporation alters its capital structure between the first date there is an otherwise binding contract to effect the transaction and the effective date of the transaction in a manner that materially alters the economic arrangement of the parties to the binding contract. If the number of shares of the issuing corporation to be issued to the target corporation shareholders is altered pursuant to a customary anti-dilution clause, the value of the shares determined under paragraph (e)(2)(i) of this section must be adjusted accordingly.

(E) *Dissenters' rights.* The possibility that some shareholders may exercise dissenters' rights and receive consideration other than that provided for in the binding contract will not prevent the contract from being treated as providing for fixed consideration.

(F) *Fractional shares.* The fact that money may be paid in lieu of issuing fractional shares will not prevent a contract from being treated as providing for fixed consideration.

(iv) *Valuation of new issuances.* For purposes of applying paragraph (e)(2)(i) of this section, any class of stock, securities, or indebtedness that the issuing corporation issues to the target corporation shareholders pursuant to the potential reorganization and that does not exist before the first date there is a binding contract to effect the potential reorganization is deemed to have been issued on the last business day before the first date there is a binding contract to effect the potential reorganization.

(v) *Examples.* For purposes of the examples in this paragraph (e)(2)(v), P is the issuing corporation, T is the target

corporation, S is a wholly owned subsidiary of P, all corporations have only one class of stock outstanding, A is an individual, no transactions other than those described occur, and the transactions are not otherwise subject to recharacterization. The following examples illustrate the application of this paragraph (e)(2):

Example 1. Application of signing date rule. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. Twenty of the P shares, however, will be placed in escrow to secure customary target representations and warranties. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is \$1 per share. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the P stock is \$.25 per share. None of the stock placed in escrow is returned to P. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under this paragraph (e)(2), there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$40 of P stock and \$60 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 2. Treatment of forfeited escrowed stock. (i) *Escrowed stock.* The facts are the same as in Example 1 except that T's breach of a representation results in the escrowed consideration being returned to P. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under this paragraph (e)(2), there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Pursuant to paragraph (e)(1)(i) of § 1.368-1, for continuity of interest purposes, the T stock is exchanged for \$20 of P stock and \$60 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

(ii) *Escrowed stock and cash.* The facts are the same as in paragraph (i) of this Example 2 except that the consideration placed in escrow consists solely of eight of the P shares and \$12 of the cash. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under this paragraph (e)(2), there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the

transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Pursuant to paragraph (e)(1)(i) of § 1.368-1, for continuity of interest purposes, the T stock is exchanged for \$32 of P stock and \$48 of cash, and the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 3. Redemption of stock received pursuant to binding contract. The facts are the same as in *Example 1* except that A owns 50 percent of the outstanding stock of T immediately prior to the merger and receives 10 P shares and \$30 in the merger and an additional 10 P shares upon the release of the stock placed in escrow. In connection with the merger, A and S agree that, immediately after the merger, S will purchase any P shares that A acquires in the merger for \$1 per share. Shortly after the merger, S purchases A's P shares for \$20. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under this paragraph (e)(2), there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. In addition, S is a person related to P under paragraph (e)(4)(i)(A) of § 1.368-1. Accordingly, A is treated as exchanging his T shares for \$50 of cash. Because, for continuity of interest purposes, the T stock is exchanged for \$20 of P stock and \$80 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 4. Modification of binding contract—continuity not preserved. The facts are the same as in *Example 1* except that on April 1 of Year 1, the parties modify their contract. Pursuant to the modified contract, which is a binding contract, the T shareholders will receive 50 P shares (an additional 10 shares) and \$75 of cash (an additional \$15 of cash) in exchange for all of the outstanding T stock. On March 31 of Year 1, the value of the P stock is \$.50 per share. Under this paragraph (e)(2), although there was a binding contract providing for fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. The execution of the transaction without modification would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if there had been no modification. However, because the modified contract provides for additional P stock and cash to be exchanged for all the proprietary interests in T, the exception in paragraph (e)(2)(ii)(B)(2) of this section does not apply to preserve the original signing date. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on March 31 of Year 1.

Because, for continuity of interest purposes, the T stock is exchanged for \$25 of P stock and \$75 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 5. Modification of binding contract disregarded—continuity preserved. The facts are the same as in *Example 4* except that, pursuant to the modified contract, which is a binding contract, the T shareholders will receive 60 P shares (an additional 20 shares as compared to the original contract) and \$60 of cash in exchange for all of the outstanding T stock. In addition, on March 31 of Year 1, the value of the P stock is \$.40 per share. Under this paragraph (e)(2), although there was a binding contract providing for fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. Nonetheless, the modification has the sole effect of providing for the issuance of additional P shares to the T shareholders. In addition, the execution of the terms of the contract without regard to the modification would have resulted in the preservation of a substantial part of the value of the T shareholders' proprietary interest in T because, for continuity of interest purposes, the T stock would have been exchanged for \$40 of P stock and \$60 of cash. Pursuant to paragraph (e)(2)(ii)(B)(2) of this section, the modification is not treated as a modification for purposes of paragraph (e)(2)(ii)(B)(1) of this section. Accordingly, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$60 of P stock and \$60 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore the transaction satisfies the continuity of interest requirement.

Example 6. New issuance. The facts are the same as in *Example 1*, except that, instead of cash, the T shareholders will receive a new class of P securities that will be publicly traded. In the aggregate, the securities will have a stated principal amount of \$60 and bear interest at the average LIBOR (London Interbank Offered Rates) during the 10 days prior to the potential reorganization. If the T shareholders had been issued the P securities on January 2 of Year 1, the P securities would have had a value of \$60 (determined by reference to the value of comparable publicly traded securities). Whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock and the P securities to be issued to the T shareholders on January 2 of Year 1. Under paragraph (e)(2)(iv) of this section, for purposes of valuing the new P securities, they will be treated as having been issued on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$40 of P stock and \$60 of other property, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the

transaction satisfies the continuity of interest requirement.

Example 7. Fixed consideration—continuity not preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, 60 shares of the T stock will be exchanged for \$80 of cash and 40 shares of the T stock will be exchanged for 20 shares of P stock. On January 2 of Year 1, the value of the P stock is \$1 per share. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. This contract provides for fixed consideration and therefore whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. However, applying the signing date rule, the P stock represents only 20 percent of the value of the total consideration to be received by the T shareholders. Accordingly, based on the economic realities of the exchange, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 8. Anti-dilution clause. (i) Absence of anti-dilution clause. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. The contract does not contain a customary anti-dilution provision. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is \$1 per share. On April 10 of Year 1, P issues its stock to effect a stock split; each shareholder of P receives an additional share of P for each P share that it holds. On April 11 of Year 1, the value of the P stock is \$.50 per share. Because P altered its capital structure between January 3 and June 1 of Year 1 in a manner that materially alters the economic arrangement of the parties, under paragraph (e)(2)(iii)(D) of this section, the contract is not treated as a binding contract that provides for fixed consideration. Accordingly, whether the transaction satisfies the continuity of interest requirement cannot be determined by reference to the value of the P stock on January 2 of Year 1.

(ii) Adjustment for anti-dilution clause. The facts are the same as in paragraph (i) of this *Example 8* except that the contract contains a customary anti-dilution provision, and the T shareholders receive 80 P shares and \$60 of cash in exchange for all of the outstanding stock of T. Under paragraph (e)(2)(iii)(D) of this section, the contract is treated as a binding contract that provides for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is generally determined by reference to the value of the P stock on January 2 of Year 1. However, under paragraph (e)(2)(iii)(D) of this section, the value of the P stock on January 2 of Year 1 must be adjusted to take the stock split into account. For continuity of interest purposes, the T stock is exchanged for \$40 of P stock $((\$1 \div 2) \times 80)$ and \$60 of

cash. Therefore, the transaction satisfies the continuity of interest requirement.

Example 9. Shareholder election. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, the value of the P stock and the T stock is \$1 per share. Pursuant to the contract, at the shareholders' election, each share of T will be exchanged for cash of \$1, or alternatively, P stock. The contract provides that the determination of the number of shares of P stock to be exchanged for a share of T stock is made using the value of the P stock on the last business day before the first date there is a binding contract (i.e., \$1 per share). Accordingly, the contract provides for fixed consideration, and the determination of whether the transaction satisfies the continuity of interest requirement is based on the number of shares of P stock the T shareholders receive in the exchange and by reference to the value of the P stock on January 2 of Year 1.

Example 10. Contingent adjustment based on the value of the issuing corporation stock—continuity not preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, the value of the P stock is \$1 per share. Pursuant to the contract, if the value of the P stock does not decrease after January 2 of Year 1, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive \$.16 of additional P shares and \$.24 for every \$.01 decrease in the value of one share of P stock after January 2 of Year 1. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the P stock is \$.40 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive 24 more P shares ($(60 \times \$.16)/\$.40$) and \$14.40 more cash ($60 \times \$.24$) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 64 P shares and \$74.40 of cash. Because the contract provides that additional P shares and cash will be delivered to the T shareholders if the value of the stock of P decreases after January 2 of Year 1, under paragraph (e)(2)(iii)(B)(2) of this section, the contract is not treated as providing for fixed consideration, and therefore whether the transaction satisfies the continuity of interest requirement cannot be determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for \$25.60 of P stock ($64 \times \$.40$) and \$74.40 of cash and the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 11. Contingent adjustment to boot based on the value of the target corporation stock—continuity not preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On January 2 of Year 1, T has 100 shares outstanding, and each T share is worth \$1. On January 2 of

Year 1, each P share is worth \$1. Pursuant to the contract, if the value of the T stock does not increase after January 3 of Year 1, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive \$1 of additional cash for every \$.01 increase in the value of one share of T stock after January 3 of Year 1. On June 1 of Year 1, the value of the T stock is \$1.40 per share and the value of the P stock is \$.75 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive \$40 more cash ($40 \times \1) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 40 P shares and \$100 of cash. Because the contract provides the number of shares of P stock and the amount of money to be exchanged for all the proprietary interests in T, and the contingent adjustment to the cash consideration is not based on changes in the value of the P stock, P assets, or any surrogate thereof, after January 2 of Year 1, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for \$40 of P stock ($40 \times \1) and \$100 of cash. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 12. Contingent adjustment to stock based on the value of the target corporation stock—continuity preserved. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. On that date T has 100 shares outstanding, and each T share is worth \$1. On January 2 of Year 1, each P share is worth \$1. Pursuant to the contract, if the value of the T stock does not decrease after January 3 of Year 1, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. Furthermore, the contract provides that the T shareholders will receive \$.40 less P stock and \$.60 less cash for every \$.01 decrease in the value of one share of T stock after January 3 of Year 1. The contract also provides that the number of P shares by which the consideration will be reduced as a result of this adjustment will be determined based on the value of the P stock on January 2 of Year 1. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the T stock is \$.70 per share and the value of the P stock is \$.75 per share. Pursuant to the terms of the contract, the consideration is adjusted so that the T shareholders receive 12 fewer P shares ($(30 \times \$.40)/\1) and \$18 less cash ($30 \times \$.60$) than they would absent an adjustment. Accordingly, at closing the T shareholders receive 28 P shares and \$42 of cash. Because the contract provides for the number of shares of P stock and the amount of money to be exchanged for all of the proprietary interests in T, the contract does not provide for contingent adjustments to the consideration based on a change in value of the P stock, P assets, or any surrogate thereof, after January 2 of Year 1, and the adjustment

to the number of P shares the T shareholders receive is determined based on the value of the P shares on January 2 of Year 1, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. For continuity of interest purposes, the T stock is exchanged for \$28 of P stock ($28 \times \1) and \$42 of cash. Therefore, the transaction satisfies the continuity of interest requirement.

(e)(3) through (7) [Reserved]. For further guidance, see § 1.368–1(e)(3) through (7).

(8) **Effective dates.** (i) [Reserved]. For further guidance, see § 1.368–1(e)(8)(i).

(ii) **Signing date rule.** Paragraph (e)(2) of this section applies to transactions occurring pursuant to binding contracts entered into after September 16, 2005. For transactions occurring pursuant to binding contracts entered into after September 16, 2005, and on or before March 20, 2007, the parties to the transaction may elect to apply the provisions of § 1.368–1(e)(2) as contained in 26 CFR part 1, revised April 1, 2006, instead of the provisions of this paragraph (e)(2). However, the target corporation, the issuing corporation, the controlling corporation of the acquiring corporation if stock thereof is provided as consideration in the transaction, and any direct or indirect transferee of transferred basis property from any of the foregoing, may not elect to apply the provisions of § 1.368–1(e)(2) as contained in 26 CFR part 1, revised April 1, 2006, unless all such taxpayers elect to apply the provisions of such regulations. This election requirement will be satisfied if none of the specified parties adopts inconsistent treatment. The applicability of this section expires on or before March 19, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 14, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–5128 Filed 3–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Sudanese Sanctions Regulations; Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Policy statement.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing this notice to clarify its policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran pursuant to section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000).

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Clarification of Policy With Respect to the Process for Issuing One-Year Licenses To Export Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000), as amended (“TSRA”), provides that, with certain exceptions, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity unless, at least 60 days before imposing such a sanction, the President submits a report describing the proposed sanction and the reasons for it and Congress enacts a joint resolution approving the report. Section 906 of TSRA, however, requires that the export of agricultural commodities, medicine, and medical devices to Cuba, or to the government of a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism, or to any entity in such country, shall only be made pursuant to one-year licenses issued by the United States Government. Section 906 also requires that procedures shall be in place to deny licenses for exports to any entity within such country that promotes international terrorism.

Effective July 26, 2001, the Office of Foreign Assets Control (“OFAC”) promulgated amendments to the Sudanese Sanctions Regulations, 31 CFR part 538 (the “SSR”), and the Iranian Transactions Regulations, 31 CFR part 560 (the “ITR”), to implement section 906 of TSRA. See 66 FR 36683 (July 12, 2001) (the “rule”). The preamble to the rule described an expedited process for the issuance of the

one-year license required by section 906 for all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan or Iran. The expedited process included, when appropriate, referral of the one-year license request to other government agencies for guidance in evaluating the request. If no government agency raised an objection to or concern with the application within nine business days from the date of any such referral, OFAC would issue the one-year license, provided that the request otherwise met the requirements set forth in the rule. Conversely, if any government agency raised an objection to the request within nine business days from the date of referral, OFAC would deny the license request. Finally, if any government agency raised a concern short of an objection with the request within nine business days from the date of referral, OFAC would delay its response to the license request for no more than thirty additional days to allow for further review of the request.

OFAC instituted this expedited licensing process described in the preamble following the rule’s publication in July 2001. However, the terrorist attacks of September 11, 2001, magnified concerns about international terrorism and proliferation of weapons of mass destruction. These concerns prompted greater scrutiny on the part of OFAC and other agencies of the U.S. Government of those entities within state sponsors of terrorism to whom agricultural commodities, medicine, and medical devices were being exported. Moreover, the volume of license requests has increased substantially since the inception of the TSRA program, and applications are now much more complicated than earlier ones, often involving dozens and sometimes hundreds of products and parties to the transaction. All of these factors have contributed to longer OFAC and interagency reviews of the applications, and thus longer processing times for the applications, than suggested in the preamble to the rule. This review is often further complicated by the fact that these license requests are evaluated both in terms of whether the foreign entities involved in the transaction “promote international terrorism,” as required by section 906 of TSRA, and in terms of whether the products at issue implicate independent export control regimes involving chemical or biological weapons or weapons of mass destruction, as provided in section 904(2)(C) of TSRA. Scrutiny of license applications on the latter ground often results in requests

for additional information by the reviewing agencies, which neither the applicant nor OFAC can anticipate, further delaying the review process.

Accordingly, today OFAC is issuing this notice to clarify its policy with respect to the licensing process for TSRA exports. OFAC will continue to conduct a review of all applications for one-year licenses consistent with the requirements of section 906 of TSRA, which may include a referral to other government agencies for guidance, and will respond to such applications upon completion of the review. Please be aware that OFAC’s processing of one-year license requests may take longer than the time periods suggested at the inception of the TSRA program. OFAC will continue to respond to such applications in as timely a manner as is possible under the circumstances of each individual license application, consistent with OFAC’s obligations under TSRA, the ITR, and the SSR.

Dated: February 9, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–4950 Filed 3–19–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–027]

Drawbridge Operation Regulations; Raritan River, Arthur Kill, and Their Tributaries, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the AK Railroad Bridge across Arthur Kill at mile 11.6, between Staten Island, New York and Elizabeth, New Jersey. This temporary deviation requires the AK Railroad Bridge to remain in the open position at all times, except that the draw would close for the passage of trains for two daily one-hour closure periods on a fixed schedule with a one hour adjustment whenever high water occurs during or up to one hour after the applicable closure period. In addition, a number of unscheduled requests for one hour closure periods may be granted by the Coast Guard within one to three hours of receipt of the request. The purpose of this

deviation is to test a temporary change to the drawbridge operation schedule to help determine the most equitable and safe solution to facilitate the present and anticipated needs of navigation and rail traffic.

DATES: This deviation is effective from April 9, 2007 through October 5, 2007. Comments must be received by June 23, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this deviation. Comments and material received from the public, as well as documents indicated in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, Bridge Branch, at (212) 668-7165.

SUPPLEMENTARY INFORMATION:

Request for comments

We encourage you to participate in evaluating this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this deviation (CGD01-07-027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by June 23, 2007, prior to the end of the deviation period so that adjustments to the tested operating schedule may be made, if necessary.

Background and Purpose

The AK Railroad Bridge has a vertical clearance of 31 feet at mean high water and 35 feet at mean low water in the closed position. The existing operating regulation, listed at 33 CFR 117.747, requires that all bridges across the

Raritan River, Arthur Kill, and their tributaries, shall open on signal; except that, from 7:30 a.m. to 10 a.m. and 5 p.m. to 7:30 p.m., the draws may be opened for the passage of vessels for periods no longer than 10 minutes or remain closed for the passage of land traffic for no longer than 10 minutes. The above regulation is no longer applicable or necessary as it pertains to the AK Railroad Bridge because the AK Railroad Bridge has been maintained in the open position for the past 20 years due to the cessation of all railroad train traffic over the bridge.

The owner of the bridge, New York City Economic Development Corporation (NYCEDC), began a bridge rehabilitation program approximately 10 years ago, as part of the region's Full Freight Access Initiative.

Part of the Full Freight Initiative was to once again move freight trains across the bridge to and from the Staten Island Landfill facility and the New York Container Terminal (formerly the Howland Hook Terminal). The New York Container Terminal has already been revitalized and is preparing to receive railroad freight traffic once again.

Recently, the AK Railroad Bridge rehabilitation project was completed in anticipation of renewed rail operations requiring the passage of train traffic across the bridge.

The existing vessel traffic transiting Arthur Kill is comprised of deep draft oceangoing tank vessels, tug assisted barge traffic, other commercial vessels of various sizes, as well as a variety of recreational craft.

The deep draft oceangoing vessel transits are tide dependent in that their ability to maneuver safely requires such vessels to do so primarily on or near slack high tide, unlike barge and tug traffic, which may transit at various stages of the tide.

The bridge owner, NYCEDC, requested that the Coast Guard promulgate bridge operation regulations commensurate with the needs of freight rail operations. The resumption of rail traffic across the AK Railroad Bridge would require the bridge be closed to navigation for short periods several times a day.

The purpose of this temporary deviation is to help determine a bridge operating schedule that will accommodate both Conrail's proposed train schedule as well as future rail operations, while continuing to provide for the present and anticipated needs of navigation.

This deviation will test an alternate drawbridge operation schedule designed to help facilitate the safe coordination of

vessel and rail traffic. A variety of factors, such as daily tide variations, the present and anticipated needs of navigation, and train scheduling, will be considered during this temporary test deviation.

After numerous meetings and consultations with rail and marine transportation interests, the Coast Guard has concluded that the most equitable and safe solution to facilitate the presently known and anticipated marine and railroad traffic scheduling needs is to test a fixed daily drawbridge operation schedule making allowances for high water periods which are critical to large vessel transits. In addition, due to the variability of some freight rail movements, accommodation of unscheduled bridge closure requests will be tested.

In anticipation of additional railroad operations, the Coast Guard will continue to evaluate the bridge operating schedule in future rulemakings, as necessary.

The schedule considered in this notice would provide two daily one-hour bridge closure periods on a fixed schedule with a one hour adjustment during certain high tides (as predicted at the Battery, New York). Also, unscheduled bridge closure requests may be granted by the Coast Guard within one to three hours of receipt of the request.

Being able to predict bridge closure periods each day, in advance, would enable both rail and marine interests to schedule accordingly, obviating the need to adjust to different bridge closure times daily. The ability to obtain unscheduled bridge closures will offer some flexibility in rail operations.

This temporary deviation requires the AK Railroad Bridge to remain in the open position at all times except when it is allowed to remain closed for the passage of rail traffic for two one-hour periods at 10 a.m. and 4 p.m., daily, except when high tide occurs during or within one hour after the scheduled closed period. When high tide occurs during the bridge closure period the bridge closure will commence one hour later, at 11 a.m.; when high tide occurs within one hour after the scheduled closure period the bridge closure will commence one hour earlier, at 9 a.m. A schedule of bridge closure periods will be posted on the U.S. Coast Guard's Homeport Web site and published in the Local Notice to Mariners. In addition to the scheduled closure periods, up to two, unscheduled one hour bridge closure periods per day (maximum of twelve per week), may be requested of and may be approved by the Coast Guard within one to three hours of the

request. The bridge will remain open for a minimum of two hours between bridge closures for the passage of marine traffic. In the event of bridge operational failure, the bridge owner or operator shall notify the Coast Guard Captain of the Port, New York immediately and shall ensure that a repair crew is on scene at the bridge no later than 45 minutes after the bridge fails, and remains until the bridge has been restored to normal operations or raised and locked in the fully open position.

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

Dated: March 12, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7-5062 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AM60

Schedule for Rating Disabilities; Appendices A, B, and C

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is revising its Schedule for Rating Disabilities, Appendices A, B, and C to include all current diagnostic codes. Appendix A is also amended to include all the diagnostic code historical information since the last review.

DATES: *Effective Date:* This amendment is effective April 19, 2007.

FOR FURTHER INFORMATION CONTACT:

Trude Steele, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

SUPPLEMENTARY INFORMATION: The Schedule for Rating Disabilities, 38 CFR Part 4, Appendices A, B, and C have not been updated since July 1, 1988. These Appendices are tools for users of the Schedule for Rating Disabilities. The Appendices reflect changes to the diagnostic criteria in the Schedule for Rating Disabilities.

We have amended the Appendices to add changes to the Schedule for Rating Disabilities since the Appendices were last updated. Additionally, we removed language in Appendix A that showed

when a diagnostic code was updated to correct spelling, revise text, or other additional changes, which had no impact on the disability code. Those changes were incorporated within the text when amended. All diagnostic codes in Appendix A will now be categorized by when they were added, removed, whether the criterion was amended, and whether the disability evaluation was amended. We will continue to include the date for historical purposes. We revised Appendices B and C to provide the current diagnostic codes and disability terminology. We will continue to update the Appendices as the Schedule for Rating Disabilities is revised.

Administrative Procedures Act

This final rule merely replaces inaccurate examples and does not alter the content of the regulations. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule 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. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is 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 final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final are 64.104, Pension for Non-Service-Connected Disability for Veterans and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: March 2, 2007

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. Appendix A to Part 4 is revised to read as follows:

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec.	Diagnostic code No.	
4.71a	5000	Evaluation February 1, 1962.
	5001	Evaluation March 11, 1969.
	5002	Evaluation March 1, 1963.
	5003	Added July 6, 1950.
	5012	Criterion March 10, 1976.
	5024	Criterion March 1, 1963.
	5025	Added May 7, 1996.
	5051	Added September 22, 1978.
	5052	Added September 22, 1978.
	5053	Added September 22, 1978.
	5054	Added September 22, 1978.
	5055	Added September 22, 1978.
	5056	Added September 22, 1978.
	5100–5103	Removed March 10, 1976.
	5104	Criterion March 10, 1976.
	5105	Criterion March 10, 1976.
	5164	Evaluation June 9, 1952.
	5166	Criterion September 22, 1978.
	5172	Added July 6, 1950.
	5173	Added June 9, 1952.
	5174	Added September 9, 1975; removed September 22, 1978.
	5211	Criterion September 22, 1978.
	5212	Criterion September 22, 1978.
	5214	Criterion September 22, 1978.
	5216	Preceding paragraph criterion September 22, 1978.
	5217	Criterion August 26, 2002.
	5218	Criterion August 26, 2002.
	5219	Criterion September 22, 1978; criterion August 26, 2002.
	5220	Preceding paragraph criterion September 22, 1978; criterion August 26, 2002.
	5223	Criterion August 26, 2002.
	5224	Criterion August 26, 2002.
	5225	Criterion August 26, 2002.
	5226	Criterion August 26, 2002.
	5227	Criterion September 22, 1978; criterion August 26, 2002.
	5228	Added August 26, 2002.
	5229	Added August 26, 2002.
	5230	Added August 26, 2002.
	5235–5243	Replaces 5285–5295 September 26, 2003.
	5243	Criterion September 26, 2003.
	5255	Criterion July 6, 1950.
	5257	Evaluation July 6, 1950.
	5264	Added September 9, 1975; removed September 22, 1978.
	5275	Criterion March 10, 1976; criterion September 22, 1978.
	5285–5292	Revised to 5235–5243 September 26, 2003.
	5293	Criterion March 10, 1976; criterion September 23, 2002; revised and moved to 5235–5243 September 26, 2003.
	5294	Evaluation March 10, 1976; revised and moved to 5235–5243 September 26, 2003.
	5295	Evaluation March 10, 1976; revised and moved to 5235–5243 September 26, 2003.
	5296	Criterion March 10, 1976.
	5297	Criterion August 23, 1948; criterion February 1, 1962.
	5298	Added August 23, 1948.
4.73		Introduction NOTE criterion July 3, 1997.
	5317	Criterion September 22, 1978.
	5324	Added February 1, 1962.
	5325	Criterion July 3, 1997.
	5327	Added March 10, 1976; criterion October 15, 1991; criterion July 3, 1997.
	5328	Added NOTE March 10, 1976.
	5329	Added NOTE July 3, 1997.
4.84a		Table V criterion July 1, 1994.
	6010	Criterion March 11, 1969.
	6019	Criterion September 22, 1978.
	6029	NOTE August 23, 1948; criterion September 22, 1978.
	6035	Added September 9, 1975.
	6050–6062	Removed March 10, 1976.
	6061	Added March 10, 1976.
	6062	Added March 10, 1976.
	6063–6079	Criterion September 22, 1978.
	6064	Criterion March 10, 1976.
	6071	Criterion March 10, 1976.
	6076	Evaluation August 23, 1948.
	6080	Criterion September 22, 1978.

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
	6081	Criterion March 10, 1976.
	6090	Criterion September 22, 1978; criterion September 12, 1988.
4.84b	6260	Added October 1, 1961; criterion October 1, 1961; evaluation March 10, 1976; removed December 18, 1987; re-designated § 4.87a December 18, 1987.
4.87		Tables VI and VII replaced by new Tables VI, VIA, and VII December 18, 1987. 6200–6260 revised and re-designated § 4.87 June 10, 1999.
4.87a	6200–6260	Moved to § 4.87 June 10, 1999.
	6275–6276	Moved from § 4.87b June 10, 1999.
	6277–6297	March 23, 1956 removed, December 17, 1987; Table II revised Table V March 10, 1976; Table II revised to Table VII September 22, 1978; text from § 4.84b Schedule of ratings-ear re-designated from § 4.87 December 17, 1987.
	6286	Removed December 17, 1987.
	6291	Criterion March 10, 1976; removed December 17, 1987.
	6297	Criterion March 10, 1976; removed December 17, 1987.
4.87b		Removed June 10, 1999.
4.88a		March 11, 1969; re-designated § 4.88b November 29, 1994; § 4.88a added to read “Chronic fatigue syndrome”; criterion November 29, 1994.
4.88b		Added March 11, 1969; re-designated § 4.88c November 29, 1994; § 4.88a re-designated to § 4.88b November 29, 1994.
	6300	Criterion August 30, 1996.
	6302	Criterion September 22, 1978; criterion August 30, 1996.
	6304	Evaluation August 30, 1996.
	6305	Criterion March 1, 1989; evaluation August 30, 1996.
	6306	Evaluation August 30, 1996.
	6307	Criterion August 30, 1996.
	6308	Criterion August 30, 1996.
	6309	Added March 1, 1963; criterion March 1, 1989; criterion August 30, 1996.
	6314	Evaluation March 1, 1989; evaluation August 30, 1996.
	6315	Criterion August 30, 1996.
	6316	Evaluation March 1, 1989; evaluation August 30, 1996.
	6317	Criterion August 30, 1996.
	6318	Added March 1, 1989; criterion August 30, 1996.
	6319	Added August 30, 1996.
	6320	Added August 30, 1996.
	6350	Evaluation March 1, 1963; evaluation March 10, 1976; evaluation August 30, 1996.
	6351	Added March 1, 1989; evaluation March 24, 1992; criterion August 30, 1996.
	6352	Added March 1, 1989; removed March 24, 1992.
	6353	Added March 1, 1989; removed March 24, 1992.
	6354	Added November 29, 1994; criterion August 30, 1996.
4.88c		Re-designated from § 4.88b November 29, 1994.
4.89		Ratings for nonpulmonary TB December 1, 1949; criterion March 11, 1969.
4.97	6502	Criterion October 7, 1996.
	6504	Criterion October 7, 1996.
	6510–6514	Criterion October 7, 1996.
	6515	Criterion March 11, 1969.
	6516	Criterion October 7, 1996.
	6517	Removed October 7, 1996.
	6518	Criterion October 7, 1996.
	6519	Criterion October 7, 1996.
	6520	Criterion October 7, 1996.
	6521	Added October 7, 1996.
	6522	Added October 7, 1996.
	6523	Added October 7, 1996.
	6524	Added October 7, 1996.
	6600	Evaluation September 9, 1975; criterion October 7, 1996.
	6601	Criterion October 7, 1996.
	6602	Criterion September 9, 1975; criterion October 7, 1996.
	6603	Added September 9, 1975; criterion October 7, 1996.
	6604	Added October 7, 1996.
	6701	Evaluation October 7, 1996.
	6702	Evaluation October 7, 1996.
	6703	Evaluation October 7, 1996.
	6704	Subparagraph (1) following December 1, 1949; criterion March 11, 1969; criterion September 22, 1978.
	6705	Removed March 11, 1969.
	6707–6710	Added March 11, 1969; removed September 22, 1978.
	6721	Criterion July 6, 1950; criterion September 22, 1978.
	6724	Second note following December 1, 1949; criterion March 11, 1969; evaluation October 7, 1996.
	6725–6728	Added March 11, 1969; removed September 22, 1978.
	6730	Added September 22, 1978; criterion October 7, 1996.

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
4.104	6731	Evaluation September 22, 1978; criterion October 7, 1996.
	6732	Criterion March 11, 1969.
	6800	Criterion September 9, 1975; removed October 7, 1996.
	6801	Removed October 7, 1996.
	6802	Criterion September 9, 1975; removed October 7, 1996.
	6810–6813	Removed October 7, 1996.
	6814	Criterion March 10, 1976; removed October 7, 1996.
	6815	Removed October 7, 1996.
	6816	Removed October 7, 1996.
	6817	Evaluation October 7, 1996.
	6818	Removed October 7, 1996.
	6819	Criterion March 10, 1976; criterion October 7, 1996.
	6821	Evaluation August 23, 1948.
	6822–6847	Added October 7, 1996.
	7000	Evaluation July 6, 1950; evaluation September 22, 1978; evaluation January 12, 1998.
	7001	Evaluation January 12, 1998.
	7002	Evaluation January 12, 1998.
	7003	Evaluation January 12, 1998.
	7004	Criterion September 22, 1978; evaluation January 12, 1998.
	7005	Evaluation September 9, 1975; evaluation September 22, 1978; evaluation January 12, 1998.
	7006	Evaluation January 12, 1998.
	7007	Evaluation September 22, 1978; evaluation January 12, 1998.
	7008	Evaluation January 12, 1998.
	7010	Evaluation January 12, 1998.
	7011	Evaluation January 12, 1998.
	7013	Removed January 12, 1998.
	7014	Removed January 12, 1998.
	7015	Evaluation September 9, 1975; criterion January 12, 1998.
	7016	Added September 9, 1975; evaluation January 12, 1998.
	7017	Added September 22, 1978; evaluation January 12, 1998.
	7018	Added January 12, 1998.
	7019	Added January 12, 1998.
	7020	Added January 12, 1998.
	7100	Evaluation July 6, 1950.
	7101	Criterion September 1, 1960; criterion September 9, 1975; criterion January 12, 1998.
	7110	Evaluation September 9, 1975; evaluation January 12, 1998.
	7111	Criterion September 9, 1975; evaluation January 12, 1998.
	7112	Evaluation January 12, 1998.
	7113	Evaluation January 12, 1998.
	7114	Added June 9, 1952; evaluation January 12, 1998.
	7115	Added June 9, 1952; evaluation January 12, 1998.
	7116	Added June 9, 1952; evaluation March 10, 1976; removed January 12, 1998.
	7117	Added June 9, 1952; evaluation January 12, 1998.
	7118	Criterion January 12, 1998.
	7119	Evaluation January 12, 1998.
	7120	Note following July 6, 1950; evaluation January 12, 1998.
	7121	Criterion July 6, 1950; evaluation March 10, 1976; evaluation January 12, 1998.
	7122	Last sentence of Note following July 6, 1950; evaluation January 12, 1998; criterion August 13, 1998.
	7123	Added October 15, 1991; criterion January 12, 1998.
4.114		Introduction paragraph revised March 10, 1976.
	7304	Evaluation November 1, 1962.
	7305	Evaluation November 1, 1962.
	7308	Evaluation April 8, 1959.
	7311	Criterion July 2, 2001.
	7312	Evaluation March 10, 1976; evaluation July 2, 2001.
	7313	Evaluation March 10, 1976; removed July 2, 2001.
	7319	Evaluation November 1, 1962.
	7321	Evaluation July 6, 1950; criterion March 10, 1976.
	7328	Evaluation November 1, 1962.
	7329	Evaluation November 1, 1962.
	7330	Evaluation November 1, 1962.
	7331	Criterion March 11, 1969.
	7332	Evaluation November 1, 1962.
	7334	Evaluation July 6, 1950; evaluation November 1, 1962.
	7339	Criterion March 10, 1976.
	7341	Removed March 10, 1976.
	7343	Criterion March 10, 1976; criterion July 2, 2001.
	7344	Criterion July 2, 2001.
	7345	Evaluation August 23, 1948; evaluation February 17, 1955; evaluation July 2, 2001.
	7346	Evaluation February 1, 1962.

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
	7347	Added September 9, 1975.
	7348	Added March 10, 1976.
	7351	Added July 2, 2001.
	7354	Added July 2, 2001.
4.115a		Re-designated and revised as § 4.115b; new § 4.115a "Ratings of the genitourinary system-dysfunctions" added February 17, 1994.
4.115b	7500	Note July 6, 1950; evaluation February 17, 1994, criterion September 8, 1994.
	7501	Evaluation February 17, 1994.
	7502	Evaluation February 17, 1994.
	7503	Removed February 17, 1994.
	7504	Criterion February 17, 1994.
	7505	Criterion March 11, 1969; evaluation February 17, 1994.
	7507	Criterion February 17, 1994.
	7508	Evaluation February 17, 1994.
	7509	Criterion February 17, 1994.
	7510	Evaluation February 17, 1994.
	7511	Evaluation February 17, 1994.
	7512	Evaluation February 17, 1994.
	7513	Removed February 17, 1994.
	7514	Criterion March 11, 1969; removed February 17, 1994.
	7515	Criterion February 17, 1994.
	7516	Criterion February 17, 1994.
	7517	Criterion February 17, 1994.
	7518	Evaluation February 17, 1994.
	7519	Evaluation March 10, 1976; evaluation February 17, 1994.
	7520	Criterion February 17, 1994.
	7521	Criterion February 17, 1994.
	7522	Criterion September 8, 1994.
	7523	Criterion September 8, 1994.
	7524	Note July 6, 1950; evaluation February 17, 1994; evaluation September 8, 1994.
	7525	Criterion March 11, 1969; evaluation February 17, 1994.
	7526	Removed February 17, 1994.
	7527	Criterion February 17, 1994.
	7528	Criterion March 10, 1976; criterion February 17, 1994.
	7529	Criterion February 17, 1994.
	7530	Added September 9, 1975; evaluation February 17, 1994.
	7531	Added September 9, 1975; criterion February 17, 1994.
	7532–7542	Added February 17, 1994.
4.116		§ 4.116 removed and § 4.116a re-designated § 4.116 "Schedule of ratings-gynecological conditions and disorders of the breasts" May 22, 1995.
	7610	Criterion May 22, 1995.
	7611	Criterion May 22, 1995.
	7612	Criterion May 22, 1995.
	7613	Criterion May 22, 1995.
	7614	Criterion May 22, 1995.
	7615	Criterion May 22, 1995.
	7617	Criterion May 22, 1995.
	7618	Criterion May 22, 1995.
	7619	Criterion May 22, 1995.
	7620	Criterion May 22, 1995.
	7621	Criterion May 22, 1995.
	7622	Evaluation May 22, 1995.
	7623	Evaluation May 22, 1995.
	7624	Criterion August 9, 1976; evaluation May 22, 1995.
	7625	Criterion August 9, 1976; evaluation May 22, 1995.
	7626	Criterion May 22, 1995; criterion March 18, 2002.
	7627	Criterion March 10, 1976; criterion May 22, 1995.
	7628	Added May 22, 1995.
	7629	Added May 22, 1995.
4.117	7700	Evaluation October 23, 1995.
	7701	Removed October 23, 1995.
	7702	Evaluation October 23, 1995.
	7703	Evaluation August 23, 1948; criterion October 23, 1995.
	7704	Evaluation October 23, 1995.
	7705	Evaluation October 23, 1995.
	7706	Evaluation October 23, 1995.
	7707	Criterion October 23, 1995.
	7709	Evaluation March 10, 1976; criterion October 23, 1995.
	7710	Criterion October 23, 1995.
	7711	Criterion October 23, 1995.
	7712	Criterion October 23, 1995.

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
4.118	7713	Removed October 23, 1995.
	7714	Added September 9, 1975; criterion October 23, 1995.
	7715	Added October 26, 1990.
	7716	Added October 23, 1995.
	7800	Evaluation August 30, 2002.
	7801	Criterion July 6, 1950; criterion August 30, 2002.
	7802	Criterion September 22, 1978; criterion August 30, 2002.
	7803	Criterion August 30, 2002.
	7804	Criterion July 6, 1950; criterion September 22, 1978; criterion August 30, 2002.
	7806	Criterion September 9, 1975; evaluation August 30, 2002.
	7807	Criterion August 30, 2002.
	7808	Criterion August 30, 2002.
	7809	Criterion August 30, 2002.
	7810	Removed August 30, 2002.
	7811	Criterion March 11, 1969; evaluation August 30, 2002.
	7812	Removed August 30, 2002.
	7813	Criterion August 30, 2002.
	7814	Removed August 30, 2002.
	7815	Evaluation August 30, 2002.
	7816	Evaluation August 30, 2002.
4.119	7817	Evaluation August 30, 2002.
	7818	Criterion August 30, 2002.
	7819	Criterion August 30, 2002.
	7820–7833	Added August 30, 2002.
	7900	Criterion August 13, 1981; evaluation June 9, 1996.
	7901	Criterion August 13, 1981; evaluation June 9, 1996.
	7902	Evaluation August 13, 1981; criterion June 9, 1996.
	7903	Criterion August 13, 1981; evaluation June 9, 1996.
	7904	Criterion August 13, 1981; evaluation June 9, 1996.
	7905	Evaluation; August 13, 1981; evaluation June 9, 1996.
4.124a	7907	Evaluation August 13, 1981; evaluation June 9, 1996.
	7908	Criterion August 13, 1981; criterion June 9, 1996.
	7909	Evaluation August 13, 1981; criterion June 9, 1996.
	7910	Removed June 9, 1996.
	7911	Evaluation March 11, 1969; evaluation August 13, 1981; criterion June 9, 1996.
	7913	Criterion September 9, 1975; criterion August 13, 1981; criterion June 6, 1996.
	7914	Criterion March 10, 1976; criterion August 13, 1981; criterion June 9, 1996.
	7916	Added June 9, 1996.
	7917	Added June 9, 1996.
	7918	Added June 9, 1996.
4.125—4.132	7919	Added June 9, 1996.
	8002	Criterion September 22, 1978.
	8021	Criterion September 22, 1978; criterion October 1, 1961; criterion March 10, 1976; criterion March 1, 1989.
	8046	Added October 1, 1961; criterion March 10, 1976; criterion March 1, 1989.
	8100	Evaluation June 9, 1953.
	8540	Added October 15, 1991.
	8910	Added October 1, 1961.
	8911	Added October 1, 1961; evaluation September 9, 1975.
	8912	Added October 1, 1961.
	8913	Added October 1, 1961.
4.130	8914	Added October 1, 1961; criterion September 9, 1975; criterion March 10, 1976.
	8910–8914	Evaluations September 9, 1975.
		All Diagnostic Codes under Mental Disorders October 1, 1961; except as to evaluation for Diagnostic Codes 9500 through 9511 September 9, 1975.
		Re-designated from § 4.132 November 7, 1996.
	9200	Removed February 3, 1988.
	9201	Criterion February 3, 1988.
	9202	Criterion February 3, 1988.
	9203	Criterion February 3, 1988.
	9204	Criterion February 3, 1988.
	9205	Criterion February 3, 1988; criterion November 7, 1996.
	9206	Criterion February 3, 1988; removed November 7, 1996.
	9207	Criterion February 3, 1988; removed November 7, 1996.
	9208	Criterion February 3, 1988; removed November 7, 1996.
	9209	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9210	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9211	Added November 7, 1996.
	9300	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9301	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9302	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.

APPENDIX A TO PART 4.—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
	9303	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9304	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9305	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9306	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9307	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9308	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9309	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9310	Criterion March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9311	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9312	Added March 10, 1976; criterion February 3, 1988; criterion November 7, 1996.
	9313	Added March 10, 1976; removed February 3, 1988.
	9314	Added March 10, 1976; removed February 3, 1988.
	9315	Added March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9316–9321	Added March 10, 1976; removed February 3, 1988.
	9322	Added March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9323	Added March 10, 1976; removed February 3, 1988.
	9324	Added March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9325	Added March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9326	Added March 10, 1976; removed February 3, 1988; added November 7, 1996.
	9327	Added November 7, 1996.
	9400–9411	Evaluations February 3, 1988.
	9400	Criterion March 10, 1976; criterion February 3, 1988.
	9401	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9402	Criterion March 10, 1976; criterion February 3, 1988; removed November 7, 1996.
	9403	Criterion March 10, 1976; criterion February 3, 1988; criterion February 3, 1988; criterion November 7, 1996.
	9410	Added March 10, 1976; criterion February 3, 1988.
	9411	Added February 3, 1988.
	9412	Added November 7, 1996.
	9413	Added November 7, 1996.
	9416	Added November 7, 1996.
	9417	Added November 7, 1996.
	9421	Added November 7, 1996.
	9422	Added November 7, 1996.
	9423	Added November 7, 1996.
	9424	Added November 7, 1996.
	9425	Added November 7, 1996.
	9431	Added November 7, 1996.
	9432	Added November 7, 1996.
	9433	Added November 7, 1996.
	9434	Added November 7, 1996.
	9435	Added November 7, 1996.
	9440	Added November 7, 1996.
	9500	Criterion March 10, 1976; criterion February 3, 1988.
	9501	Criterion March 10, 1976; criterion February 3, 1988.
	9502	Criterion March 10, 1976; criterion February 3, 1988.
	9503	Removed March 10, 1976.
	9504	Criterion September 9, 1975; removed March 10, 1976.
	9505	Added March 10, 1976; criterion February 3, 1988.
	9506	Added March 10, 1976; criterion February 3, 1988.
	9507	Added March 10, 1976; criterion February 3, 1988.
	9508	Added March 10, 1976; criterion February 3, 1988.
	9509	Added March 10, 1976; criterion February 3, 1988.
	9510	Added March 10, 1976; criterion February 3, 1988.
	9511	Added March 10, 1976; criterion February 3, 1988.
	9520	Added November 7, 1996.
	9521	Added November 7, 1996.
4.132		Re-designated as § 4.130 November 7, 1996.
4.150	9900	Criterion September 22, 1978; criterion February 17, 1994.
	9901	Criterion February 17, 1994.
	9902	Criterion February 17, 1994.
	9903	Criterion February 17, 1994.
	9905	Criterion September 22, 1978; evaluation February 17, 1994.
	9910	Removed February 17, 1994.
	9913	Criterion February 17, 1994.
	9914	Added February 17, 1994.
	9915	Added February 17, 1994.
	9916	Added February 17, 1994.

■ 3. Appendix B to Part 4 is revised to read as follows:

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES

Diagnostic Code No.	
THE MUSCULOSKELETAL SYSTEM Acute, Subacute, or Chronic Diseases	
5000	Osteomyelitis, acute, subacute, or chronic.
5001	Bones and Joints, tuberculosis.
5002	Arthritis, rheumatoid (atrophic).
5003	Arthritis, degenerative (hypertrophic or osteoarthritis).
5004	Arthritis, gonorrheal.
5005	Arthritis, pneumococcic.
5006	Arthritis, typhoid.
5007	Arthritis, syphilitic.
5008	Arthritis, streptococcic.
5009	Arthritis, other types (specify).
5010	Arthritis, due to trauma.
5011	Bones, caisson disease.
5012	Bones, new growths, malignant.
5013	Osteoporosis, with joint manifestations.
5014	Osteomalacia.
5015	Bones, new growths, benign.
5016	Osteitis deformans.
5017	Gout.
5018	Hydrarthrosis, intermittent.
5019	Bursitis.
5020	Synovitis.
5021	Myositis.
5022	Periostitis.
5023	Myositis ossificans.
5024	Tenosynovitis.
5025	Fibromyalgia.
Prosthetic Implants	
5051	Shoulder replacement (prosthesis).
5052	Elbow replacement (prosthesis).
5053	Wrist replacement (prosthesis).
5054	Hip replacement (prosthesis).
5055	Knee replacement (prosthesis).
5056	Ankle replacement (prosthesis).
Combination of Disabilities	
5104	Anatomical loss of one hand and loss of use of one foot.
5105	Anatomical loss of one foot and loss of use of one hand.
5106	Anatomical loss of both hands.
5107	Anatomical loss of both feet.
5108	Anatomical loss of one hand and one foot.
5109	Loss of use of both hands.
5110	Loss of use of both feet.
5111	Loss of use of one hand and one foot.
Amputations: Upper Extremity	
Arm amputation of:	
5120	Disarticulation.
5121	Above insertion of deltoid.
5122	Below insertion of deltoid.
Forearm amputation of:	
5123	Above insertion of pronator teres.
5124	Below insertion of pronator teres.
5125	Hand, loss of use of.
Multiple Finger Amputations	
5126	Five digits of one hand.
Four digits of one hand:	
5127	Thumb, index, long and ring.
5128	Thumb, index, long and little.
5129	Thumb, index, ring and little.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
5130	Thumb, long, ring and little.
5131	Index, long, ring and little.
Three digits of one hand:	
5132	Thumb, index and long.
5133	Thumb, index and ring.
5134	Thumb, index and little.
5135	Thumb, long and ring.
5136	Thumb, long and little.
5137	Thumb, ring and little.
5138	Index, long and ring.
5139	Index, long and little.
5140	Index, ring and little.
5141	Long, ring and little.
Two digits of one hand:	
5142	Thumb and index.
5143	Thumb and long.
5144	Thumb and ring.
5145	Thumb and little.
5146	Index and long.
5147	Index and ring.
5148	Index and little.
5149	Long and ring.
5150	Long and little.
5151	Ring and little.
Single finger:	
5152	Thumb.
5153	Index finger.
5154	Long finger.
5155	Ring finger.
5156	Little finger.
Amputations: Lower Extremity	
Thigh amputation of:	
5160	Disarticulation.
5161	Upper third.
5162	Middle or lower thirds.
Leg amputation of:	
5163	With defective stump.
5164	Not improvable by prosthesis controlled by natural knee action.
5165	At a lower level, permitting prosthesis.
5166	Forefoot, proximal to metatarsal bones.
5167	Foot, loss of use of.
5170	Toes, all, without metatarsal loss.
5171	Toe, great.
5172	Toes, other than great, with removal of metatarsal head.
5173	Toes, three or more, without metatarsal involvement.
Shoulder and Arm	
5200	Scapulohumeral articulation, ankylosis.
5201	Arm, limitation of motion.
5202	Humerus, other impairment.
5203	Clavicle or scapula, impairment.
Elbow and Forearm	
5205	Elbow, ankylosis.
5206	Forearm, limitation of flexion.
5207	Forearm, limitation of extension.
5208	Forearm, flexion limited.
5209	Elbow, other impairment.
5210	Radius and ulna, nonunion.
5211	Ulna, impairment.
5212	Radius, impairment.
5213	Supination and pronation, impairment.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
	Wrist
5214	Wrist, ankylosis.
5215	Wrist, limitation of motion.
	Limitation of Motion
Multiple Digits: Unfavorable Ankylosis:	
5216	Five digits of one hand.
5217	Four digits of one hand.
5218	Three digits of one hand.
5219	Two digits of one hand.
Multiple Digits: Favorable Ankylosis:	
5220	Five digits of one hand.
5221	Four digits of one hand.
5222	Three digits of one hand.
5223	Two digits of one hand.
Ankylosis of Individual Digits:	
5224	Thumb.
5225	Index finger.
5226	Long finger.
5227	Ring or little finger.
Limitation of Motion of Individual Digits:	
5228	Thumb.
5229	Index or long finger.
5230	Ring or little finger.
	Spine
5235	Vertebral fracture or dislocation.
5236	Sacroiliac injury and weakness.
5237	Lumbosacral or cervical strain.
5238	Spinal stenosis.
5239	Spondylolisthesis or segmental instability.
5240	Ankylosing spondylitis.
5241	Spinal fusion.
5242	Degenerative arthritis.
5243	Intervertebral disc syndrome.
	Hip and Thigh
5250	Hip, ankylosis.
5251	Thigh, limitation of extension.
5252	Thigh, limitation of flexion.
5253	Thigh, impairment.
5254	Hip, flail joint.
5255	Femur, impairment.
	Knee and Leg
5256	Knee, ankylosis.
5257	Knee, other impairment.
5258	Cartilage, semilunar, dislocated.
5259	Cartilage, semilunar, removal.
5260	Leg, limitation of flexion.
5261	Leg, limitation of extension.
5262	Tibia and fibula, impairment.
5263	Genu recurvatum.
	Ankle
5270	Ankle, ankylosis.
5271	Ankle, limited motion.
5272	Subastragalar or tarsal joint, ankylosis.
5273	Os calcis or astragalus, malunion.
5274	Astragalectomy.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
Shortening of the Lower Extremity	
5275	Bones, of the lower extremity
The Foot	
5276	Flatfoot, acquired.
5277	Weak foot, bilateral.
5278	Claw foot (pes cavus), acquired.
5279	Metatarsalgia, anterior (Morton's disease).
5280	Hallux valgus.
5281	Hallux rigidus.
5282	Hammer toe.
5283	Tarsal or metatarsal bones.
5284	Foot injuries, other.
The Skull	
5296	Loss of part of.
The Ribs	
5297	Removal of.
The Coccyx	
5298	Removal of.
MUSCLE INJURIES	
Shoulder Girdle and Arm	
5301	Group I Function: Upward rotation of scapula.
5302	Group II Function: Depression of arm.
5303	Group III Function: Elevation and abduction of arm.
5304	Group IV Function: Stabilization of shoulder.
5305	Group V Function: Elbow supination.
5306	Group VI Function: Extension of elbow.
Forearm and Hand	
5307	Group VII Function: Flexion of wrist and fingers.
5308	Group VIII Function: Extension of wrist, fingers, thumb.
5309	Group IX Function: Forearm muscles.
Foot and Leg	
5310	Group X Function: Movement of forefoot and toes.
5311	Group XI Function: Propulsion of foot.
5312	Group XII Function: Dorsiflexion.
Pelvic Girdle and Thigh	
5313	Group XIII Function: Extension of hip and flexion of knee.
5314	Group XIV Function: Extension of knee.
5315	Group XV Function: Adduction of hip.
5316	Group XVI Function: Flexion of hip.
5317	Group XVII Function: Extension of hip.
5318	Group XVIII Function: Outward rotation of thigh.
Torso and Neck	
5319	Group XIX Function: Abdominal wall and lower thorax.
5320	Group XX Function: Postural support of body.
5321	Group XXI Function: Respiration.
5322	Group XXII Function: Rotary and forward movements, head.
5323	Group XXIII Function: Movements of head.
Miscellaneous	
5324	Diaphragm, rupture.
5325	Muscle injury, facial muscles.
5326	Muscle hernia.
5327	Muscle, neoplasm of, malignant.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
5328	Muscle, neoplasm of, benign.
5329	Sarcoma, soft tissue.
THE EYE Diseases of the Eye	
6000	Uveitis.
6001	Keratitis.
6002	Scleritis.
6003	Iritis.
6004	Cyclitis.
6005	Choroiditis.
6006	Retinitis.
6007	Hemorrhage, intra-ocular, recent.
6008	Retina, detachment.
6009	Eye, injury of, unhealed.
6010	Eye, tuberculosis.
6011	Retina, localized scars.
6012	Glaucoma, congestive or inflammatory.
6013	Glaucoma, simple, primary, noncongestive.
6014	New growths, malignant, eyeball.
6015	New growths, benign, eyeball and adnexa.
6016	Nystagmus, central.
6017	Conjunctivitis, trachomatous, chronic.
6018	Conjunctivitis, other, chronic.
6019	Ptosis unilateral or bilateral.
6020	Ectropion.
6021	Entropion.
6022	Lagophthalmos.
6023	Eyebrows, loss.
6024	Eyelashes, loss.
6025	Epiphora.
6026	Neuritis, optic.
6027	Cataract, traumatic.
6028	Cataract, senile, and others.
6029	Aphakia.
6030	Accommodation, paralysis.
6031	Dacryocystitis.
6032	Eyelids, loss of portion.
6033	Lens, crystalline, dislocation.
6034	Pterygium.
6035	Keratoconus.
Impairment of Central Visual Acuity	
6061	Anatomical loss both eyes.
6062	Blindness, both eyes, only light perception.
Anatomical loss of 1 eye:	
6063	Other eye 5/200 (1.5/60).
6064	Other eye 10/200 (3/60).
6064	Other eye 15/200 (4.5/60).
6064	Other eye 20/200 (6/60).
6065	Other eye 20/100 (6/30).
6065	Other eye 20/70 (6/21).
6065	Other eye 20/50 (6/15).
6066	Other eye 20/40 (6/12).
Blindness in 1 eye, only light perception:	
6067	Other eye 5/200 (1.5/60).
6068	Other eye 10/200 (3/60).
6068	Other eye 15/200 (4.5/60).
6068	Other eye 20/200 (6/60).
6069	Other eye 20/100 (6/30).
6069	Other eye 20/70 (6/21).
6069	Other eye 20/50 (6/15).
6070	Other eye 20/40 (6/12).
Vision in 1 eye 5/200 (1.5/60):	
6071	Other eye 5/200 (1.5/60).
6072	Other eye 10/200 (3/60).
6072	Other eye 15/200 (4.5/60).

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
6072	Other eye 20/200 (6/60).
6073	Other eye 20/100 (6/30).
6073	Other eye 20/70 (6/21).
6073	Other eye 20/50 (6/15).
6074	Other eye 20/40 (6/12).
Vision in 1 eye 10/200 (3/60):	
6075	Other eye 10/200 (3/60).
6075	Other eye 15/200 (4.5/60).
6075	Other eye 20/200 (6/60).
6076	Other eye 20/100 (6/30).
6076	Other eye 20/70 (6/21).
6076	Other eye 20/50 (6/15).
6077	Other eye 20/40 (6/12).
Vision in 1 eye 15/200 (4.5/60):	
6075	Other eye 15/200 (4.5/60).
6075	Other eye 20/200 (6/60).
6076	Other eye 20/100 (6/30).
6076	Other eye 20/70 (6/21).
6076	Other eye 20/50 (6/15).
6077	Other eye 20/40 (6/12).
Vision in 1 eye 20/200 (6/60):	
6075	Other eye 20/200 (6/60).
6076	Other eye 20/100 (6/30).
6076	Other eye 20/70 (6/21).
6076	Other eye 20/50 (6/15).
6077	Other eye 20/40 (6/12).
Vision in 1 eye 20/100 (6/30):	
6078	Other eye 20/100 (6/30).
6078	Other eye 20/70 (6/21).
6078	Other eye 20/50 (6/15).
6079	Other eye 20/40 (6/12).
Vision in 1 eye 20/70 (6/21):	
6078	Other eye 20/70 (6/21).
6078	Other eye 20/50 (6/15).
6079	Other eye 20/40 (6/12).
Vision in 1 eye 20/50 (6/15):	
6078	Other eye 20/50 (6/15).
6079	Other eye 20/40 (6/12).
Impairment of Field Vision:	
6080	Field vision, impairment.
6081	Scotoma.
Impairment of Muscle Function:	
6090	Diplopia.
6091	Symblepharon.
6092	Diplopia, limited muscle function.
THE EAR	
6200	Chronic suppurative otitis media.
6201	Chronic nonsuppurative otitis media.
6202	Otosclerosis.
6204	Peripheral vestibular disorders.
6205	Meniere's syndrome.
6207	Loss of auricle.
6208	Malignant neoplasm.
6209	Benign neoplasm.
6210	Chronic otitis externa.
6211	Tympanic membrane.
6260	Tinnitus, recurrent.
OTHER SENSE ORGANS	
6275	Smell, complete loss.
6276	Taste, complete loss.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
INFECTIOUS DISEASES, IMMUNE DISORDERS AND NUTRITIONAL DEFICIENCIES	
6300	Cholera, Asiatic.
6301	Visceral Leishmaniasis.
6302	Leprosy (Hansen's Disease).
6304	Malaria.
6305	Lymphatic Filariasis.
6306	Bartonellosis.
6307	Plague.
6308	Relapsing fever.
6309	Rheumatic fever.
6310	Syphilis.
6311	Tuberculosis, miliary.
6313	Avitaminosis.
6314	Beriberi.
6315	Pellagra.
6316	Brucellosis.
6317	Typhus, scrub.
6318	Melioidosis.
6319	Lyme disease.
6320	Parasitic diseases.
6350	Lupus erythematosus.
6351	HIV-Related Illness.
6354	Chronic Fatigue Syndrome (CFS).
THE RESPIRATORY SYSTEM	
Nose and Throat	
6502	Septum, nasal, deviation.
6504	Nose, loss of part of, or scars.
6510	Sinusitis, pansinusitis, chronic.
6511	Sinusitis, ethmoid, chronic.
6512	Sinusitis, frontal, chronic.
6513	Sinusitis, maxillary, chronic.
6514	Sinusitis, sphenoid, chronic.
6515	Laryngitis, tuberculous.
6516	Laryngitis, chronic.
6518	Laryngectomy, total.
6519	Aphonia, complete organic.
6520	Larynx, stenosis of.
6521	Pharynx, injuries to.
6522	Allergic or vasomotor rhinitis.
6523	Bacterial rhinitis.
6524	Granulomatous rhinitis.
Trachea and Bronchi	
6600	Bronchitis, chronic.
6601	Bronchiectasis.
6602	Asthma, bronchial.
6603	Emphysema, pulmonary.
6604	Chronic obstructive pulmonary disease.
Lungs and Pleura Tuberculosis	
Ratings for Pulmonary Tuberculosis (Chronic) Entitled on August 19, 1968:	
6701	Active, far advanced.
6702	Active, moderately advanced.
6703	Active, minimal.
6704	Active, advancement unspecified.
6721	Inactive, far advanced.
6722	Inactive, moderately advanced.
6723	Inactive, minimal.
6724	Inactive, advancement unspecified.
Ratings for Pulmonary Tuberculosis Initially Evaluated After August 19, 1968:	
6730	Chronic, active.
6731	Chronic, inactive.
6732	Pleurisy, active or inactive.
Nontuberculous Diseases	
6817	Pulmonary Vascular Disease.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
6819	Neoplasms, malignant.
6820	Neoplasms, benign.
Bacterial Infections of the Lung	
6822	Actinomycosis.
6823	Nocardiosis.
6824	Chronic lung abscess.
Interstitial Lung Disease	
6825	Fibrosis of lung, diffuse interstitial.
6826	Desquamative interstitial pneumonitis.
6827	Pulmonary alveolar proteinosis.
6828	Eosinophilic granuloma.
6829	Drug-induced, pneumonitis & fibrosis.
6830	Radiation-induced, pneumonitis & fibrosis.
6831	Hypersensitivity pneumonitis.
6832	Pneumoconiosis.
6833	Asbestosis.
Mycotic Lung Disease	
6834	Histoplasmosis.
6835	Coccidioidomycosis.
6836	Blastomycosis.
6837	Cryptococcosis.
6838	Aspergillosis.
6839	Mucormycosis.
Restrictive Lung Disease	
6840	Diaphragm paralysis or paresis.
6841	Spinal cord injury with respiratory insufficiency.
6842	Kyphoscoliosis, pectus excavatum/carinatum.
6843	Traumatic chest wall defect.
6844	Post-surgical residual.
6845	Pleural effusion or fibrosis.
6846	Sarcoidosis.
6847	Sleep Apnea Syndromes.
THE CARDIOVASCULAR SYSTEM	
Diseases of the Heart	
7000	Valvular heart disease.
7001	Endocarditis.
7002	Pericarditis.
7003	Pericardial adhesions.
7004	Syphilitic heart disease.
7005	Arteriosclerotic heart disease.
7006	Myocardial infarction.
7007	Hypertensive heart disease.
7008	Hyperthyroid heart disease.
7010	Supraventricular arrhythmias.
7011	Ventricular arrhythmias.
7015	Atrioventricular block.
7016	Heart valve replacement.
7017	Coronary bypass surgery.
7018	Implantable cardiac pacemakers.
7019	Cardiac transplantation.
7020	Cardiomyopathy.
Diseases of the Arteries and Veins	
7101	Hypertensive vascular disease.
7110	Aortic aneurysm.
7111	Aneurysm, large artery.
7112	Aneurysm, small artery.
7113	Arteriovenous fistula, traumatic.
7114	Arteriosclerosis obliterans.
7115	Thrombo-angiitis obliterans (Buerger's Disease).
7117	Raynaud's syndrome.
7118	Angioneurotic edema.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
7119	Erythromelalgia.
7120	Varicose veins.
7121	Post-phlebitic syndrome.
7122	Cold injury residuals.
7123	Soft tissue sarcoma.

THE DIGESTIVE SYSTEM

7200	Mouth, injuries.
7201	Lips, injuries.
7202	Tongue, loss.
7203	Esophagus, stricture.
7204	Esophagus, spasm.
7205	Esophagus, diverticulum.
7301	Peritoneum, adhesions.
7304	Ulcer, gastric.
7305	Ulcer, duodenal.
7306	Ulcer, marginal.
7307	Gastritis, hypertrophic.
7308	Postgastrectomy syndromes.
7309	Stomach, stenosis.
7310	Stomach, injury of, residuals.
7311	Liver, injury of, residuals.
7312	Liver, cirrhosis.
7314	Cholecystitis, chronic.
7315	Cholelithiasis, chronic.
7316	Cholangitis, chronic.
7317	Gall bladder, injury.
7318	Gall bladder, removal.
7319	Colon, irritable syndrome.
7321	Amebiasis.
7322	Dysentery, bacillary.
7323	Colitis, ulcerative.
7324	Distomiasis, intestinal or hepatic.
7325	Enteritis, chronic.
7326	Enterocolitis, chronic.
7327	Diverticulitis.
7328	Intestine, small, resection.
7329	Intestine, large, resection.
7330	Intestine, fistula.
7331	Peritonitis.
7332	Rectum & anus, impairment.
7333	Rectum & anus, stricture.
7334	Rectum, prolapse.
7335	Ano, fistula in.
7336	Hemorrhoids.
7337	Pruritus ani.
7338	Hernia, inguinal.
7339	Hernia, ventral, postoperative.
7340	Hernia, femoral.
7342	Visceroptosis.
7343	Neoplasms, malignant.
7344	Neoplasms, benign.
7345	Liver disease, chronic, without cirrhosis.
7346	Hernia, hiatal.
7347	Pancreatitis.
7348	Vagotomy.
7351	Liver transplant.
7354	Hepatitis C.

THE GENITOURINARY SYSTEM

7500	Kidney, removal.
7501	Kidney, abscess.
7502	Nephritis, chronic.
7504	Pyelonephritis, chronic.
7505	Kidney, tuberculosis.
7507	Nephrosclerosis, arteriolar.
7508	Nephrolithiasis.
7509	Hydronephrosis.
7510	Ureterolithiasis.
7511	Ureter, stricture.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
7512	Cystitis, chronic.
7515	Bladder, calculus.
7516	Bladder, fistula.
7517	Bladder, injury.
7518	Urethra, stricture.
7519	Urethra, fistula.
7520	Penis, removal of half or more.
7521	Penis, removal of glans.
7522	Penis, deformity, with loss of erectile power.
7523	Testis, atrophy, complete.
7524	Testis, removal.
7525	Epididymo-orchitis, chronic only.
7527	Prostate gland.
7528	Malignant neoplasms.
7529	Benign neoplasms.
7530	Renal disease, chronic.
7531	Kidney transplant.
7532	Renal tubular disorders.
7533	Kidneys, cystic diseases.
7534	Atherosclerotic renal disease.
7535	Toxic nephropathy.
7536	Glomerulonephritis.
7537	Interstitial nephritis.
7538	Papillary necrosis.
7539	Renal amyloid disease.
7540	Disseminated intravascular coagulation.
7541	Renal involvement in systemic diseases.
7542	Neurogenic bladder.

GYNECOLOGICAL CONDITIONS AND DISORDERS OF THE BREAST

7610	Vulva, disease or injury.
7611	Vagina, disease or injury.
7612	Cervix, disease or injury.
7613	Uterus, disease or injury.
7614	Fallopian tube, disease or injury.
7615	Ovary, disease or injury.
7617	Uterus and both ovaries, removal.
7618	Uterus, removal.
7619	Ovary, removal.
7620	Ovaries, atrophy of both.
7621	Uterus, prolapse.
7622	Uterus, displacement.
7623	Pregnancy, surgical complications.
7624	Fistula, rectovaginal.
7625	Fistula, urethrovaginal.
7626	Breast, surgery.
7627	Malignant neoplasms.
7628	Benign neoplasms.
7629	Endometriosis.

THE HEMIC AND LYMPHATIC SYSTEMS

7700	Anemia.
7702	Agranulocytosis, acute.
7703	Leukemia.
7704	Polycythemia vera.
7705	Thrombocytopenia.
7706	Splenectomy.
7707	Spleen, injury of, healed.
7709	Hodgkin's disease.
7710	Adenitis, tuberculous.
7714	Sickle cell anemia.
7715	Non-Hodgkin's lymphoma.
7716	Aplastic anemia.

THE SKIN

7800	Disfigurement of, head, face or neck.
7801	Scars, deep, other than head, face or neck.
7802	Scars, superficial, other than head, face, or neck.
7803	Scars, superficial, unstable.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
7804	Scars, superficial, painful.
7805	Scars, other.
7806	Dermatitis or eczema.
7807	Leishmaniasis, American (New World).
7808	Leishmaniasis, Old World.
7809	Lupus erythematosus, discoid.
7811	Tuberculosis luposa (lupus vulgaris).
7813	Dermatophytosis.
7815	Bullous disorders.
7816	Psoriasis.
7817	Exfoliative dermatitis.
7818	Malignant skin neoplasms.
7819	Benign skin neoplasms.
7820	Infections of the skin.
7821	Cutaneous manifestations of collagen-vascular diseases.
7822	Papulosquamous disorders.
7823	Vitiligo.
7824	Keratinization, diseases.
7825	Urticaria.
7826	Vasculitis, primary cutaneous.
7827	Erythema multiforme.
7828	Acne.
7829	Chloracne.
7830	Scarring alopecia.
7831	Alopecia areata.
7832	Hyperhidrosis.
7833	Malignant melanoma.

THE ENDOCRINE SYSTEM

7900	Hyperthyroidism.
7901	Thyroid gland, toxic adenoma.
7902	Thyroid gland, nontoxic adenoma.
7903	Hypothyroidism.
7904	Hyperparathyroidism.
7905	Hypoparathyroidism.
7907	Cushing's syndrome.
7908	Acromegaly.
7909	Diabetes insipidus.
7911	Addison's disease.
7912	Pluriglandular syndrome.
7913	Diabetes mellitus.
7914	Malignant neoplasm.
7915	Benign neoplasm.
7916	Hyperpituitarism.
7917	Hyperaldosteronism.
7918	Pheochromocytoma.
7919	C-cell hyperplasia, thyroid.

NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS
Organic Diseases of the Central Nervous System

8000	Encephalitis, epidemic, chronic.
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Brain, New Growth of

8002	Malignant.
8003	Benign.
8004	Paralysis agitans.
8005	Bulbar palsy.
8007	Brain, vessels, embolism.
8008	Brain, vessels, thrombosis.
8009	Brain, vessels, hemorrhage.
8010	Myelitis.
8011	Poliomyelitis, anterior.
8012	Hematomyelia.
8013	Syphilis, cerebrospinal.
8014	Syphilis, meningovascular.
8015	Tabes dorsalis.
8017	Amyotrophic lateral sclerosis.
8018	Multiple sclerosis.
8019	Meningitis, cerebrospinal, epidemic.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
8020	Brain, abscess.
Spinal Cord, New Growths	
8021	Malignant.
8022	Benign.
8023	Progressive muscular atrophy.
8024	Syringomyelia.
8025	Myasthenia gravis.
8045	Brain disease due to trauma.
8046	Cerebral arteriosclerosis.
Miscellaneous Diseases	
8100	Migraine
8103	Tic, convulsive.
8104	Paramyoclonus multiplex.
8105	Chorea, Sydenham's.
8106	Chorea, Huntington's.
8107	Athetosis, acquired.
8108	Narcolepsy.
The Cranial Nerves	
8205	Fifth (trigeminal), paralysis.
8207	Seventh (facial), paralysis.
8209	Ninth (glossopharyngeal), paralysis.
8210	Tenth (pneumogastric, vagus), paralysis.
8211	Eleventh (spinal accessory, external branch), paralysis.
8212	Twelfth (hypoglossal), paralysis.
8305	Neuritis, fifth cranial nerve.
8307	Neuritis, seventh cranial nerve.
8309	Neuritis, ninth cranial nerve.
8310	Neuritis, tenth cranial nerve.
8311	Neuritis, eleventh cranial nerve.
8312	Neuritis, twelfth cranial nerve.
8405	Neuralgia, fifth cranial nerve.
8407	Neuralgia, seventh cranial nerve.
8409	Neuralgia, ninth cranial nerve.
8410	Neuralgia, tenth cranial nerve.
8411	Neuralgia, eleventh cranial nerve.
8412	Neuralgia, twelfth cranial nerve.
Peripheral Nerves	
8510	Upper radicular group, paralysis.
8511	Middle radicular group, paralysis.
8512	Lower radicular group, paralysis.
8513	All radicular groups, paralysis.
8514	Musculospiral nerve (radial), paralysis.
8515	Median nerve, paralysis.
8516	Ulnar nerve, paralysis.
8517	Musculocutaneous nerve, paralysis.
8518	Circumflex nerve, paralysis.
8519	Long thoracic nerve, paralysis.
8520	Sciatic nerve, paralysis.
8521	External popliteal nerve (common peroneal), paralysis.
8522	Musculocutaneous nerve (superficial peroneal), paralysis.
8523	Anterior tibial nerve (deep peroneal), paralysis.
8524	Internal popliteal nerve (tibial), paralysis.
8525	Posterior tibial nerve, paralysis.
8526	Anterior crural nerve (femoral), paralysis.
8527	Internal saphenous nerve, paralysis.
8528	Obturator nerve, paralysis.
8529	External cutaneous nerve of thigh, paralysis.
8530	Ilio-inguinal nerve, paralysis.
8540	Soft-tissue sarcoma (Neurogenic origin).
8610	Neuritis, upper radicular group.
8611	Neuritis, middle radicular group.
8612	Neuritis, lower radicular group.
8613	Neuritis, all radicular group.
8614	Neuritis, musculospiral (radial) nerve.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
8615	Neuritis, median nerve.
8616	Neuritis, ulnar nerve.
8617	Neuritis, musculocutaneous nerve.
8618	Neuritis, circumflex nerve.
8619	Neuritis, long thoracic nerve.
8620	Neuritis, sciatic nerve.
8621	Neuritis, external popliteal (common peroneal) nerve.
8622	Neuritis, musculocutaneous (superficial peroneal) nerve.
8623	Neuritis, anterior tibial (deep peroneal) nerve.
8624	Neuritis, internal popliteal (tibial) nerve.
8625	Neuritis, posterior tibial nerve.
8626	Neuritis, anterior crural (femoral) nerve.
8627	Neuritis, internal saphenous nerve.
8628	Neuritis, obturator nerve.
8629	Neuritis, external cutaneous nerve of thigh.
8630	Neuritis, ilio-inguinal nerve.
8710	Neuralgia, upper radicular group.
8711	Neuralgia, middle radicular group.
8712	Neuralgia, lower radicular group.
8713	Neuralgia, all radicular groups.
8714	Neuralgia, musculospiral nerve (radial).
8715	Neuralgia, median nerve.
8716	Neuralgia, ulnar nerve.
8717	Neuralgia, musculocutaneous nerve.
8718	Neuralgia, circumflex nerve.
8719	Neuralgia, long thoracic nerve.
8720	Neuralgia, sciatic nerve.
8721	Neuralgia, external popliteal nerve (common peroneal).
8722	Neuralgia, musculocutaneous nerve (superficial peroneal).
8723	Neuralgia, anterior tibial nerve (deep peroneal).
8724	Neuralgia, internal popliteal nerve (tibial).
8725	Neuralgia, posterior tibial nerve.
8726	Neuralgia, anterior crural nerve (femoral).
8727	Neuralgia, internal saphenous nerve.
8728	Neuralgia, obturator nerve.
8729	Neuralgia, external cutaneous nerve of thigh.
8730	Neuralgia, ilio-inguinal nerve.
The Epilepsies	
8910	Grand mal.
8911	Petit mal.
8912	Jacksonian and focal motor or sensory.
8913	Diencephalic.
8914	Psychomotor.
Mental Disorders	
9201	Schizophrenia, disorganized type.
9202	Schizophrenia, catatonic type.
9203	Schizophrenia, paranoid type.
9204	Schizophrenia, undifferentiated type.
9205	Schizophrenia, residual type.
9208	Delusional disorder.
9210	Psychotic disorder.
9211	Schizoaffective disorder.
Delirium, Dementia, Amnestic and Other Cognitive Disorders	
9300	Delirium.
9301	Dementia due to infection.
9304	Dementia due to head trauma.
9305	Vascular dementia.
9310	Dementia of unknown etiology.
9312	Dementia of Alzheimer's type.
9326	Dementia due to other medical conditions.
9327	Organic mental disorder.
Anxiety Disorders	
9400	Generalized anxiety disorder.
9403	Specific (simple) phobia.

APPENDIX B TO PART 4.—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic Code No.	
9404	Obsessive compulsive disorder.
9410	Other and unspecified neurosis.
9411	Post-traumatic stress disorder.
9412	Panic disorder.
9413	Anxiety disorder, not otherwise specified.
Dissociative Disorder	
9416	Amnesia, fugue, identity disorder.
9417	Depersonalization disorder.
Somatoform Disorders	
9421	Somatization disorder.
9422	Pain disorder.
9423	Undifferentiated somatoform disorder.
9424	Conversion disorder.
9425	Hypochondriasis.
Mood Disorders	
9431	Cyclothymic disorder.
9432	Bipolar disorder.
9433	Dysthymic disorder.
9434	Major depressive disorder.
9435	Mood disorder not otherwise specified.
Chronic Adjustment Disorder	
9440	Chronic adjustment disorder.
Eating Disorders	
9520	Anorexia nervosa.
9521	Bulimia nervosa.
DENTAL AND ORAL CONDITIONS	
9900	Maxilla or mandible, chronic.
9901	Mandible, loss of, complete.
9902	Mandible, loss of approximately one-half.
9903	Mandible, nonunion.
9904	Mandible, malunion.
9905	Temporomandibular articulation, limited motion.
9906	Ramus, loss of whole or part.
9907	Ramus, loss of less than one-half.
9908	Condylod process.
9909	Coronoid process.
9911	Hard palate, loss of half or more.
9912	Hard palate, loss of less than half.
9913	Teeth, loss of.
9914	Maxilla, loss of more than half.
9915	Maxilla, loss of half or less.
9916	Maxilla, malunion or nonunion of.

■ 4. Appendix C to part 4 is revised to read as follows:

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES

	Diagnostic code No.
Abscess:	
Brain	8020
Kidney	7501
Lung	6824
Acne	7828
Acromegaly	7908
Actinomycosis	6822

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Addison's disease	7911
Agranulocytosis	7702
Alopecia areata	7831
Amebiasis	7321
Amputation:	
Arm:	
Disarticulation	5120
Above insertion of deltoid	5121
Below insertion of deltoid	5122
Digits, five of one hand	5126
Digits, four of one hand:	
Thumb, index, long and ring	5127
Thumb, index, long and little	5128
Thumb, index, ring and little	5129
Thumb, long, ring and little	5130
Index, long, ring and little	5131
Digits, three of one hand:	
Thumb, index and long	5132
Thumb, index and ring	5133
Thumb, index and little	5134
Thumb, long and ring	5135
Thumb, long and little	5136
Thumb, ring and little	5137
Index, long and ring	5138
Index, long and little	5139
Index, ring and little	5140
Long, ring and little	5141
Digits, two of one hand:	
Thumb and index	5142
Thumb and long	5143
Thumb and ring	5144
Thumb and little	5145
Index and long	5146
Index and ring	5147
Index and little	5148
Long and ring	5149
Long and little	5150
Ring and little	5151
Single finger:	
Thumb	5152
Index finger	5153
Long finger	5154
Ring finger	5155
Little finger	5156
Forearm:	
Above insertion of pronator teres	5123
Below insertion of pronator teres	5124
Leg:	
With defective stump	5163
Not improvable by prosthesis controlled by natural knee action	5164
At a lower level, permitting prosthesis	5165
Forefoot, proximal to metatarsal bones	5166
Toes, all, without metatarsal loss	5170
Toe, great	5171
Toes, other than great, with removal of metatarsal head	5172
Toes, three or more, without metatarsal involvement	5173
Thigh:	
Disarticulation	5160
Upper third	5161
Middle or lower thirds	5162
Amyotrophic lateral sclerosis	8017
Anatomical loss of:	
Both eyes	6061
One eye, with visual acuity of other eye:	
5/200 (1.5/60)	6063
10/200 (3/60); 15/200 (4.5/60); 20/200 (6/60)	6064
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6065
20/40 (6/12)	6066
Both feet	5107
Both hands	5106
One hand and one foot	5108

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
One foot and loss of use of one hand	5105
One hand and loss of use of one foot	5104
Anemia	7700
Aneurysm:	
Aortic	7110
Large artery	7111
Small artery	7112
Angioneurotic edema	7118
Ankylosis:	
Ankle	5270
Digits, individual:	
Thumb	5224
Index finger	5225
Long finger	5226
Ring or little finger	5227
Elbow	5205
Hand	
Favorable:	
Five digits of one hand	5220
Four digits of one hand	5221
Three digits of one hand	5222
Two digits of one hand	5223
Unfavorable:	
Five digits of one hand	5216
Four digits of one hand	5217
Three digits of one hand	5218
Two digits of one hand	5219
Hip	5250
Knee	5256
Scapulohumeral articulation	5200
Subastragalar or tarsal joint	5272
Wrist	5214
Ankylosing spondylitis	5240
Aphakia	6029
Aphonia, organic	6519
Aplastic anemia	7716
Arrhythmia:	
Supraventricular	7010
Ventricular	7011
Arteriosclerosis obliterans	7114
Arteriosclerotic heart disease	7005
Arteriovenous fistula	7113
Arthritis:	
Degenerative (hypertrophic or osteoarthritis)	5003
Due to trauma	5010
Gonorrheal	5004
Other types	5009
Pneumococcic	5005
Rheumatoid (atrophic)	5002
Streptococcic	5008
Syphilitic	5007
Typhoid	5006
Asbestosis	6833
Aspergillosis	6838
Asthma, bronchial	6602
Astragalectomy	5274
Atherosclerotic renal disease	7534
Athetosis	8107
Atrioventricular block	7015
Avitaminosis	6313
Bartonellosis	6306
Beriberi	6314
Bladder:	
Calculus in	7515
Fistula in	7516
Injury of	7517
Neurogenic	7542
Blastomycosis	6836
Blindness: <i>see also</i> Vision and Anatomical Loss	
Both eyes, only light perception	6062
One eye, only light perception and other eye:	
5/200 (1.5/60)	6067

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
10/200 (3/60); 15/200 (4.5/60); 20/200 (6/60)	6068
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6069
20/40 (6/12)	6070
Bones:	
Caisson disease	5011
New growths, benign	5015
New growths, malignant	5012
Shortening of the lower extremity	5275
Brain:	
Abscess	8020
Disease due to trauma	8045
Breast surgery	7626
Bronchiectasis	6601
Bronchitis	6600
Brucellosis	6316
Buerger's disease	7115
Bulbar palsy	8005
Bullous disorders	7815
Bursitis	5019
Cardiac:	
Pacemakers, implantable	7018
Transplantation	7019
Cardiomyopathy	7020
C-cell hyperplasia, thyroid	7919
Cataract:	
Senile and others	6028
Traumatic	6027
Cerebral arteriosclerosis	8046
Cervical strain	5237
Cervix disease or injury	7612
Chorea:	
Huntington's	8106
Sydenham's	8105
Chloracne	7829
Cholangitis, chronic	7316
Cholecystitis, chronic	7314
Cholelithiasis, chronic	7315
Cholera, Asiatic	6300
Choroiditis	6005
Chronic Fatigue Syndrome (CFS)	6354
Chronic lung abscess	6824
Chronic obstructive pulmonary disease	6604
Coccidioidomycosis	6835
Cold injury residuals	7122
Colitis, ulcerative	7323
Conjunctivitis:	
Trachomatous	6017
Other	6018
Coronary bypass surgery	7017
Cryptococcosis	6837
Cushing's syndrome	7907
Cutaneous manifestations of collagen-vascular diseases	7821
Cyclitis	6004
Cystitis, chronic	7512
Dacryocystitis	6031
Dermatitis or eczema	7806
Dermatophytosis	7813
Desquamative interstitial pneumonitis	6826
Diabetes:	
Insipidus	7909
Mellitus	7913
Diaphragm:	
Paralysis or paresis	6840
Rupture	5324
Diplopia	6090
Diplopia, limited muscle function, eye	6092
Disease:	
Addison's	7911
Buerger's	7115
Chronic obstructive pulmonary disease	6604
Hodgkin's	7709

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Leprosy (Hansen's)	6302
Lyme	6319
Morton's	5279
Parasitic	6320
Disfigurement of, head, face or neck	7800
Dislocated:	
Cartilage, semilunar	5258
Lens, crystalline	6033
Disseminated intravascular coagulation	7540
Distomiasis, intestinal or hepatic	7324
Diverticulitis	7327
Dysentery, bacillary	7322
Ectropion	6020
Embolism, brain	8007
Emphysema, pulmonary	6603
Encephalitis, epidemic, chronic	8000
Endocarditis	7001
Endometriosis	7629
Enteritis, chronic	7325
Enterocolitis, chronic	7326
Entropion	6021
Eosinophilic granuloma of lung	6828
Epididymo-orchitis	7525
Epilepsies:	
Diencephalic	8913
Grand mal	8910
Jacksonian and focal motor or sensory	8912
Petit mal	8911
Psychomotor	8914
Epiphora	6025
Erythema multiforme	7827
Erythromelalgia	7119
Esophagus:	
Diverticulum	7205
Spasm	7204
Stricture	7203
Exfoliative dermatitis	7817
Fallopian tube	7614
Fever:	
Relapsing	6308
Rheumatic	6309
Fibrosis of lung, diffuse interstitial	6825
Fibromyalgia	5025
Fistula in ano	7335
Fistula:	
Rectovaginal	7624
Urethrovaginal	7625
Flatfoot, acquired	5276
Gastritis, hypertrophic	7307
Genu recurvatum	5263
Glaucoma:	
Congestive or inflammatory	6012
Simple, primary, noncongestive	6013
Glomerulonephritis	7536
Gout	5017
Hallux:	
Rigidus	5281
Valgus	5280
Hammer toe	5282
Heart valve replacement	7016
Hematomyelia	8012
Hemorrhage:	
Brain	8009
Intra-ocular	6007
Hemorrhoids	7336
Hepatitis C	7354
Hernia:	
Femoral	7340
Hiatal	7346
Inguinal	7338
Muscle	5326

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Ventral	7339
Hip:	
Degenerative arthritis	5242
Flail joint	5254
Histoplasmosis	6834
HIV-Related Illness	6351
Hodgkin's disease	7709
Hydrarthrosis, intermittent	5018
Hydronephrosis	7509
Hyperaldosteronism	7917
Hyperhidrosis	7832
Hyperparathyroidism	7904
Hyperpituitarism	7916
Hypersensitivity	6831
Hypertensive:	
Heart disease	7007
Vascular disease	7101
Hyperthyroid heart disease	7008
Hyperthyroidism	7900
Hypoparathyroidism	7905
Hypothyroidism	7903
Impairment of:	
Humerus	5202
Clavicle or scapula	5203
Elbow	5209
Thigh	5253
Femur	5255
Knee, other	5257
Field vision	6080
Tibia and fibula	5262
Rectum & anus	7332
Ulna	5211
Implantable cardiac pacemakers	7018
Infections of the skin	7820
Injury:	
Bladder	7517
Eye, unhealed	6009
Foot	5284
Gall bladder	7317
Lips	7201
Liver, residuals	7311
Mouth	7200
Muscle:	
Facial	5325
Group I Function: Upward rotation of scapula	5301
Group II Function: Depression of arm	5302
Group III Function: Elevation and abduction of arm	5303
Group IV Function: Stabilization of shoulder	5304
Group V Function: Elbow supination	5305
Group VI Function: Extension of elbow	5306
Group VII Function: Flexion of wrist and fingers	5307
Group VIII Function: Extension of wrist, fingers, thumb	5308
Group IX Function: Forearm muscles	5309
Group X Function: Movement of forefoot and toes	5310
Group XI Function: Propulsion of foot	5311
Group XII Function: Dorsiflexion	5312
Group XIII Function: Extension of hip and flexion of knee	5313
Group XIV Function: Extension of knee	5314
Group XV Function: Adduction of hip	5315
Group XVI Function: Flexion of hip	5316
Group XVII Function: Extension of hip	5317
Group XVIII Function: Outward rotation of thigh	5318
Group XIX Function: Abdominal wall and lower thorax	5319
Group XX Function: Postural support of body	5320
Group XXI Function: Respiration	5321
Group XXII Function: Rotary and forward movements, head	5322
Group XXIII Function: Movements of head	5323
Pharynx	6521
Sacroiliac	5236
Spinal cord	6841
Stomach, residuals of	7310

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Iritis	6003
Interstitial nephritis	7537
Intervertebral disc syndrome	5243
Intestine, fistula of	7330
Irritable colon syndrome	7319
Keratinization, diseases of	7824
Keratitis	6001
Keratoconus	6035
Kidney:	
Abscess	7501
Cystic diseases	7533
Removal	7500
Transplant	7531
Tuberculosis	7505
Kyphoscoliosis, pectus excavatum / carinatum	6842
Lagophthalmos	6022
Laryngectomy	6518
Laryngitis:	
Tuberculous	6515
Chronic	6516
Larynx, stenosis of	6520
Leishmaniasis:	
American (New World)	7807
Old World	7808
Leprosy (Hansen's Disease)	6302
Leukemia	7703
Limitation of extension:	
Forearm	5207
Leg	5261
Radius	5212
Supination and pronation	5213
Thigh	5251
Limitation of extension and flexion:	
Forearm	5208
Limitation of flexion:	
Forearm	5206
Leg	5260
Thigh	5252
Limitation of motion:	
Ankle	5271
Arm	5201
Index or long finger	5229
Ring or little finger	5230
Temporomandibular articulation	9905
Thumb	5228
Wrist, limitation of motion	5215
Liver:	
Disease, chronic, without cirrhosis	7345
Transplant	7351
Cirrhosis	7312
Loss of:	
Auricle	6207
Condylod process	9908
Coronoid process	9909
Eyebrows	6023
Eyelashes	6024
Eyelids	6032
Mandible:	
One-half	9902
Complete	9901
Maxilla:	
More than half	9914
Less than half	9915
Nose, part of, or scars	6504
Palate, hard:	
Half or more	9911
Less than half	9912
Ramus:	
Whole or part	9906
Less than one-half	9907
Skull, part of	5296

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Smell, sense of	6275
Taste, sense of	6276
Teeth, loss of	9913
Tongue, loss of whole or part	7202
Loss of use of:	
Both feet	5110
Both hands	5109
Foot	5167
Hand	5125
One hand and one foot	5111
Lumbosacral strain	5237
Lupus:	
Erythematosus	6350
Erythematosus, discoid	7809
Lyme disease	6319
Lymphatic filariasis	6305
Malaria	6304
Malignant melanoma	7833
Malunion:	
Mandible	9904
Os calcis or astragalus	5273
Maxilla, malunion or nonunion	9916
Melioidosis	6318
Meniere's syndrome	6205
Meningitis, cerebrospinal, epidemic	8019
Mental disorders:	
Anxiety disorders:	
Generalized anxiety disorder	9400
Obsessive compulsive disorder	9404
Other and unspecified neurosis	9410
Not otherwise specified	9413
Panic disorder	9412
Post-traumatic stress disorder	9411
Specific (simple) phobia	9403
Chronic adjustment disorder	9440
Delirium, dementia, amnesic and other cognitive disorders	
Alzheimers	9312
Delirium	9300
Head trauma	9304
Infection	9301
Organic mental disorder	9327
Other medical conditions	9326
Unknown etiology	9310
Vascular dementia	9305
Dissociative disorders:	
Amnesia, fugue, identity disorders	9416
Depersonalization disorder	9417
Eating Disorder:	
Anorexia nervosa	9520
Bulimia nervosa	9521
Mood Disorders:	
Bipolar disorder	9432
Cyclothymic disorder	9431
Dysthymic disorder	9433
Major depressive disorder	9434
Mood disorder not otherwise specified	9435
Schizophrenia and other psychotic disorders:	
Catatonic type	9202
Delusional disorder	9208
Disorganized type	9201
Psychotic disorder	9210
Paranoid type	9203
Residual type	9205
Schizoaffective disorder	9211
Undifferentiated type	9204
Somatoform:	
Conversion disorder	9424
Hypochondriasis	9425
Pain disorder	9422
Somatization disorder	9421
Undifferentiated somatoform disorder	9423

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Metatarsalgia	5279
Migraine	8100
Morton's disease	5279
Mucormycosis	6839
Multiple sclerosis	8018
Myasthenia gravis	8025
Myelitis	8010
Myocardial infarction	7006
Myositis ossificans	5023
Myositis	5021
Narcolepsy	8108
Neoplasms:	
Benign:	
Digestive system	7344
Ear	6209
Endocrine	7915
Genitourinary	7529
Gynecological or breast	7628
Muscle	5328
Respiratory	6820
Skin	7819
Malignant:	
Digestive system	7343
Ear	6208
Endocrine	7914
Genitourinary	7528
Gynecological or breast	7627
Muscle	5327
Respiratory	6819
Skin	7818
Nephritis, chronic	7502
Nephrolithiasis	7508
Nephrosclerosis, arteriolar	7507
Neuralgia:	
Cranial Nerves	
Fifth (trigeminal)	8405
Seventh (facial)	8407
Ninth (glossopharyngeal)	8409
Tenth (pneumogastric, vagus)	8410
Eleventh (spinal accessory, external branch)	8411
Twelfth (hypoglossal)	8412
Peripheral Nerves	
Upper radicular group	8710
Middle radicular group	8711
Lower radicular group	8712
All radicular groups	8713
Musculospiral (radial)	8714
Median	8715
Ulnar	8716
Musculocutaneous	8717
Circumflex	8718
Long thoracic	8719
Sciatic	8720
External popliteal (common peroneal)	8721
Musculocutaneous (superficial peroneal)	8722
Anterior tibial (deep peroneal)	8723
Internal popliteal (tibial)	8724
Posterior tibial	8725
Anterior crural (femoral)	8726
Internal saphenous	8727
Obturator	8728
External cutaneous nerve of thigh	8729
Ilio-inguinal	8730
Neuritis:	
Cranial nerves	
Fifth (trigeminal)	8305
Seventh (facial)	8307
Ninth (glossopharyngeal)	8309
Tenth (pneumogastric, vagus)	8310
Eleventh (spinal accessory, external branch)	8311
Twelfth (hypoglossal)	8312

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Optic	6026
Peripheral Nerves	
Upper radicular group	8610
Middle radicular group	8611
Lower radicular group	8612
All radicular groups	8613
Musculospiral (radial)	8614
Median	8615
Ulnar	8616
Musculocutaneous	8617
Circumflex	8618
Long thoracic	8619
Sciatic	8620
External popliteal (common peroneal)	8621
Musculocutaneous (superficial peroneal)	8622
Anterior tibial (deep peroneal)	8623
Internal popliteal (tibial)	8624
Posterior tibial	8625
Anterior crural (femoral)	8626
Internal saphenous	8627
Obturator	8628
External cutaneous nerve of thigh	8629
Ilio-inguinal	8630
Neurogenic bladder	7542
New growths:	
Benign	
Bones	5015
Brain	8003
Eyeball and adnexa	6015
Spinal cord	8022
Malignant	
Bones	5012
Brain	8002
Eyeball	6014
Spinal cord	8021
Nocardiosis	6823
Non-Hodgkin's lymphoma	7715
Nonunion:	
Mandible	9903
Radius and ulna	5210
Nystagmus, central	6016
Osteitis deformans	5016
Osteomalacia	5014
Osteomyelitis	5000
Osteomyelitis maxilla or mandible	9900
Osteoporosis, with joint manifestations	5013
Otitis media:	
Externa	6210
Nonsuppurative	6201
Suppurative	6200
Otosclerosis	6202
Ovaries, atrophy of both	7620
Ovary:	
Disease or injury	7615
Removal	7619
Palsy, bulbar	8005
Pancreatitis	7347
Papillary necrosis	7538
Papulosquamous disorders	7822
Paralysis:	
Accommodation	6030
Agitans	8004
Paralysis, nerve:	
Cranial nerves	
Fifth (trigeminal)	8205
Seventh (facial)	8207
Ninth (glossopharyngeal)	8209
Tenth (pneumogastric, vagus)	8210
Eleventh (spinal accessory, external branch)	8211
Twelfth (hypoglossal)	8212
Peripheral Nerves:	
Upper radicular group	8510

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Middle radicular group	8511
Lower radicular group	8512
All radicular groups	8513
Musculospiral (radial)	8514
Median	8515
Ulnar	8516
Musculocutaneous	8517
Circumflex	8518
Long thoracic	8519
Sciatic	8520
External popliteal (common peroneal)	8521
Musculocutaneous (superficial peroneal)	8522
Anterior tibial nerve (deep peroneal)	8523
Internal popliteal (tibial)	8524
Posterior tibial nerve	8525
Anterior crural nerve (femoral)	8526
Internal saphenous	8527
Obturator	8528
External cutaneous nerve of thigh	8529
Ilio-inguinal	8530
Paramyoclonus multiplex	8104
Parasitic disease	6320
Pellagra	6315
Penis	
Deformity, with loss of erectile power	7522
Removal of glans	7521
Removal of half or more	7520
Pericardial adhesions	7003
Pericarditis	7002
Periostitis	5022
Peripheral vestibular disorders	6204
Peritoneum, adhesions	7301
Peritonitis	7331
Pes cavus (Claw foot) acquired	5278
Pheochromocytoma	7918
Plague	6307
Pleural effusion or fibrosis	6845
Pluriglandular syndrome	7912
Pneumoconiosis	6832
Pneumonitis & fibrosis:	
Drug-induced	6829
Radiation-induced	6830
Poliomyelitis, anterior	8011
Polycythemia vera	7704
Postgastrectomy syndromes	7308
Post-phlebotic syndrome	7121
Post-surgical residual	6844
Pregnancy, surgical complications	7623
Progressive muscular atrophy	8023
Prostate gland	7527
Prosthetic Implants:	
Ankle replacement	5056
Elbow replacement	5052
Hip replacement	5054
Knee replacement	5055
Shoulder replacement	5051
Wrist replacement	5053
Psoriasis	7816
Pterygium	6034
Ptosis	6019
Pulmonary:	
Alveolar proteinosis	6827
Vascular disease	6817
Pruritus ani	7337
Pyelonephritis, chronic	7504
Raynaud's syndrome	7117
Rectum:	
Rectum & anus, stricture	7333
Prolapse	7334
Removal:	
Cartilage, semilunar	5259

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Coccyx	5298
Gall bladder	7318
Kidney	7500
Penis glans	7521
Penis half or more	7520
Ribs	5297
Testis	7524
Ovary	7619
Uterus	7618
Uterus and both ovaries	7617
Renal:	
Amyloid disease	7539
Disease, chronic	7530
Involvement in systemic diseases	7541
Tubular disorders	7532
Retina detachment of	6008
Retinitis	6006
Rhinitis:	
Allergic or vasomotor	6522
Bacterial	6523
Granulomatous	6524
Resection of intestine:	
Large	7329
Small	7328
Sarcoidosis	6846
Scarring alopecia	7830
Scars:	
Deep, other than head, face or neck	7801
Other	7805
Retina	6011
Superficial, other than head, face, or neck	7802
Superficial, painful	7804
Superficial, unstable	7803
Scleritis	6002
Scotoma	6081
Septum, nasal, deviation of	6502
Sickle cell anemia	7714
Sinusitis:	
Ethmoid	6511
Frontal	6512
Maxillary	6513
Pansinusitis	6510
Sphenoid	6514
Sleep Apnea Syndrome	6847
Soft tissue sarcoma:	
Muscle, fat, or fibrous connected	5329
Neurogenic origin	8540
Vascular origin	7123
Spinal fusion	5241
Spinal stenosis	5238
Spleen, injury of, healed	7707
Splenectomy	7706
Spondylolisthesis or segmental instability, spine	5239
Stomach, stenosis of	7309
Symblepharon	6091
Syndromes:	
Chronic Fatigue Syndrome (CFS)	6354
Cushing's	7907
Meniere's	6205
Raynaud's	7117
Sleep Apnea	6847
Synovitis	5020
Syphilis	6310
Syphilis:	
Cerebrospinal	8013
Meningovascular	8014
Syphilitic heart disease	7004
Syringomyelia	8024
Tabes dorsalis	8015
Tarsal or metatarsal bones	5283
Tenosynovitis	5024

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
Testis:	
Atrophy, complete	7523
Removal	7524
Thrombocytopenia	7705
Thrombosis, brain	8008
Thyroid gland:	
Nontoxic adenoma	7902
Toxic adenoma	7901
Tic, convulsive	8103
Tinnitus, recurrent	6260
Toxic nephropathy	7535
Traumatic chest wall defect	6843
Tuberculosis:	
Adenitis	7710
Bones and joints	5001
Eye	6010
Kidney	7505
Luposa (lupus vulgaris)	7811
Miliary	6311
Pleurisy, active or inactive	6732
Pulmonary:	
Active, far advanced	6701
Active, moderately advanced	6702
Active, minimal	6703
Active, advancement unspecified	6704
Active, chronic	6730
Inactive, chronic	6731
Inactive, far advanced	6721
Inactive, moderately advanced	6722
Inactive, minimal	6723
Inactive, advancement unspecified	6724
Tuberculosis luposa (lupus vulgaris)	7811
Tympanic membrane	6211
Typhus, scrub	6317
Ulcer:	
Duodenal	7305
Gastric	7304
Marginal	7306
Ureter, stricture of	7511
Ureterolithiasis	7510
Urethra:	
Fistula	7519
Stricture	7518
Urticaria	7825
Uterus:	
And both ovaries, removal	7617
Disease or injury	7613
Displacement	7622
Prolapse	7621
Removal	7618
Uveitis	6000
Vagina, disease or injury	7611
Vagotomy	7348
Valvular heart disease	7000
Varicose veins	7120
Vasculitis, primary cutaneous	7826
Vertebral fracture or dislocation	5235
Visceral Leishmaniasis	6301
Visceroptosis	7342
Vision: <i>see also</i> Blindness and Loss of	
One eye 5/200 (1.5/60), with visual acuity of other eye:	
5/200 (1.5/60)	6071
10/200 (3/60); 15/200 (4.5/60); 20/200 (6/60)	6072
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6073
20/40 (6/12)	6074
One eye 10/200 (3/60), with visual acuity of other eye:	
10/200 (3/60); 15/200 (4.5/60); 20/200 (6/60)	6075
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6076
20/40 (6/12)	6077
One eye 15/200 (4.5/60), with visual acuity of other eye:	
15/200 (4.5/60) or 20/200 (6/60)	6075

APPENDIX C TO PART 4.—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6076
20/40 (6/12)	6077
One eye 20/200 (6/60), with visual acuity of other eye:	
20/200 (6/60)	6075
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6076
20/40 (6/12)	6077
One eye 20/100 (6/30), with visual acuity of other eye: and other eye:	
20/100 (6/30); 20/70 (6/21); 20/50 (6/15)	6078
20/40 (6/12)	6079
One eye 20/70 (6/21), with visual acuity of other eye:	
20/70 (6/21) or 20/50 (6/15)	6078
20/40 (6/12)	6079
One eye 20/50 (6/15), with visual acuity of other eye:	
20/50 (6/15)	6078
20/40 (6/12)	6079
Each eye 20/40 (6/12)	6079
Vitiligo	7823
Vulva disease or injury of	7610
Weak foot	5277

[FR Doc. E7-4914 Filed 3-19-07; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[EPA-HQ-OAR-2005-0117; FRL-8289-6]

RIN 2060-AO18

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of reconsideration of final rule.

SUMMARY: On May 10, 2006, EPA published a final rule entitled, "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors." Following that final action, the Administrator received a petition for reconsideration. In response to the petition, EPA is announcing its reconsideration of three aspects of the rule: operator stand-in provisions, data requirements for continuous monitors, and the status of operating parameters during the 2 weeks prior to mercury and dioxin/furan testing.

DATES: *Comments.* Comments must be received on or before April 19, 2007. Because of the need to resolve the issues raised in this action in a timely manner, EPA will not grant requests for extensions beyond this date. If, however, a public hearing is held, the

comment period will remain open until May 4, 2007.

Public Hearing. If anyone contacts EPA by March 27, 2007 requesting to speak at a public hearing, EPA will hold a public hearing on April 4, 2007. If you are interested in attending the public hearing, contact Pamela Garrett at (919) 541-7966 to verify that a hearing will be held.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0117, by one of the following methods.

Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

E-mail: Send your comments via electronic mail to a-and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Facsimile: Fax your comments to (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Mail: Send your comments to: EPA Docket Center (EPA/DC), EPA, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2005-0117. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0117. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is requested, it will be held at EPA's Campus located at 109 T.W. Alexander

Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts Pamela Garrett by March 27, 2007 requesting to speak at a public hearing, we will not hold a hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the reconsideration. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of rebuttal and supplementary information.

Docket. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket facility and the Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding

legal holidays. The Docket telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5264, e-mail stevenson.walt@epa.gov. For questions about the public hearing, contact Pamela Garrett (919) 541-7966.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

- I. General Information
 - A. Does this notice of reconsideration apply to me?
 - B. How do I obtain a copy of this document and other related information?
- II. Background Information
- III. Actions We Are Taking
- IV. Discussion of Issues for Reconsideration
 - A. Operator Stand-in Provisions
 - B. Data Requirements for Continuous Monitors
 - C. Status of Operating Parameters During the 2 Weeks Prior to Mercury and Dioxin/Furan Testing
- V. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer Advancement Act

I. General Information

A. Does this notice of reconsideration apply to me?

1. Regulated Entities

Categories and entities potentially affected by this reconsideration notice are municipal waste combustion units with a design combustion capacity of greater than 250 tons per day (tpd). The New Source Performance Standards (NSPS) and emission guidelines for municipal waste combustors affect the following categories of sources:

Category	NAICS code	Examples of potentially regulated entities
Industry, Federal government, and State/local/tribal governments.	562213, 92411	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal solid waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal solid waste) and do not recover energy from the waste combustion.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are regulated by the final large municipal waste combustors (MWC) rules. You should consult the applicability provisions of the NSPS and emission guidelines to determine if you are subject to the rule.

B. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final large MWC NSPS (40 CFR part 60, subpart Eb) and emission guidelines (40 CFR part 60, subpart Cb) is Docket ID No. EPA-HQ-OAR-2005-0117.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of the final rule and this notice of reconsideration are available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of this notice on the

TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

Section 129 of the Clean Air Act (CAA), entitled "Solid Waste Combustion," requires EPA to develop and adopt NSPS for new units and emission guidelines for existing units for solid waste incineration units pursuant to CAA sections 111 and 129. Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of the NSPS and emissions guidelines and, in accordance with sections 129 and 111, revise the NSPS and emission guidelines. EPA undertook and completed that review. On December 19, 2005 (70 FR 75348), EPA proposed amendments to the NSPS and emission guidelines to reflect the revisions EPA believes are appropriate. EPA carefully considered comments received on the

proposal and promulgated the amendments on May 10, 2006 (71 FR 27323).

Following the promulgation of the final amendments to the large MWC rule, EPA received a petition for reconsideration from Earthjustice. The purpose of today's notice is to initiate a process for responding to issues raised in the petition.

III. Actions We Are Taking

We are granting reconsideration of, and requesting comment on, three of the four issues raised in the petition for reconsideration: (1) The provisions to allow provisionally-certified control room operators to perform the duties of a certified chief facility operator or certified shift operator; (2) the data availability requirements for continuous emissions monitoring systems (CEMS); and (3) the status of operating parameters during the 2 weeks prior to mercury and dioxin/furan testing. EPA is not proposing any rule changes as a result of this reconsideration.

We are seeking public comment only on the three issues specifically identified in this notice. We will not respond to any comments addressing other aspects of the large MWC rule or any related rulemakings.

Our final decision on reconsideration of the issue raised by the petitioner for which we are not granting reconsideration will be issued no later than the date by which we take final action on the issues discussed in this action.

IV. Discussion of Issues for Reconsideration

This section of the preamble contains EPA's basis for our proposed response to the issues identified in the petition for reconsideration.

A. Operator Stand-in Provisions

Earthjustice, in their petition of July 7, 2006, states "EPA must reconsider its decision to allow untrained employees to perform the duties of a certified chief facility operator or certified shift operator." Below, EPA presents its rationale for the training and certification requirements contained in the final rule for large MWC units. This presentation includes a review of (1) requirements under CAA section 129(d); (2) requirements under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA); (3) training and certification requirements adopted for large MWC units in 1995 under 40 CFR part 60, subpart Eb; (4) implementation guidance issued in 1998; (5) revisions proposed for large MWC units in December 2005; (6) public comments received on the proposed operator certification requirements; and (7) operator "stand-in" requirements contained in the final May 2006 rule.

Under CAA section 129(d), EPA "shall develop and promote a model State program for the training and certification of solid waste incineration unit operators * * *. It shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this section." Additionally, under section 12(d) of the NTTAA, EPA is directed to incorporate readily available voluntary consensus standards into its regulations unless to do so would be inconsistent with applicable law or otherwise impractical.

In the 1995 rule for MWC units, EPA addressed both the training requirements and certification

requirements. The rule addresses the training requirements in two ways. First, to promote and assist State air pollution control offices, EPA developed and distributed an MWC training program. The 1995 rule required all control room operators, shift supervisors, and chief facility operators to complete the training. Second, the 1995 rule required MWC owners and operators to develop a site-specific operating manual that included: (1) A summary of the 1995 MWC rule; (2) description of the basic combustion theory applicable to the MWC; (3) procedures for receiving, handling, and feeding municipal solid waste to the MWC; (4) procedures for start-up, shutdown, and malfunction at the MWC; (5) procedures for maintaining proper combustion air supply to the MWC; (6) procedures for operating within the requirements of the 1995 MWC rule; (7) procedures for responding to periodic upset or off-specification conditions; (8) procedures for minimizing particulate matter carryover; (9) procedures for ash handling; (10) procedures for monitoring emissions from the MWC; and (11) a review of reporting and recordkeeping requirements. The 1995 rule required the manual to be used to train a wide range of individuals at the MWC. Not only did the 1995 rule require training of the control room operators, shift supervisors, and chief facility operator, but it also required training of the crane/load handlers, ash handlers, maintenance personnel, as well as any other person at the MWC with responsibilities affecting the operation of MWC. The 1995 MWC rule required initial training of these individuals and an annual review of the manual. The 1995 rule required that a copy of the manual be kept in a location readily accessible by these personnel. These requirements ensure that individuals working at an MWC are well trained and know how the plant is to be operated.

Relative to CAA certification requirements, EPA considered development of a certification program. However, as a first step, consistent with NTTAA requirements, EPA conducted a review to see if such standards or techniques were already developed and available. EPA identified the availability of the national MWC operator certification program that had been developed and implemented by the American Society of Mechanical Engineers (ASME). The ASME program satisfied EPA's needs. The program was titled "Standards for the Qualification and Certification of Resource Recovery

Facility Operators (QRO)—1989." The ASME/QRO certification is MWC plant-specific and ASME certifies only the supervisory positions of chief facility operator and shift supervisor. As the first step toward certification, the individual must obtain an ASME provisional certification. Next, the individual must "document 6 months of satisfactory employment at the level of chief facility operator or shift supervisor in that resource recovery facility." After completing the 6-month employment, the individual may apply for MWC site-specific certification testing. A control room operator can also obtain ASME provisional certification, but cannot take the ASME test for full certification until the control room operator elevates to the level of chief facility operator or shift supervisor.

The 1995 MWC rule requires that during all periods of MWC operations, one of the following people must be on site: A fully-certified chief facility operator, a provisionally-certified chief facility operator scheduled to take the ASME/QRO full certification test, a fully-certified shift supervisor, or a provisionally-certified shift supervisor scheduled to take the ASME/QRO full certification. If these individuals must leave the MWC plant during their operating shift, a provisionally-certified control room operator may stand in. Shortly after adopting the MWC rule in 1995, questions arose about the control room operator "stand-in" provisions. The basic question was: could a provisionally-certified control room operator stand in for longer than a partial operating shift? For example, if the chief facility operator was out of the State at a meeting, and the shift supervisor became sick and was out for a number of days, what should be done? Should the MWC plant stop operations until a certified individual returns, while hundreds of tons of municipal solid waste were being received daily? Should the waste be diverted to some other location?

To address these issues, an enforcement guidance memorandum was issued by EPA on May 14, 1998 ("John Seitz memo"). The guidance memorandum addresses what to do for periods up to 12 hours, up to 2 weeks, and greater than 2 weeks. Such periods could occur during vacations, training, administrative activities, or sickness. If both the certified chief facility operator and shift supervisor would be away from the MWC for more than 2 weeks, the guidance memorandum requires the MWC owner or operator to notify EPA of what actions were being taken to address the absence of certified personnel and to submit supplemental

monthly reports until the certified personnel returned or were replaced. Such extended period could occur if a certified individual was transferred to another MWC, the certified individual discontinued employment at the MWC, or the certified individual was dismissed. The 1998 guidance memo has been used for the past 9 years for implementation of the operator stand-in provisions.

On December 19, 2005, EPA proposed revisions to the 1995 MWC rule. One of the proposed revisions was to incorporate the provisions of the 1998 guidance memorandum into the MWC rule. These same provisions had already been incorporated into the small MWC rules (subparts AAAA and BBBB, 40 CFR part 60) on December 6, 2000. EPA received a number of comments on the 2005 proposal, including one comment on the proposed control room operator stand-in provisions. The commenter supported the proposal, but noted that the stand-in/certification provisions should be expanded to address a recent issue being faced by the MWC industry: The turnover of certified chief facility operators and certified shift supervisors has increased due to the growing employment opportunities in the power generation and industrial boiler industries. The commenter noted that it was not uncommon to lose one or more certified individuals from an MWC plant in the same year. The commenter also noted that when an employee (the control room operator in most cases) was promoted to the shift supervisor position (or chief facility operator position), the employee would have to act in that capacity for 6 months before the employee could apply for ASME/QRO testing. Since this activity would take more than 2 weeks, under the 1998 guidance memo the owner or operator of the MWC would be required to notify EPA of this activity and provide monthly reports.

EPA carefully considered the comment, noting that the request limited the focus of the exemption to provisionally-certified control room operators. EPA considered CAA requirements, NTTAA requirements, training requirements in the rule, ASME/QRO requirements, and the 1998 guidance memo. Under the May 10, 2006 rule, all control room operators will have already completed the EPA training course, will have completed initial training and annual review of a site-specific MWC operating manual, and under this exemption will already have achieved provisional certification by the ASME/QRO program. In its evaluation, EPA concluded this limited exemption did not undermine the MWC

regulation, did not allow untrained individuals to operate the MWC, and would, in fact, improve the efficiency of the regulation by reducing unnecessary reporting and paperwork requirements. The final rule adopted on May 10, 2006, added text at 40 CFR 60.54b(c)(3) that says: "A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion unit may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Administrator for up to 6 months before taking the ASME QRO certification exam."

For the reasons discussed above, EPA continues to believe that this provision is appropriate and, therefore, is not proposing to change it. The EPA is, however, soliciting comment on the appropriateness of the provision from interested parties and will make a final decision on the issue after fully considering any such comments.

B. Data Requirements for Continuous Monitors

The second issue addressed by this notice of reconsideration is the data availability requirements for CEMS. Earthjustice in their petition states "EPA must reconsider its CEMS data availability requirements." Earthjustice suggests the final CEMS data requirements are inadequate. In particular, Earthjustice took exception to the elimination of a "requirement that operators obtain CEMS data for 75 percent of the operating hours per day before the data is counted toward the CEMS data availability requirements." In this section, EPA presents its rationale for the CEMS data availability requirements contained in the final rule. This includes a review of (1) The progression of CEMS data requirements from 1979 thru 1995, (2) proposed 2005 CEMS data requirements for large MWC units, (3) public comments on proposed requirements, and (4) final 2006 data requirements.

In development of NSPS under CAA section 111, EPA has constantly pushed for increased CEMS application and improvements. Relative to boiler standards, the first NSPS to use CEMS as a continuous compliance test method was the 1979 NSPS for electric utility boilers (40 CFR part 60, subpart Da). This was followed with identical CEMS requirements under the subpart Db, 40 CFR part 60, NSPS (1987) for industrial boilers and the subpart Dc, 40 CFR part 60, NSPS (1990) for commercial boilers. This was followed with revised, but similar, CEMS requirements under the

subpart Ea, 40 CFR part 60, NSPS (1991) and the subpart Eb, 40 CFR part 60, NSPS (1995) for large MWC units. CEMS technology has continued to improve, and EPA has continued to increase requirements.

CEMS data availability requirements, and the format of those requirements, have been refined and revised over time. The CEMS data requirements under the 1979 subpart Da NSPS for electric utility boilers includes a minimum CEMS data generation rate of 75 percent of the operating hours per day for 22 days in each 30 day period. This minimum data collection requirement equates to 55 percent CEMS data availability ($0.75 \times (22/30) = 0.55$). This same requirement was incorporated into the 1987 subpart Db for industrial boilers and the 1990 subpart Dc for commercial boilers. EPA reformatted these requirements slightly, and in the 1991 subpart Ea NSPS for MWC units, included a minimum data requirement of 75 percent of the operating hours per day for 75 percent of the operating days per month. This minimum data collection requirement equates to 56 percent data availability ($0.75 \times 0.75 = 0.56$).

Under section 129 of the CAA amendments of 1990, EPA was required to upgrade the subpart Ea requirements to be based on the use of maximum available control technology (MACT). An upgraded subpart Eb was adopted in 1995. The upgrade to subpart Eb included increased CEMS data requirements. Under the 1995 subpart Eb, the minimum data availability requirement was 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. This minimum data requirement equates to a minimum of 68 percent data availability ($0.75 \times 0.90 = 0.68$).

Acting in accordance with the requirements of CAA section 129(a)(5), EPA initiated a review of the 1995 subpart Eb rule for large MWC units, which included a review of CEMS data availability requirements. As described in the December 19, 2005 proposal, EPA obtained calendar year 2003 CEMS data from a large MWC plant. The data included CEMS information on six parameters (sulfur dioxide, oxygen, nitrogen oxides, carbon monoxide, hydrogen chloride, opacity, and flue gas temperature at the inlet to the particulate matter control device), for each of the three MWC units at the plant, and for all four quarters of operation in 2003. Overall, this data base contained 72 calendar quarters of CEMS data ($6 \times 3 \times 4 = 72$). For all quarters and all parameters, the CEMS data availability level was more than 99

percent. This information had been formatted differently than EPA's 1995 rule. The data statistics presented were in hours of valid CEMS data generated per quarter divided by the hours of MWC operation per quarter. It did not consider a 75 percent daily data requirement. Because of the differences of data formats, EPA made conservative assumptions and proposed to increase the minimum data requirement to 75 percent of the operating hours per day for 95 percent of the operating days per calendar quarter. This proposed requirement equates to a minimum data requirement of 72 percent CEMS data availability ($0.75 \times 0.95 = 0.72$).

On December 19, 2005, EPA proposed these more stringent requirements for subpart Eb. EPA received a number of comments on the proposal including comments on the CEMS data availability requirements. The most relevant comment regarding CEMS data availability was that the CEMS data availability analysis used by EPA had not been adjusted to include the proposed 75 percent daily data requirement. The commenter suggested this adjustment would have reduced the 99 percent data availability level shown by the analysis. Rather than adjust the analysis, EPA elected to revise the format of the CEMS data availability requirements to match the analysis. This would also eliminate the need for the

conservative assumptions made in adjusting from one format to the other. CEMS data availability would be based simply on actual hours of MWC operation.

The percent of operation format is becoming common for reporting CEMS data availability generally. Under EPA's acid rain control program, more than 1,000 electric utility boilers report information on CEMS data generation to EPA. The hourly data submitted is compiled by EPA as the ratio (percent) of hours of CEMS data generation relative to hours of boiler operation per calendar quarter. The 75 percent daily data requirement is not used. EPA recently upgraded the subpart Da NSPS for new electric utility boilers and in that action revised the CEMS data requirements to be based on the percent of boiler operating hours. The 75 percent daily data requirement was dropped from subpart Da. The percent of operation format is a superior metric for CEMS performance. It does not credit data as being available for a full 24-hour day unless it is available for a full 24 hours. Data is credited on an hour-by-hour basis. Under the earlier 75 percent daily data format, a day was counted as a full day if more than 75 percent (18 hours) of data were generated.

In the May 10, 2006, large MWC rule, EPA revised the CEMS data availability

requirements to be based on the hours of MWC operation. Also, in consideration of public comments on the potential need for back-up CEMS, EPA revised the data requirement to 90 percent on a calendar quarter basis and 95 percent on a calendar year basis. The final requirement equates to a minimum data requirement of 90 percent CEMS data availability on a calendar quarter basis and 95 percent on an annual basis.

The final rule adopted on May 10, 2006, contains revised text at 40 CFR 60.58b(e)(7) to read as follows: "At a minimum, valid continuous monitoring system hourly averages shall be obtained* * * for 90 percent of the operating hours per calendar quarter and for 95 percent of the operating hours per calendar year that the affected facility is combusting municipal waste."

In summary, EPA has continued to upgrade CEMS data requirements. The final requirements are superior to the proposed requirements and earlier requirements. As shown in Table 1 of this preamble, on a calendar quarter basis, the proposed requirements would have required a minimum of 1,539 hours of CEMS data generation (71 percent) per calendar quarter as opposed to the final requirements with a minimum of 1,944 hours of CEMS data generation (90 percent) per calendar quarter.

TABLE 1.—MINIMUM CEMS DATA REQUIREMENTS UNDER 40 CFR PART 60, SUBPART Eb^a

	Data required (per calendar quarter)	1995 Rule	2005 Pro- posal	2006 Final
Hours		1,458 ^b	1,539 ^c	1,944 ^d
Percent		68	71	90

(^a) Table based on the assumption that an MWC operated for 24 hours per day for a 90 day calendar quarter: $(24 \times 90 = 2,160$ hours of MWC operation).

(^b) CEMS data for 75 percent of the operating hours per day for 90 percent of the days per quarter: $(0.75 \times 24)(0.90 \times 90) = 1,458$ hours of data.

(^c) CEMS data for 75 percent of the operating hours per day for 95 percent of the days per quarter: $(0.75 \times 24)(0.95 \times 90) = 1,539$ hours of data.

(^d) CEMS data for 90 percent of the MWC operating hours per quarter: $(0.90)(90 \times 24) = 1,944$ hours of data.

For the reasons discussed above, EPA believes that the data availability requirements contained in the final rule, including the elimination of the requirement to obtain data for 75 percent of the operating hours per day, is the preferred approach. The EPA is, therefore, not proposing to change the requirement. The EPA is, however, soliciting comment on the issue from interested parties and will make a final decision on the issue after fully considering any such comments.

C. Status of Operating Parameters During the 2 Weeks Prior to Mercury and Dioxin/Furan Testing

The third issue addressed by this notice of reconsideration is the operating parameter testing for activated carbon injection (ACI) rate. Earthjustice in their petition says "EPA must reconsider its operating parameter requirements * * *. EPA's rule now allows MWC to avoid meeting mass carbon feed rate limits for dioxin/furan testing, as well as mercury testing, and increases to more than 4 weeks per year the total amount of time that MWC can avoid meeting mass carbon feed rate limits." Below, EPA presents its

rationale for the mass carbon feed rate alternatives in the final rule. This presentation includes a review of the following: (1) The requirements in the 1994 proposed and 1995 final large MWC rules, (2) requirements in the 2005 proposed amendments to the large MWC rule, (3) public comments received on proposed amendments, and (4) requirements in the final 2006 large MWC rule.

First, it is useful to briefly review MWC control systems. MWC units use either spray dryer/fabric filter (SD/FF) scrubbing systems or spray dryer/electrostatic precipitator (SD/ESP) scrubbing systems as the basic

component of their MACT control system. Other technologies are used to supplement this primary control system. ACI is one technology used to supplement dioxin/furan control and mercury control. Of the 167 large MWC units, 120 MWC units use ACI for supplemental control. The supplemental use of ACI reduces mercury emissions by about 90 percent from the level achieved by the scrubbing system alone and reduces dioxin/furan emissions by about 75 percent from the level achieved by the scrubbing system alone.

In 1995, dioxin/furan emissions at MWC units were stack tested. CEMS to measure dioxin/furan were unavailable. To supplement the annual dioxin/furan test, various operating parameters are measured continuously. The rule requires the continuous monitoring of the following site-specific operating parameters: (1) MWC load level (steam generation rate), (2) flue gas temperatures at the inlet to the particulate matter control device, and (3) ACI injection rate (mass carbon feed rate). The allowable rate for these parameters is established during the dioxin/furan stack test and is site-specific for each MWC unit. Relative to mercury testing, the 1995 rule requires measurement of ACI mass flow rate during both the dioxin/furan stack test and the mercury stack test, with the more restrictive of the two flow rates applied. For all three operating parameters, the site-specific limits are applied on a continuous basis until the next annual stack test when new parameters are established.

The site-specific parameters discussed above adequately addressed operating parameters for the initial MACT compliance test (December 2000). Owners and operators of the MWC units would have had adequate time following control device retrofits for pre-testing and adjusting the control system before the initial MACT compliance test. However, there remained the question of what should be done for subsequent compliance tests.

The 1995 MWC rule answered that question by providing the following at 40 CFR 60.53b(b): "During the annual dioxin/furan performance test and 2 weeks preceding* * * the municipal waste combustor load limit may be waived in accordance with permission granted by the Administrator * * * for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance* * *." An identical 2-week waiver is provided

in 40 CFR 60.53b(c) for establishing the site-specific operating parameter for flue gas temperature at the inlet to the particulate matter control device during dioxin/furan testing. Optimizing ACI rate was not addressed.

In the 2005 proposal, 40 CFR 60.53b(b) and (c) were proposed to be revised to allow waiver of municipal waste combustor load limit and flue gas temperature at the inlet to the particulate matter control device during either dioxin/furan testing or mercury testing. Previously, optimization testing for these two parameters was allowed during only dioxin/furan testing. Additionally, companion text was added in 40 CFR 60.58b(m) to allow optimization testing for ACI injection rate before mercury testing. The 2005 proposal also required the testing waiver be a written document. The proposal did not propose to add optimization testing for ACI injection rate before dioxin/furan testing.

One comment received on the 2005 proposal indicated EPA should revise the rule to make it clear that all three operating parameters are waived for up to 2 weeks prior to testing for either dioxin/furan or mercury. This would assure consistency, since all three parameters affect both dioxin/furan emissions and mercury emissions. The text in the final 2006 rule allows a 2-week waiver for optimization of the three operating parameters, whether testing for dioxin/furan or mercury.

The optimization tests are expected to be relatively short. In most cases, the optimization testing for dioxin/furan and mercury will be conducted during the same test period. This is an economic reality: the duration of the test program significantly affects the cost of testing. To illustrate this, EPA randomly selected and compiled dioxin/furan and mercury testing dates that occurred at 27 MWC units during their initial compliance tests. EPA noted the date the testing was started and the date it was completed, and calculated the duration from start to finish (including time that existed between dioxin/furan and mercury tests). The most common test duration for dioxin/furan and mercury testing for the 27 MWC units was 2 days. The average test duration was 3.6 days. All test programs took less than 8 days. Clearly, optimization testing for dioxin/furan and mercury is expected to be coordinated and completed in 2 weeks or less. The only exception envisioned is for an exceptionally well operated MWC plant that under 40 CFR 60.58(g)(5)(iii) is not required to conduct dioxin/furan tests on all units each year. In such cases, it is possible that only mercury emissions

will be optimized and tested. This should occur in limited circumstances because the operating parameters optimized for mercury control would be of little utility if the previous parameters determined from dioxin/furan testing were more stringent and were controlling. In any case, a test period of up to 2 weeks is judged to be adequate for dioxin/furan and mercury optimization testing, with the period allowed by the Administrator determined on a case-by-case basis.

In summary, the procedure for establishing operating parameters has been refined for consistency over time. The application for a waiver prior to testing must now be made in writing to the Administrator. The testing duration schedule, as determined by the Administrator, is expected to be 2 weeks or less.

For the reasons discussed above, EPA believes that the provision for optimization testing for ACI injection before dioxin/furan testing contained in the final rule is appropriate and, therefore, is not proposing to change it. The EPA is, however, soliciting comment on the issue from interested parties and will make a final decision on the issue after fully considering any such comments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This notice of reconsideration does not impose any new information collection burden. The Office of Management and Budget previously approved the information collection requirements contained in the NSPS and emission guidelines for large MWC units under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the NSPS and emission guidelines were promulgated on December 19, 1995 and subsequent recertifications. The information collection request has been assigned OMB Control Number 2060-0210 (EPA ICR No. 1506.10).

This action results in no changes to the information collection requirements of the NSPS or emission guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by

OMB. Therefore, the information collection requests have not been revised.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of the large MWC rules on small entities, small entity is defined as follows: (1) A small business in the regulated industry that has gross annual revenues of less than \$6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this notice of reconsideration on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This notice of reconsideration will not impose any requirements on any entities because it does not impose any additional regulatory requirements. We continue to

be interested in the potential impacts of this action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, EPA must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this notice of reconsideration contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This notice of reconsideration imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This notice of reconsideration will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this notice of reconsideration.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This notice of reconsideration does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a

disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This notice of reconsideration is not subject to Executive Order 13045 because the large MWC final rule is based on technology performance. Also, this notice of reconsideration is not "economically significant."

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

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

I. National Technology Transfer Advancement Act

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

EPA is not proposing to make any changes to the regulatory requirements in the large MWC final rule in this action, including requirements that involve technical standards. As a result, the NTTAA discussion set forth in the May 10, 2006, final rule remains valid. The requirements of NTTAA, therefore, do not apply to this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental

relations, Reporting and recordkeeping requirements.

Dated: March 14, 2007.

Stephen L. Johnson,
Administrator.

[FR Doc. E7-5022 Filed 3-19-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1544, 1546, and 1548

[Docket No. TSA-2004-19515; Amendment Nos. 1544-7, 1546-4, and 1548-4]

RIN 1652-AA52

Air Cargo Security Requirements; Compliance Dates; Amendment

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule (IFR) amends the Air Cargo Security Requirements final rule (Air Cargo Final Rule) by extending the compliance dates by which aircraft operators, foreign air carriers, and indirect air carriers (IACs) must ensure that their employees and agents with unescorted access to cargo, and IAC proprietors, general partners, officers, directors, and certain owners of the entity successfully complete a Security Threat Assessment (STA). This extension is based on technology problems that TSA is experiencing with the processing of STA applications.

DATES:

Effective Date: This rule is effective March 20, 2007.

Comment Date: Comments must be received by May 21, 2007.

Compliance Dates: Compliance date for STAs for employees under §§ 1544.228, 1546.213, 1548.15, and for IAC proprietors, general partners, officers, directors and certain owners of the entity under § 1548.16: Changed from March 15, 2007, to a requirement that the operators submit names and other identifying information to TSA by May 15, 2007. The date that all covered individuals must have successfully completed the STAs is extended to a date that TSA will specify in a future notice in the **Federal Register**.

Compliance dates for STAs for agents under §§ 1544.228, 1546.213, and 1548.15: Changed from June 15, 2007, to a requirement that the operators submit names and other identifying information to TSA by July 15, 2007. The date that

all covered individuals must have successfully completed the STAs is extended to a date that TSA will specify in a future notice in the **Federal Register**.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at <http://dms.dot.gov>. You also may submit comments through the Federal Rulemaking portal at <http://www.regulations.gov>.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001; Fax: 202-493-2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT:

Tamika McCree, Office of Transportation Security Network Management (TSA-28), Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202; (571-227-2632); tamika.mccree@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, TSA will provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, 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 TSA 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 to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).¹ TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

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 **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA 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's) FOIA regulation 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 in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>; or
- (3) Visiting TSA's Security Regulations web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

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.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at http://www.sba.gov/advo/laws/law_lib.html.

Background

On May 26, 2006, TSA published a final rule in the **Federal Register** (the Air Cargo Final Rule).² Certain compliance dates were changed by interim final rule on October 25, 2006.³ The Air Cargo Final Rule, in part, as amended, requires that aircraft operators, foreign air carriers, and indirect air carriers (IACs) ensure that security threat assessments (STAs) are

completed on their employees and agents with unescorted access to cargo under §§ 1544.228, 1546.213, and 1548.15; and on proprietors, general partners, officers, directors, and certain owners of an IAC entity under § 1548.16. Under the final rule, the compliance date for these sections is March 15, 2007. The compliance date for STAs to be completed for agents of these entities is June 15, 2007.

Since the publication of the interim rule in October 2006 extending the compliance dates for completion of STAs, TSA has encountered technical problems that will delay TSA's ability to process the large number of STA applications for air cargo employees, agents, and IAC proprietors, general partners, officers, directors, and certain owners of the entity (IAC proprietors). TSA is working diligently on these problems and expects to resolve them within the next few months. Accordingly, TSA is extending the compliance dates for STAs for employees and agents of aircraft operators, foreign air carriers, and IACs under §§ 1544.228, 1546.213, 1548.15; and for IAC proprietors under § 1548.16. Because TSA is not certain when it will be possible to assure expeditious vetting of the individuals required to complete STAs, TSA has decided not to establish specific dates for when all covered individuals must have completed the STA before having unescorted access to air cargo or performing another covered function. Instead, TSA now is setting the dates by which the operators must submit the names and other identifying information of these individuals for whom TSA requires STAs. This information must be submitted to TSA by May 15, 2007, for employees and by July 15, 2007, for agents. After those dates, the operators may not allow unescorted access to air cargo for any individual, or allow an individual to perform another function for which a STA is required under these sections, unless the operator has submitted the information for that individual to TSA. In the future, TSA will issue a notice in the **Federal Register** establishing dates after which employees and agents must have successfully completed their STAs in order to hold positions for which STAs are required.

Good Cause for Immediate Adoption and Immediate Effective Date

TSA finds that good cause exists to issue this interim rule without providing the public prior notice and the opportunity for comment. Under 5 U.S.C. 553(b), the requirements of notice and opportunity for comment do not

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.

² 71 FR 30478. Certain compliance dates were corrected on June 2, 2006 (71 FR 31964).

³ 71 FR 62546.

apply when the agency for good cause finds that it would be, “impracticable, unnecessary, or contrary to the public interest” to delay implementation of a rule to allow for prior notice and comment. As detailed above, TSA believes that: (a) Regulated parties will be largely unable to comply with the regulations in the time specified because the TSA IT systems are not ready; (b) no party will be adversely affected by the extensions; and (c) the lack of notice will not cause any hardship. Further, because the current compliance deadlines begin on March 15, 2007, it would be impracticable to delay the extension of this deadline to allow for prior notice and comments. Accordingly, TSA finds that good cause exists under 5 U.S.C. 553(b) to implement this interim rule without prior notice and public comment on the extensions of the compliance dates in the provisions of the Air Cargo Final Rule.

For the same reasons, TSA also finds that good cause exists under 5 U.S.C. 553(d) to make this interim rule effective immediately upon publication in the **Federal Register**. TSA nevertheless invites written comments on this interim rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. et seq.) requires that a Federal agency 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. TSA has determined that there are no current or new information collection requirements associated with this rule.

Regulatory Analyses

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined that this rulemaking is not a “significant regulatory action” as defined in the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment

rulemaking. Consistent with the APA and for the reasons provided under “Good Cause for Immediate Adoption,” TSA is issuing this rule as an IFR. Accordingly, the regulatory flexibility analysis as described in the RFA is not required.

TSA notes, however, that we have analyzed the small business impacts of the air cargo rulemaking that this IFR amends. A Final Regulatory Flexibility Analysis (FRFA) was placed on the public docket in the Regulatory Impact Analysis document for the Air Cargo Final Rule issued on May 26, 2006. The extension of the compliance dates in this IFR provides more flexibility than the final rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

Unfunded Mandates Assessment

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

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the action 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

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign Air Carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ For the reasons set forth above, the Transportation Security Administration amends Title 49 of the Code of Federal Regulations, parts 1544, 1546, and 1548, as follows:

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

■ 2. Amend § 1544.228 to revise paragraph (d) and to add new paragraph (e) to read as follows:

§ 1544.228 Access to cargo: Security threat assessments for cargo personnel in the United States.

* * * * *

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later

than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the **Federal Register**.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 3. The authority citation for part 1546 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

■ 4. Amend § 1546.213 by revising paragraph (d) and add new paragraph (e) to read as follows:

§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.

* * * * *

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the **Federal Register**.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 5. The authority citation for part 1548 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

■ 6. Amend § 1548.15 by revising paragraph (d) and add new paragraph (e) to read as follows:

§ 1548.15 Access to cargo: Security threat assessments for individuals having unescorted access to cargo.

* * * * *

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees

and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the **Federal Register**.

■ 7. Amend § 1548.16 by revising paragraph (a) and add new paragraph (d) to read as follows:

§ 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.

(a) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that the names and other identifying information required by TSA of each proprietor, general partner, officer, director, and owner of the entity have been submitted to TSA for a Security Threat Assessment under part 1540, subpart C, of this chapter not later than May 15, 2007. After those dates, the operators may not allow an individual to perform this function unless the operator has submitted the information for that individual to TSA.

* * * * *

(d) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that each proprietor, general partner, officer, director and owner of the entity has successfully completed a Security Threat Assessment under part 1540, subpart C, of this chapter not later than a date to be specified by TSA in a future rule in the **Federal Register**.

* * * * *

Issued in Arlington, Virginia, on March 14, 2007.

Kip Hawley,
Assistant Secretary.

[FR Doc. 07–1327 Filed 3–15–07; 2:14 pm]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2006–24191]

RIN 1652–AA41

Transportation Worker Identification Credential Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: Rule.

SUMMARY: The Department of Homeland Security (DHS), through the Transportation Security Administration (TSA) and the U.S. Coast Guard, published a final rule on January 25, 2007 that establishes requirements for merchant mariners and workers who need unescorted access to secure areas of maritime facilities and vessels. These individuals must successfully complete a security threat assessment conducted by TSA and hold a Transportation Worker Identification Credential (TWIC) in order to enter secure areas without escort. As required by statute, all TWIC applicants must pay a user fee to cover TSA's costs to enroll applicants, complete security threat assessments, and issue biometric credentials. With this notice, we announce the user fees as follows: The total standard fee for a TWIC applicant is \$137.25 and the reduced fee for applicants who have completed a prior comparable threat assessment is \$105.25.

DATES: Effective March 20, 2007.

FOR FURTHER INFORMATION CONTACT:

Christine Beyer, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2657; facsimile (571) 227–1380 e-mail Christine.Beyer@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security, through TSA and the U.S. Coast Guard, published a final rule on January 25, 2007¹ that establishes requirements for merchant mariners and workers who need unescorted access to secure areas of maritime facilities and vessels. These individuals must successfully complete a security threat assessment conducted by TSA and hold a TWIC that TSA issues in order to enter secure areas without escort.

As required by sec. 520 of the 2004 DHS Appropriations Act, Pub. L. 108–90, TSA must collect user fees to cover the costs of implementing the TWIC program, including the cost to enroll all applicants, complete security threat assessments, provide an appeal and waiver process, and issue biometric credentials.

As stated in the final rule,² the fee is made up of three segments: Enrollment Segment; Full Card Production/Security Threat Assessment Segment; and FBI Segment. Most applicants will pay the Standard TWIC Fee, which includes all three segments. However, applicants

¹ 72 FR 3492.

² 72 FR 3506.

who have completed a comparable threat assessment, such as the threat assessment TSA conducts on commercial drivers with a hazardous materials endorsement, will pay the Reduced TWIC Fee. These applicants are not charged for the FBI Segment and pay a reduced fee for the Full Card Production/Security Threat Assessment Segment.

In the preamble of the final rule, we discussed the potential range of fees that would be charged for each Segment but did not publish specific fees for each Segment in the final rule text because the contract for enrollment and card production services was not finalized at that time. We explained that when the contract was executed and final fee amounts determined, we would publish a notice in the **Federal Register** announcing them. TSA has executed the contract for TWIC enrollment and card production and, with this notice, announces the final fee amounts. The Enrollment Segment fee is \$43.25, the Full Card Production/Security Threat Assessment Segment fee is \$72, and the FBI Segment fee is \$22. Therefore, the total Standard TWIC Fee is \$137.25 (\$43.25 + 72 + 22). For applicants who have completed a prior comparable threat assessment, there is no FBI Segment fee and the Card Production/Security Threat Assessment Segment fee is \$62. Therefore, the total Reduced TWIC Fee is \$105.25 (\$43.25 + 62).

As stated in the final rule, the fee for a replacement credential is \$36, but we do not believe that amount adequately funds TSA's card replacement costs. Our calculations indicate that \$60 is the correct amount for card replacement costs and invited comment on that issue.³ The comment period for increasing the card replacement fee closed on February 26, 2007. We will examine all comments received and determine the final card replacement fee. We will amend the rule text to include all of the fees discussed in this notice and the card replacement fee, so that they will appear in the Code of Federal Regulations, at 49 CFR 1572, subpart F, Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC).

Issued in Arlington, Virginia, on March 14, 2007.

Kip Hawley,

Assistant Secretary, Transportation Security Administration.

[FR Doc. 07-1328 Filed 3-19-07; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI41

Endangered and Threatened Wildlife and Plants; Reclassification of the American Crocodile Distinct Population Segment in Florida From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the American crocodile (*Crocodylus acutus*) distinct vertebrate population segment (DPS) in Florida from endangered to threatened, under the authority of the Endangered Species Act of 1973, as amended (Act). The endangered designation no longer correctly reflects the current status of this DPS due to a substantial improvement in the species' status. This action is based on a review of all available data, which indicate, for example, that since its listing in 1975, the American crocodile population in Florida has more than doubled and its distribution has expanded. Land acquisition has also provided protection for many important nesting areas. We have determined that the American crocodile in its range in Florida meets the criteria of a DPS as stated in our policy of February 17, 1996. With this rule, we are designating the American crocodile in Florida as a DPS, and this DPS will remain protected as a threatened species under the Act. The status of the American crocodile throughout the remainder of its range, as described in our December 18, 1979, final rule, will remain endangered.

DATES: This final rule is effective April 19, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960.

You may obtain copies of the final rule from the field office address above, by calling 772-562-3909, or from the Service's Division of Policy and Directives Management Web site at <http://www.fws.gov/policy/frsystem/default.cfm>.

FOR FURTHER INFORMATION CONTACT:

Cindy Schulz, at the South Florida Ecological Services Office (see **ADDRESSES**) (telephone 772-562-3909, extension 305; facsimile 772-562-4288).

SUPPLEMENTARY INFORMATION:

Note: Please refer to our March 24, 2005, proposed rule (70 FR 15052) for detailed information concerning the biology of the American crocodile.

Background

The American crocodile is a large, greenish-gray reptile. It is one of two native crocodilians (the other being the American alligator (*Alligator mississippiensis*)) that occur in the continental United States, and is limited in distribution in the United States to south Florida. At hatching, crocodiles are yellowish-tan to gray in color with vivid dark bands on the body and tail. As they grow older, their overall coloration becomes more pale and uniform, and the dark bands fade. All adult crocodiles have a hump in front of the eye, and tough, asymmetrical, armor-like scutes (scale-like plates) on their backs.

The American crocodile is distinguished from the American alligator by a relatively narrow, more pointed snout and by an indentation in the upper jaw that leaves the fourth tooth of the lower jaw exposed when the mouth is closed. Another distinguishing feature is that in alligators the two nostrils are clearly separated by a bony septum covered in skin while in crocodiles the nostrils lie touching, close together in a single depression (P. Ross, 2005). In Florida, the crocodile ranges in size from 26.0 centimeters (cm) (10.3 inches (in)) at hatching, to an upper length of 3.8 meters (m) (12.5 feet (ft)) (Moler 1991a, pp. 6-7). The largest specimens in Florida historically were reported to be up to 4.6 m (15.1 ft) in length (Service 1979, p. 3), and individuals as large as 6 to 7 m (19.7 to 23.0 ft) have been reported outside the United States (Thorbjarnarson 1989, p. 228).

The American crocodile occurs within the jurisdictional boundaries of many different countries in the western hemisphere, including Belize, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Mexico, Panama, Peru, United States (Florida), and Venezuela. The species occurs in coastal regions of the Atlantic and Pacific, including the Pacific coast of Mexico, Central America, and northern South America, as well as the Greater Antilles (with the exception of Puerto Rico).

³ 72 FR 3507-3508.

(Thorbjarnarson 1989, p. 228; P. Ross, 2005). It reaches the northern extent of its range in south Florida (Kushlan and Mazzotti 1989a, p. 5; Thorbjarnarson 1989, p. 229).

The first documented occurrence of a crocodile in the United States was in Florida from a collection in the Miami River off Biscayne Bay in 1869, although crocodiles were earlier suspected to occur there (Kushlan and Mazzotti 1989a, p. 1). Within the United States, the historic core geographic range of crocodiles included Miami-Dade, Broward, and Monroe Counties, but reports indicated that they occupied areas as far north as Indian River County on the east coast of Florida (Kushlan and Mazzotti 1989a, pp. 1–2). Crocodiles were probably never common on the west coast of Florida, but credible reports suggest that they occurred at least periodically as far north as Sanibel Island and Sarasota County (Kushlan and Mazzotti 1989a, p. 2).

The primary historic nesting area in Florida was on the mainland shore of Florida and Biscayne Bays, including many of the small islands near shore, in what is today Everglades National Park (ENP) (Kushlan and Mazzotti 1989a, p. 2). Nesting was also historically well documented in the upper Keys from Key Largo south to Lower Matecumbe Key (Kushlan and Mazzotti 1989a, p. 2). Crocodiles have probably nested regularly on northern Key Largo since the 1920s, when the borrow pits (excavated areas where material has been dug for use as fill at another location) and canals were created in early and unsuccessful attempts to develop north Key Largo during the “boom” years preceding the 1929 depression (Ogden 1978, p. 185).

Today, the crocodile population in Florida has grown to an estimated 1,400 to 2,000 individuals, not including hatchlings (P. Moler, 2005a; F. Mazzotti, 2005). This estimate, developed by two established American crocodile experts, is based on a demographic characteristic, derived from both Nile crocodiles and American alligators, where breeding females make up 4 to 5 percent of the non-hatchling population and where approximately 75 percent of reproductively mature females breed and nest each year. This estimate exhibits a large confidence interval, because the researchers used a range of 70 to 80 crocodile nests in Florida in their calculations (P. Moler, 2005a; F. Mazzotti, 2005). We believe this is a reasonable but conservative estimate, because as described below, nesting has increased to between 91 and 94 documented nests in 2005.

The nesting range has also expanded on both the east and west coasts of the State, and crocodiles are frequently seen throughout most of their historical range. Nesting has extended back into Biscayne Bay on Florida’s east coast, and now commonly occurs at the Turkey Point Power Plant (TPPP) (Gaby *et al.* 1985, p. 197; Brandt *et al.* 1995, p. 29). Although crocodiles have been nesting on Marco Island since 1997, none of the nests have produced a viable clutch (S. Bertone, 2005). Based on peer review comments and because the relatedness and origin of these animals are unknown, we did not include the nesting attempts of these animals in estimating population size above (see “Peer Review Comments” below for further detail). Nesting has been increasing for several years (Brandt *et al.* 1995, p. 31; Mazzotti *et al.* 2000, p. 5; 2002, p. 14; Mazzotti and Cherkiss 2001, pp. 4–5), and during 2005, 91 to 94 crocodile nests were documented in south Florida (S. Klett, 2005; M. Cherkiss, 2005a; J. Wasilewski, 2005a). Surveyors detect approximately 80 to 90 percent of nests (F. Mazzotti, 2005; J. Wasilewski, 2006) and are generally unable to distinguish those nests that contain more than one clutch of eggs from different females without excavating the nests. In some instances, surveyors are able to determine that more than one female has laid eggs at a communal nest by visiting the nest over a series of days and observing hatching of separate nests (J. Wasilewski, 2005b). In instances where communal nests are not distinguishable, we believe this lends to a possible underestimation of nests or females, because on occasion two females lay eggs in the same nest.

The breeding range of the American crocodile is still restricted relative to its reported historic range (Kushlan and Mazzotti 1989a, p. 5), with most breeding occurring on the mainland shore of Florida Bay between Cape Sable and Key Largo (Mazzotti *et al.* 2002, pp. 9–14). In the recent past, it was thought that crocodiles no longer regularly occur in the Keys south of Key Largo (Jacobsen 1983, p. 13; P. Moler, 2002). However, confirmed sightings are occurring with increasing frequency in many of the lower Keys, and we believe that these observations may indicate that crocodiles are expanding their range back into the Keys. From 2003 to 2005, one individual has successfully nested on Lower Matecumbe (M. Cherkiss, 2005a). A crocodile was also observed as far south as Fort Jefferson in the Dry Tortugas in May 2002 (O. Bass, 2002); however, nesting has not been recorded at this location. In addition, a

crocodile was documented as far north as Indian River County in October 2004.

Females do not become reproductively active until they reach a total length of approximately 2.3 m (7.4 ft) (Mazzotti 1983, p. 30, 33), which generally corresponds to an age of 10 to 13 years (LeBuff 1957, p. 27; Moler 1991a, p. 7). Females construct earthen nests (mounds or holes) on elevated, well-drained sites near the water, such as ditch-banks and beaches. Nests have been reported in sand, marl, and organic peat soils, and the nests constructed in these different soils may be susceptible to different environmental conditions and different threats (Lutz and Dunbar-Cooper 1984, p. 153; Moler 1991b, p. 1, 3). Female crocodiles nest only one time per year and may not nest every year after they reach sexual maturity. Studies conducted in Florida found that they lay an average of 38 eggs (Kushlan and Mazzotti 1989b, p. 14), which hatch after an incubation period of approximately 90 days (Mazzotti 1989, p. 221). Flooding, over-drying, and raccoon predation all pose threats to nests and developing eggs (Mazzotti *et al.* 1988, pp. 68–69; Mazzotti 1999, pp. 557–558), and suitable nest sites that are protected from these threats may be limited. For the Florida population, the reported percentage of nests from which eggs successfully hatch in any 1 year ranges from 33 to 78 percent (Ogden 1978, p. 190; Kushlan and Mazzotti 1989b, p. 15; Moler 1991b, p. 4; Mazzotti *et al.* 2000, p. 4; Mazzotti and Cherkiss 2001, p. 4). Typically, a nest was considered successful if at least one hatched eggshell or hatchling crocodile was documented. However, Moler (1991b, p. 2) classified a nest as successful if “it appeared to have been opened by an adult crocodile. In all but one case, hatchling crocodiles were tagged near each successful nest.”

Unlike alligators, female crocodiles do not defend nest sites (Kushlan and Mazzotti 1989b, p. 14). However, females remain near their nest sites and usually excavate young from the nest after hatching (Kushlan and Mazzotti 1989b, p. 15). Kushlan (1988, p. 784) reported that females may be very sensitive to disturbance at the nest site; most females that were disturbed near their nests did not return to excavate their young after hatching. In Florida, female crocodiles show little parental care at hatching, and the young generally become independent shortly after hatching, although the duration or extent of maternal care can vary throughout the species’ range (J. Thorbjarnarson, 2005). Shortly after hatching, the hatchlings disperse from nest sites to nursery habitats that are

generally more sheltered, have lower salinity (1 to 20 parts per thousand (ppt)), shallower water (generally), and more vegetation cover. Hatchlings remain in these nursery habitats until they grow larger. Growth during the first year can be rapid, and crocodiles may double or triple in size (Moler 1991a, p. 6). Growth rates in hatchling crocodiles depend primarily on the availability of fresh water and food in the nursery habitat they occupy and may also be influenced by temperature (Mazzotti *et al.* 1986, pp. 195–196).

Land acquisition efforts by many agencies have provided protection for crocodiles and their habitat in south Florida. Approximately 95 percent of current nesting habitat for crocodiles in Florida is protected (F. Mazzotti, 2006). Crocodile Lake National Wildlife Refuge (CLNWR) was acquired in 1980 to provide over 2,205 ha (5,000 acres) of crocodile nesting and nursery habitat. In 1980, ENP established a crocodile sanctuary in northeastern Florida Bay. A total of 46 public properties (including CLNWR and ENP), owned and managed by Federal, State, or county governments, as well as three privately-owned properties (including TPPP), are managed at least partially or wholly for conservation purposes and contain potential crocodile habitat within the coastal mangrove communities in south Florida. For example, in the early 1980s, ENP plugged canals, which allowed crocodiles to begin nesting on the canal berms. In 1976, the C-107 canal was completed and provides habitat for crocodiles at TPPP.

Previous Federal Action

We proposed listing of the United States population of the American crocodile as endangered on April 21, 1975 (40 FR 17590). The proposed rule stated that only an estimated 10 to 20 breeding females remained in Florida, mostly concentrated in northern Florida Bay. The primary threats cited included development pressures, lack of adequate protection of crocodiles and their habitat, and the risk of extinction inherent to a small, isolated population. Comments on the proposed rule were received from 14 parties including representatives of the State of Florida, and all supported listing the American crocodile as endangered in Florida. We published a final rule on September 25, 1975, listing the United States population of the American crocodile as endangered (40 FR 44149).

On December 16, 1975, we published a proposal to designate critical habitat for the American crocodile (40 FR 58308). The proposed critical habitat included portions of Biscayne Bay south

of TPPP; northeast Florida Bay, including the Keys; and the mainland extending as far west as Flamingo. We published a final rule designating critical habitat on September 24, 1976 (41 FR 41914). The final rule expanded the critical habitat to include a portion of ENP, including northern Florida Bay to the west of the previously proposed area.

On April 6, 1977, we published a proposed rule to list as endangered all populations of the American crocodile with the exception of those in Florida, and all populations of the saltwater (estuarine) crocodile (*Crocodylus porosus*) due to their similarity in appearance to the American crocodile in Florida (42 FR 18287). We did not, however, publish a final rule for this action.

On February 5, 1979, we provided notice in the **Federal Register** that a status review was being conducted for the American crocodile (outside of Florida) and the saltwater crocodile. The notice specified that we had information to suggest that the American crocodile and the saltwater crocodile may have experienced population declines and extensive habitat loss during the previous decade (44 FR 7060).

On July 24, 1979, we published a proposed rule (44 FR 43442) that recommended listing the American and saltwater crocodiles as endangered throughout their ranges outside of Papua New Guinea, citing widespread loss of habitat and extensive poaching for their hides. The Florida population of the American crocodile was not included because it was previously listed as endangered.

On December 18, 1979, we published a final rule (44 FR 75074) that listed both the American crocodile (with the exception of the previously listed population in Florida) and the saltwater crocodile throughout its range (with the exception of the Papua New Guinea population) as endangered. This action provided protection to these crocodilians worldwide.

The first recovery plan for the American crocodile was approved February 12, 1979 (Service 1979). For a complete discussion, see “Recovery Accomplishments” below. On March 24, 2005, we published a proposed rule to reclassify the American crocodile from endangered to threatened in Florida, and to designate crocodiles in Florida as a distinct population segment.

Summary of Comments and Recommendations

In the March 24, 2005, proposed rule, we requested that all interested parties submit comments and information concerning the proposed reclassification of the American crocodile DPS in Florida (70 FR 15052). We also initiated, and requested information for incorporation into, a status review of the American crocodile in Florida. We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We provided notification of the publication of the proposed rule through e-mail, facsimile, telephone calls, letters, and news releases sent to the appropriate Federal, State, and local agencies, county governments, elected officials, media outlets, local jurisdictions, scientific organizations, interest groups, and other interested parties. We also posted the proposed rule on the Service’s South Florida Ecological Services Office Internet website following the rule’s publication.

We accepted public comments on the proposed rule for 60 days, ending May 23, 2005. By that date, we received 11 written comments (including 3 from peer reviewers). Of the comments received, five supported reclassification of the American crocodile DPS in Florida from endangered to threatened, and four opposed the reclassification. The proponents of the reclassification included the International Union for the Conservation of Nature and Natural Resources (IUCN)—Species Survival Commission’s Crocodile Specialist Group. Two of the commenters did not state support or opposition to the proposed downlisting. No one expressed comments that the species was recovered or recommended that it should be delisted, and we received no public hearing requests.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals who have expertise with the species and the geographic region where the species occurs, and are familiar with conservation biology principles. We received comments from all three of the peer reviewers, which are included in the summary below and incorporated into the final rule. The reviewers were affiliated with the State of Florida, a Florida university, and a nonprofit organization. Reviewers provided additional factual information, as well as minor corrections and input on our interpretation of existing information. In general, all peer reviewers supported or

concurred with the downlisting of the American crocodile DPS in Florida to threatened status.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed reclassification of the American crocodile DPS in Florida. Substantive comments received during the comment period have been addressed below and, where appropriate, incorporated directly into this final rule. The comments are grouped below according to peer review or public comments.

Peer Review/State Comments

(1) *Comment:* One reviewer expressed concern over current efforts to restore the hydrology in the Florida Everglades and the potential to increase the crocodile's exposure to contaminants. Monitoring the population for nonlethal and endocrine disruptive effects of contaminants was recommended.

Response: All properties being acquired for the Comprehensive Everglades Restoration Plan (CERP) are subject to a rigorous environmental site assessment for contaminants, using a protocol developed by the South Florida Water Management District (SFWMD) and the Service. Environmental Risk Assessments (ERAs) are also conducted if the Service deems it necessary. If any contaminant issues are identified, the Service works with the SFWMD to remediate the site. Before water is put on the site, the Service must be convinced that there are either no risks or insignificant risks to Service trust resources, including wildlife. If a contaminant problem is suspected, fish and wildlife are monitored at the project sites, where it would be easier to detect a problem than monitoring crocodiles located off-site. If a problem is found at these sites, then crocodiles may be added to the monitoring plan.

Contaminants were evaluated from eggs in a sampling of nests in the early 1970s through the early 1980s. Eggs were tested for organochlorines and heavy metals, and no exceptional levels were reported (Mazzotti and Cherkiss 2003, p. 18). The Service is not aware of any studies regarding endocrine-disrupting chemicals and their effects on crocodiles.

One contaminant that will be addressed by monitoring post-construction (rather than prospective ERAs) is mercury. CERP projects have the potential to increase the bioavailability of mercury. As fish-eaters, crocodiles could potentially be exposed to some mercury, although they are downstream from where mercury impacts would be greatest. The SFWMD

has a monitoring plan in place with performance criteria. If the criteria were exceeded, the SFWMD would have to correct the problem.

(2) *Comment:* The reviewer was concerned that specific information was not provided on road mortality, which this reviewer characterized as one of the sole remaining human influences of any significance on the crocodile population. The reviewer suggested that if mortality reaches levels of 5 to 15 percent in subadult and adult size classes, then population growth and stability may be affected.

Response: The Service, in cooperation with the Florida Fish and Wildlife Conservation Commission (FWC), documents all reported mortalities, including road mortalities. From 1999 to 2005, a total of 33 vehicle-related mortalities and 5 non-vehicle-related mortalities were documented with no consistent increase in mortalities occurring over the years. The largest number of reported mortalities we recorded was 11, in 2002 (nine vehicle-related and two non-vehicle-related). We recorded seven vehicle-related mortalities and one non-vehicle-related mortality in 2005 (B. Muiznieks, 2005). The maximum number of recorded deaths for any given year has never exceeded 11 mortalities.

For mortality to exceed the minimal threshold of 5 percent (P. Ross, 2005), the lowest point where recruitment and reproductive capacity could be compromised, more than 70 crocodile deaths would have to occur annually based on a population of 1,400 individuals, which we consider to be a conservative population estimate. The actual population could be as high as 2,000. Even with undocumented mortalities, we do not believe we are near this threshold of 70 even though we were conservative in all of our estimates. Despite all of the reported mortalities (not just vehicle collisions), total nesting effort has continued to increase in recent years.

The majority of the road mortalities have occurred on U.S. 1 or Card Sound Road between Florida City and Key Largo. Currently, the Florida Department of Transportation (FDOT) is modifying/widening U.S. Route 1 between Florida City and Key Largo. They will be installing 16, 6 foot by 10 foot, box culverts in various locations along the project corridor. The box culverts will be installed in areas where vehicle-related mortality of crocodiles has occurred. To prevent crocodiles from entering the roadway, FDOT will install a continuous 6-foot-high fence along the western roadway shoulder from approximately Jewfish Creek to

just south of the C-111 Canal. Along the eastern roadway shoulder, FDOT will install two, 100 foot long by 6-foot-high, wing fences in association with each box culvert. To further discourage crocodiles from entering the roadway, the roadside slopes in the vicinity of the box culverts and wildlife crossings will be as steep as practicable. The potential for vehicle-related crocodile mortality will also be reduced by the removal of the Lake Surprise Causeway and the construction of a new bridge over Lake Surprise. Moreover, signs will be posted on the new Lake Surprise and Jewfish Creek bridges alerting drivers to possibility of crocodiles crossing the roadway (J. Wrublik, 2005).

(3) *Comment:* One of the reviewers cautioned that the future health of the crocodile population in Florida Bay is dependent on the restoration of a more natural freshwater flow to the area. The seasonal timing of nesting is determined to a large degree by the availability of fresh water, which improves the survivorship of young crocodiles by reducing the salinity and increasing the availability of invertebrate prey. Hatching of the nests coincides with the beginning of the annual wet season, ensuring that hatchlings emerge from the nests during a period of high fresh water availability. A reduction of freshwater flow into the area could have negative impacts on the younger age classes of crocodiles in Florida Bay.

Response: Proposed restoration activities in and around Taylor Slough and the C-111 canal could increase the amount of fresh water entering the estuarine system, and extend the duration of freshwater flow into Florida Bay (U.S. Army Corps of Engineers (Corps) and SFWMD 1999, p. 4-28, K-135). Alternative D13R hydrologic plan simulation (Corps and SFWMD 1999, p. 1-20) predicts that the addition of fresh water could occur throughout many of the tributaries and small natural drainages along the shore of Florida Bay, instead of primarily from the mouth of the C-111 canal. Salinities in nesting areas, including Joe, Little Madeira, and Terrapin Bays, are projected to be lower for longer periods than they currently are within this area (based on alternative D13R hydrologic plan simulation) (Corps and SFWMD 1999, pp. D-24, D-A-81 to D-A-83, K-135). This restoration project should increase the amount and suitability of crocodile habitat in northern Florida Bay, and increase juvenile growth rates and survival (Mazzotti and Brandt 1995, p. 7).

While the overall volume of freshwater flow to Biscayne Bay will likely decrease as a result of CERP,

substantial tracts of degraded coastal wetlands in central and southern Biscayne Bay will realize improvements in crocodile habitat quality because the fresh water that is currently discharged into the bay through conveyance canals will be redirected into the natural creek systems. The goal is to reestablish flow through a series of natural creek systems along this part of the coastline. If successful, the recreation of these natural creeks systems should significantly improve crocodile habitat along this part of Biscayne Bay. Even if the volume discharged into the wetlands is less than what is currently flowing through the canals, this should improve habitat for crocodiles in this area. One of the performance measures for the Biscayne Bay Coastal Wetlands Project focuses on improvement of juvenile crocodile habitat.

(4) *Comment:* A proactive approach should be undertaken to develop a sound strategy for “Living with Crocodiles” in south Florida. The development of a strong public education program alerting people to the growing presence of crocodiles is recommended. Strategies for dealing with “problem” crocodiles are needed.

Response: While an informal education campaign is currently being implemented, we will continue to work with our State partners to develop a more formal, proactive education campaign for living with crocodiles. The FWC, with participation from the Service and the National Park Service, completed a human-crocodile interaction response plan in 2005, and through its implementation will continue gathering information on how crocodiles respond to translocation (FWC 2005, pp. 1–8). We agree that we need to conduct additional studies on habitat use and movement patterns with particular emphasis on translocation of individuals. We need to determine if translocating individuals meets the desired objectives. Some nuisance animals that have been translocated in the past have returned to their original capture location.

(5) *Comment:* One of the reviewers commented that no successful nesting has occurred on the southwest coast north of the Ten Thousand Islands. Although several nests have been produced annually in the Marco Island area and occasional nests have been encountered near the Imperial River and on Sanibel Island, these nests have failed for unknown reasons. Also, preliminary genetics analysis suggests that at least some of these animals may not be of Florida origin.

Response: Because of the uncertainty of the origin of these individuals and

because none of these nests have ever produced a viable clutch (S. Bertone, 2005), these crocodiles (i.e., their clutches) were not included in any population estimate calculations. At present, the origin of these animals is unknown. They may have originated from 1 to 2 clutches of Key Largo crocodiles that were released in the Naples area in the early 1970s, or from another release of crocodiles from Mexico, Jamaica, Panama, and Ecuador (Behler 1978, pp. 35–41; F. Mazzotti, 2005).

Public Comments

The following public comments address issues that were not raised by the peer reviewers. If an issue brought up by a peer reviewer was also raised by the public, it is discussed above in the peer review comment section rather than below.

(6) *Comment:* One commenter noted that the five factors under section 4(a)(1) of the Act that are considered when a species is listed must also be considered in this action to reclassify the American crocodile DPS in Florida. The commenter also noted that four of these five factors still affect the crocodile and therefore it must remain endangered.

Response: We define an endangered species as one that is in danger of extinction throughout all or a significant portion of its range (50 CFR 424.02(e)). We believe that this designation no longer correctly reflects the current status of this taxon in Florida due to a substantial improvement in the species' status. The population in Florida has increased from an estimated 10 to 20 breeding females in 1975 (40 FR 17590) to an estimated 1400–2000 total individuals (not including hatchlings) (P. Moler, 2005a; F. Mazzotti, 2005) producing 91 to 94 nests in 2005 (S. Klett, 2005; M. Cherkiss, 2005a; J. Wasilewski, 2005a), the species distribution has expanded within its historic range, and occupied and potential crocodile habitat are now under public ownership. However, we believe that the status of the species still meets the definition of threatened because the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. As discussed by the commenter, the crocodile is still affected by some threats, such as development within coastal areas. The five factors are discussed in depth in the section titled “Summary of Factors Affecting the Species.”

(7) *Comment:* One commenter stated that many of the actions in the recovery plan for the American crocodile have yet to be conducted.

Response: Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that over all criteria, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps to delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, and our assessment of recovery progress may, or may not, fully adhere to the guidance provided in a recovery plan depending on circumstances that may have changed since completion of the plan.

In this particular instance, we have met the reclassification criteria outlined in the South Florida Multi-Species Recovery Plan (MSRP). Recovery actions will continue for the crocodile under the MSRP, and some actions, such as “control human-induced crocodile mortality and disturbance,” remain to be completed.

(8) *Comment:* One commenter stated that the potential effects of sea-level rise should be of concern because of the vulnerability of natural nest sites to increases in water levels.

Response: The forecasted temperature increases and the associated sea-level rise over the next 100 years, based on climate models, have changed over time (Westbrook 1998, pp. 1–2). In the early 1980s, forecasters were predicting a 100-year sea-level rise of 7 to 7.9 m (23 to 26 feet) (Westbrook 1998, p. 1). By 1990, the predicted rise was less than 0.9 m (3 feet) (Westbrook 1998, p. 1). The current Intergovernmental Panel on Climate Change forecasts are for a rise of about 0.46 m (1.5 feet), and other forecasts are even lower (Westbrook 1998, p. 1). Recent reports of what many consider to be the best computer models

indicate a rise of about 3.1 degrees Fahrenheit with a sea level rise of approximately 20 cm (8 inches) (Westbrook 1998, p. 2). Depending upon the extent of sea-level rise, some nests on exposed shorelines and creek banks could potentially disappear.

Fortunately, crocodiles will readily use artificial substrates for nests, providing a management option to compensate for negative impacts to existing nesting areas if the need arises (Mazzotti 1999, p. 558). The Service is aware of this issue and will continue to monitor it, but at present we do not believe it represents a significant threat to the crocodile population.

(9) *Comment:* Three commenters expressed concern over poaching or illegal harvest.

Response: With this final rule, the American crocodile DPS in Florida will remain protected as threatened under the Act. Our regulations at 50 CFR 17.31, pursuant to section 4(d) of the Act, prohibit the take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct) of threatened species (without a special exemption).

Only two potential incidences of illegal poaching/taking have been documented in recent years. One occurred in 2002 at the Sexton Cove Estates in Key Largo. A more recent incident of an illegally killed crocodile occurred at Manatee Bay Marina in Miami-Dade County in 2005. This incident is still under law enforcement investigation.

(10) *Comment:* One commenter was concerned about depredation of nests by fire ants and raccoons.

Response: The Service recognizes both of these issues and realizes that they have the potential to affect nesting success, but depredation of nests by fire ants and raccoons has not been documented on a regular basis and could vary from year to year. For example, in 2005, 13 nests were depredated in ENP by raccoons (M. Cherkiss, 2005c). We will continue to monitor nesting sites and attempt to appropriately manage for this concern.

(11) *Comment:* One commenter asked if a long term assessment of pesticide and heavy metal contamination levels in crocodile eggs was being conducted.

Response: Recovery actions will continue to be funded according to resource availability and the priority given to the recovery action. Long-term assessment of pesticide and heavy metal contamination is a recommended recovery action in the MSRP; however, no long-term assessment is currently being conducted. Contaminants were

evaluated from eggs from a sampling of nests in the early 1970s through the early 1980s. Eggs were tested for organochlorines and heavy metals; however, no exceptional levels were reported (Mazzotti and Cherkiss 2003, p. 18).

(12) *Comment:* One commenter mentioned threats from introduced nonnative wildlife, particularly the Nile monitor (*Varanus niloticus*), a species known to be a predator on nests and young of the larger and more aggressively protective Nile crocodile (*Crocodilus niloticus*).

Response: No adverse impacts on the American crocodile by the Nile monitor have been documented. Although *Varanus* spp. have been observed in Miami-Dade County, there is no evidence of reproducing populations (Enge *et al.* 2004, p. 572). If Nile monitors are documented in the vicinity of crocodile nesting areas, appropriate measures will need to be taken to eradicate them from the area.

(13) *Comment:* With the rapidly growing human population in south Florida, anthropogenic threats to the crocodile will increase. Specific threats include vehicle collisions, boat propellers, and lead poisoning from fishing sinkers.

Response: The Service documents all reported crocodile mortalities. From 1999 to 2005, a total of 33 vehicle-related mortalities and 5 non-vehicle-related mortalities were documented, with no consistent increase in mortalities occurring over the years. See response to comment 2. Boat propellers and lead poisoning have accounted for only a small proportion of the documented mortalities. Given the annually increasing population size, we do not believe that the recruitment and reproductive capacity of the population is being compromised by these mortalities.

(14) *Comment:* One commenter was concerned that if the crocodile is reclassified to threatened there will not be as much pressure for continued and increased flows of fresh water to Florida and Biscayne Bays.

Response: See response to comment 3 above.

(15) *Comment:* One commenter was concerned about the loss of nesting habitat due to invasive species, particularly tide-dispersed species such as beach naupaka (*Scaevola taccada*) and Asiatic Colubrina (*Colubrina asiatica*).

Response: Although invasive plant species occur in crocodile nesting areas, invasive plant species have not been documented to negatively affect selection of nesting locations. Overall,

land managers are concerned about the invasion of nonnative plants, but more for the conversion of native to nonnative habitats than for the direct loss of crocodile nesting habitat.

Protection and enhancement of nesting habitat within each of the three primary crocodile nesting areas has been ongoing for many years. Land managers at the three primary nesting areas control exotic vegetation. Containment and elimination of invasive, exotic vegetation species is part of the ENP's Strategic Plan. CLNWR has an exotic plant control program and has received additional funding in recent years from the Florida Keys Invasive Exotics Task Force. For instance, the swamp fern (*Blechnum serrulatum*), a native of Florida but not of the Keys, is removed from the crocodile nesting berms at CLNWR. Chemical and mechanical removal of the swamp fern is conducted on an as-needed basis. As another example, TPPP has designated nesting "sanctuaries" where habitat management includes exotic vegetation control (primarily Australian pine and Brazilian pepper) and encouragement of the growth of low-maintenance native vegetation.

(16) *Comment:* Two commenters stated that the Service's previous recovery documents identified recovery goals of 60 breeding females and therefore reclassifying the crocodile because 61 nests were documented in 2003 is premature. One of these commenters also indicated that recovery criteria should be based on the present and future availability of suitable habitat.

Response: Crocodile nest numbers have been steadily increasing since 2001, and in the 2005 nesting year, nest numbers totaled 91 to 94 nests (S. Klett, 2005; M. Cherkiss, 2005a; J. Wasilewski, 2005a). The crocodile has been at or above the recovery criterion of 60 breeding females for 3 consecutive years. Further, the population in Florida has more than doubled, and the species distribution has expanded within its historic range. In addition, approximately 95 percent of nesting habitat for crocodiles in Florida is under public ownership or otherwise protected (F. Mazzotti, 2006). The recommendation that recovery criteria should be based on suitable habitat will be considered in the next revision of the recovery plan for this species.

(17) *Comment:* Another commenter recommended that we stop all surveys because they are harassment and constitute danger and injury for crocodiles.

Response: For the surveys to be conducted, a section 10(a)(1)(A) permit

is required under the Act. Before such a permit can be issued, all activities must be justified in relation to enhancement of survival and recovery, effects to the species, and qualifications of permittees. By definition, authorized activities should benefit species' recovery with minimal adverse effects by qualified permittees. None of the permitted activities, like surveys, are expected to result in death or injury to any individuals, and any injury or mortality will be incidental to other actions. By contrast, the information gained from permitted research is necessary for the conservation and management of the crocodile, which is needed to aid in the survival and recovery of the species in the wild.

(18) *Comment:* One commenter recommended that reclassification should not occur until after the CERP fresh water restoration projects are completed, and 10 percent of the documented hatchlings in 2003 survive to become subadults.

Response: We believe we have already met the reclassification criteria for the crocodile because the population in Florida has more than doubled, the species distribution has expanded within its historic range, and occupied and potential crocodile habitat is protected, as outlined in the "Summary of Factors Affecting the Species" section.

Attempts were made to mark crocodiles hatched in 2003, but all hatchlings may not have been marked because dispersal may have occurred prior to the researchers arriving at the nest. A crocodile is considered a subadult from 2 to 6 years of age and can start breeding at 7 years of age. CERP projects, such as the C-111 canal (which is anticipated to have construction completed in 2012), will be completed after the hatchlings marked in 2003 become subadults. Therefore, we will have information on survivorship obtained through monitoring of any hatchling crocodiles marked in 2003 before CERP projects like the C-111 canal are completed.

(19) *Comment:* One commenter noted that a population having 50 breeding females would be ranked as "critically endangered" under the IUCN criteria.

Response: The comments the Service received on the proposed rule from the Co-Regional Chairman of the North American Region IUCN SSC Crocodile Special Group Steering Committee stated that "it is the opinion of the CSG [Crocodile Specialist Group] members familiar with the species in Florida, that criteria for reclassification, as outlined in the reclassification proposal have been met." The Service has reviewed

the IUCN definition of critically endangered and because the crocodile population in Florida has more than doubled, the species distribution has expanded within its historic range, and occupied and potential habitat are now under public ownership, the Service does not believe that the crocodile population in Florida meets this definition.

(20) *Comment:* One commenter questioned the scientific veracity of data used in the proposed rule.

Response: The population and nesting data utilized by the Service were obtained from FWC crocodile experts, crocodile experts at State universities, and a Florida Power and Light (FPL) crocodile biologist. These individuals have been monitoring crocodiles and conducting research on the species for much of their careers. The population and nesting data we are relying on to make our decision in this instance were not published in a peer-reviewed journal; however, that is typical for most wildlife monitoring data. Our overall analyses and conclusions based on that data, combined with other information from peer-reviewed journal articles, were reviewed by three peer reviewers (see "Peer Review" comments above), all of whom concurred with proceeding with reclassification. The three peer reviewers agreed that the American crocodile DPS in Florida has significantly increased since listing and that the majority of the species' habitat is protected or under special management consideration. We have used the best available scientific data in determining to reclassify the American crocodile DPS in Florida from endangered to threatened.

Distinct Vertebrate Population Segment Analysis

The Act defines "species" to include " * * * any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, we published in the **Federal Register** our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment endangered or threatened?). The best available scientific information

supports recognition of the Florida population of the American crocodile as a distinct vertebrate population segment. We discuss the discreteness and significance of the DPS within this section; the remainder of the document discusses the status of the Florida DPS.

Discreteness: The DPS policy states that vertebrate populations may be considered discrete if they are markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, and/or they are delimited by international governmental boundaries within which significant differences exist in control of exploitation, management of habitat, conservation status, or regulatory mechanisms.

The Florida population segment represents the northernmost extent of the American crocodile's range (Kushlan and Mazzotti 1989a, p. 5; Thorbjarnarson 1989, p. 229). It is spatially separated by approximately 90 miles of open ocean from the nearest adjacent American crocodile population in Cuba (Kushlan 1988, pp. 777-778). The Gulf Stream, or the Florida Current (the southernmost leg of the Gulf Stream), flows through this 90-mile (145-km) gap. This strong current makes it unlikely that crocodiles would regularly, or even occasionally, move between Florida and Cuba. Behaviorally, American crocodiles are not predisposed to travel across open ocean. They prefer calm waters with minimal wave action, and most frequently occur in sheltered, mangrove-lined estuaries (Mazzotti 1983, p. 45). No evidence is available to suggest that crocodiles have crossed the Florida Straits. There are no other American crocodile populations in close proximity to Florida (Richards 2003, p. 1) that would allow direct interaction of animals. The Florida population is effectively isolated from other crocodile populations and functions as a single demographic unit. Consequently, we conclude that the Florida population of the American crocodile is discrete from other crocodile populations as a consequence of physical and behavioral factors.

The genetic makeup of the Florida population of the American crocodile is recognizably distinct from populations in other geographic areas within its range (M. Forstner, 1998). Analysis of mitochondrial DNA suggests that the Florida population may be genetically more closely related to American crocodile populations in Central and South America than to those in Jamaica and Hispaniola (P. Moler, 2005b).

Significance: The DPS policy states that populations that are found to be discrete will then be examined for their biological or ecological significance. This consideration may include evidence that the loss of the population would create a significant gap in the range of the taxon. The Florida population of the American crocodile represents the northernmost portion of the species' range in the world (Kushlan and Mazzotti 1989a, p. 5; Thorbjarnarson 1989, p. 229) and the only population in the United States. Loss of this population would result in a significant reduction to the extent of the species' range and ecological variability. Maintaining this species throughout its historic and current range is important to ensure its genetic diversity and population viability. While it is difficult to determine to what degree the Florida population of the crocodile contributes substantially to the security of the species as a whole, the apparent isolation and evidence of genetic uniqueness (M. Forstner, 1998) suggest that the Florida population substantially contributes to the overall diversity within the species and is biologically or ecologically significant.

Recovery Accomplishments

The first recovery plan for the American crocodile was approved on February 12, 1979 (Service 1979, pp. 1–24). The recovery plan was revised on February 2, 1984 (Service 1984, pp. 1–37). The recovery plan for the American crocodile was revised again and included as part of the MSRP, which was approved in May 1999 (Service 1999, pp. 4–505 to 4–528); this version represents the current recovery plan for this species.

The MSRP identifies 10 primary recovery actions for the crocodile. Species-focused recovery actions include: (1) Conduct surveys to determine the current distribution and abundance of crocodiles; (2) protect and enhance existing colonies of crocodiles; (3) conduct research on the biology and life history of crocodiles; (4) monitor the south Florida crocodile population; and (5) inform the public about the recovery needs of crocodiles. Habitat-focused recovery actions include: (1) Protect nesting, basking, and nursery habitat of crocodiles in south Florida; (2) manage and restore suitable habitat of crocodiles; (3) conduct research on the habitat relationships of the crocodile; (4) continue to monitor crocodile habitat; and (5) increase public awareness of the habitat needs of crocodiles. All of these primary recovery actions have been initiated.

Nest surveys and subsequent hatchling surveys around nest sites are conducted in all areas where crocodiles are known to nest (Mazzotti *et al.* 2000, p. 3; Mazzotti and Cherkiss 2003, p. 24). Nest monitoring has been conducted nearly continuously at each of the three primary nesting areas (CLNWR, ENP, and TPPP) since 1978. In addition, detailed surveys and population monitoring have been conducted annually since 1996 throughout the crocodile's range in Florida. These surveys documented distribution, habitat use, population size, and age class distribution. During both surveys and nest monitoring, crocodiles of all age classes are captured and marked (Mazzotti and Cherkiss 2003, p. 24). These marked individuals provide information on survival, longevity, growth, and movements (Mazzotti and Cherkiss 2003, p. 24). All captured individuals are marked by clipping tail scutes in a prescribed manner so that each crocodile is given an individual identification number (Mazzotti and Cherkiss 2003, pp. 24–25). In addition, hatchlings at TPPP are marked with microchips placed under the skin.

Ecological studies have been initiated or continued in recent years. Laboratory (e.g., Dunson 1982, p. 375; Richards 2003, p. 29) and field (e.g., Mazzotti *et al.* 1986, p. 192) studies have continued on the effects of salinity on the growth rate and survival of crocodiles in the wild. Analyses of contaminants in crocodile eggs have been conducted in south Florida, and these analyses contribute to a record of contaminants data as far back as the 1970s (Hall *et al.* 1979, p. 90; Stoneburner and Kushlan 1984, p. 192).

Protection and enhancement of habitat within each of the three primary American crocodile nesting areas have been ongoing for many years. TPPP has implemented management actions to minimize disturbance to crocodiles and their nesting habitat. This includes the designation of nesting "sanctuaries" where access and maintenance activities are minimized. Habitat management in these areas includes exotic vegetation control and encouraging the growth of low-maintenance native vegetation. On CLNWR, management has focused on maintaining suitable nesting substrate. The organic soils that compose the nesting substrate have subsided over time, leading to the potential for increased risk of flooding or unfavorable microclimate. Nesting substrate has been augmented and encroaching vegetation in nesting areas has been removed. In ENP, management has included screening or barricades around active nest sites to prevent raccoon

depredation or human disturbance of nest sites (M. Cherkiss, 2005b).

Signs have been in place for several years along highways in the areas where most road kills have occurred to alert motorists to the presence of crocodiles. Fences were also erected along highways to prevent crocodiles from crossing, although several of these fences were later removed because they were ineffective when not properly maintained and may have contributed to additional road kills by trapping animals on the road. The remaining sections of fence are intended to funnel crocodiles to culverts where they can cross underneath roads without risk. Other efforts to reduce human-caused mortality include law enforcement actions and signs that inform the public about crocodiles in areas where crocodiles and people are likely to encounter each other, such as at fish cleaning stations along Biscayne Bay.

The FWC established a standard operating protocol in 1988 to manage crocodile-human interactions. This protocol established a standard procedure that included both public education to encourage tolerance of crocodiles and translocation of crocodiles in situations that may threaten the safety of either crocodiles or humans. While the protocol has led to the successful resolution of many complaints, many of the large crocodiles that have been translocated under the protocol have shown strong site fidelity and returned to the areas from which they were removed (Mazzotti and Cherkiss 2003, p. 18, table 5). Translocation appears to be effective with small crocodiles (generally less than 6 ft total length), but may not completely resolve human-crocodile interactions involving larger, older animals. Developing an effective, proactive protocol to address human-crocodile interactions is necessary to ensure the safety of crocodiles of all age groups near populated areas and to help maintain a positive public perception of crocodiles and their conservation. The FWC, with participation from the Service and National Park Service, completed a human-crocodile interaction response plan in 2005, and through its implementation will continue gathering information on how crocodiles respond to translocation.

Recovery Plan Provisions

The MSRP specifies a recovery objective of reclassifying the species to threatened, and describes recovery criteria as:

Previous recovery efforts identified the need for a minimum of 60 breeding females within the population before reclassification

could be considered. Since these criteria were developed, new information, based on consistent surveys, has indicated that the total number of nesting females has increased substantially over the last 20 years, from about 20 animals to about 50, and that nesting has remained stable at the major nesting areas. Based on the fact that the population appears stable, and that all of the threats as described in the original listing have been eliminated or reduced, reclassification of the crocodile will be possible, provided existing levels of protection continue to be afforded to crocodiles and their habitat, and that management efforts continue to maintain or enhance the amount and quality of available habitats necessary for all life stages.

Based on these criteria outlined in the MSRP, the crocodile can be reclassified as threatened in Florida at this time because the species and its habitat are protected and management efforts continue to maintain or enhance the amount and quality of available habitat. In addition, the nesting range has expanded on both the east and west coasts of the State; crocodiles are frequently documented throughout most of their historical range; nesting has returned to Biscayne Bay on Florida's east coast and now commonly occurs at TPPP; and nesting has been increasing for several years. Since 2001, when there were 50 known nests in Florida, the number of documented nests in Florida has continued to increase to between 91 and 94 in 2005, which satisfies the MSRP recommended minimum of having 60 breeding females before reclassification can be considered. The level of protection currently afforded to the species and its habitat, as well as the status of habitat management, are outlined in the "Summary of Factors Affecting the Species" section of this rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove species on the List of Endangered and Threatened Wildlife and Plants. These five factors and their application to the American crocodile are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The original rule proposing listing (40 FR 17590, April 12, 1975) identified intensive human development and subsequent loss of habitat as a primary threat to crocodiles. Since listing, much of the nesting habitat has remained

intact and been afforded some form of protection. In addition, nesting activity that was concentrated in a small portion of the historic range in northeastern Florida Bay at the time of listing now occurs on the eastern, southern, and southwestern portions of the Florida peninsula. The primary nesting areas in northern Florida Bay that were active at the time of listing are protected and under the management of ENP, which has consistently supported the largest number of nests and the largest population of American crocodiles in Florida. The habitat in ENP is protected and maintained for crocodiles, and ongoing hydrologic restoration efforts may improve the quality of the habitat in ENP. Managers at ENP emphasize maintaining high quality natural habitat that includes crocodile nesting areas. Restoration of disturbed sites, hydrologic restoration, and removal of exotic vegetation like Australian pine (*Casuarina equisetifolia*) and Brazilian pepper (*Schinus terebinthifolius*) have improved nesting sites, nursery habitat, and other areas frequented by crocodiles.

Since the original listing, we have acquired and protected an important nesting area for crocodiles: CLNWR on Key Largo. The acquisition of CLNWR in 1980 provided protection for over 2,205 ha (5,000 acres) of crocodile nesting and nursery habitat. Habitat on CLNWR is protected and managed to support the local crocodile population. Almost all of the nesting on Key Largo occurs within CLNWR on artificial substrates composed of spoil taken from adjacent ditches that were dredged prior to acquisition of the property. These sites and the surrounding high quality nursery habitat consistently support five to eight nests each year. Nest success on CLNWR is strongly influenced by environmental factors, and typically only about half of the nests are successful (P. Moler, 2005b).

The nesting substrate on CLNWR has begun to settle and, in an effort to maintain nesting habitat, the substrate has been augmented at two sites to return it to its original elevation. Nesting has been documented at both of the elevated sites. In order for these areas to remain as nesting and nursery sites, they need to be cleared of invasive exotics. Encroachment of native and exotic plants along the levees needs to be controlled for these areas to remain suitable for nesting crocodiles and their young. In general, CLNWR is closed to public access; access is granted by special use permit only.

Both CLNWR and ENP have implemented programs that provide for maintenance of natural conditions that

will benefit the crocodile; ENP is in the process of preparing a General Management Plan that will formalize ongoing management actions and further protect crocodile habitat (S. Snow, 2006), and CLNWR has finalized their plan (Service 2006, pp. 1–127). A management plan as defined here and throughout this rule is not regulatory. These plans are developed by the property owners, and outline strategies and alternatives needed to conserve habitat and in some cases species on the property. Implementation of the plan is not mandatory. The plan should be updated on a regular basis so that managers and staff have the latest information and guidance for crocodile management.

In addition to the two primary, publicly-owned, crocodile nesting sites, additional nesting habitat has been created within the historic range on a site that may not have historically supported nesting. TPPP, owned and operated by FPL, contains an extensive network of cooling canals (built in 1974) that provides good crocodile habitat in Biscayne Bay. The site is approximately 1,214 ha (3,000 acres), and the majority is considered crocodile habitat. The number of nests at this site has risen from 1 to 2 per year between 1978 and 1981 (Gaby *et al.* 1985, p. 193), to 10 to 15 nests per year in the 1990s (Brandt *et al.* 1995, p. 31; Cherkiss 1999, p. 15; J. Wasilewski, 1999, 2005a), and supported 25 nests in 2005 (J. Wasilewski, 2005a). This property now supports the second largest breeding aggregation of crocodiles in Florida. TPPP has developed and implemented a management plan that specifically addresses crocodiles. TPPP is also closed to access other than personnel who work at the facility. FPL personnel maintain the canals and crocodile habitat through activities like exotic vegetation control and planting of low-maintenance native vegetation. FPL personnel also have supported an extensive crocodile monitoring program since 1976. Operation of the TPPP is licensed by the Nuclear Regulatory Commission through 2032, and FPL plans to continue crocodile management and monitoring while the plant is in operation (B. Bertleson, 2002).

FPL has also developed the Everglades Mitigation Bank along the western shore of Biscayne Bay immediately adjacent to the TPPP, which may help bolster the crocodile population in Biscayne Bay in coming years. This site is a wetlands mitigation bank, approximately 5,665 ha (14,000 acres) in size, of which about 5,050 ha (10,000 acres) is crocodile habitat. As of November 2005, crocodile nesting has

not been recorded on this site, but it is anticipated that nesting will occur in the near future (J. Wasilewski, 2005b). It is difficult to estimate in advance how many potential nesting sites will occur here, but we believe that it will be roughly equivalent to the TPPP site. This area will be protected in perpetuity and may help offset any loss of the artificial habitat at TPPP if that site is modified after the current operating license expires in 2032.

Even though nesting habitat at TPPP is created rather than natural, and all of the nesting at CLNWR and some areas of ENP is on artificial or created substrate, crocodiles have successfully moved into and used these habitats. We believe that it is important to continue to provide protection for the artificial habitats that crocodiles opportunistically use within their current range.

Outside of these areas that now comprise primary nesting habitat for crocodiles, land acquisition has provided protection to many other areas of potential habitat for crocodiles in Florida. A total of 44 public properties, owned and managed by Federal, State, or county governments, as well as two privately-owned properties managed at least partially or wholly for conservation purposes, contain potential habitat for crocodiles. Thirty-five of these conservation lands operate under management plans (e.g., Florida Department of Environmental Protection 2001, pp. 1–103). All of the plans prescribe management actions that will provide conditions beneficial for crocodiles and maintain or improve crocodile habitat and potential nesting sites. A common action called for in many of the plans is exotic vegetation control, and some plans (e.g., Rookery Bay National Estuarine Research Reserve, Collier-Seminole State Park) have goals to restore the natural freshwater flow patterns through hydrological restoration (e.g., Florida Department of Environmental Protection 2000, p. 4). These 44 public properties contain about 28,330 ha (70,000 acres) of potential crocodile habitat, whereas together ENP and CLNWR contain about 131,120 ha (324,000 acres). A total of approximately 166,000 ha (410,000 acres) of mangrove-dominated vegetation communities are present in south Florida on public and private lands (i.e., TPPP) that are managed at least partially for conservation purposes. Approximately 10,117 ha (25,000 acres) of mangrove habitat occurs in south Florida outside of conservation lands. Only a small fraction (<5 percent) of known nests

currently occur on unprotected sites (F. Mazzotti, 2006).

With the majority of crocodile nesting habitat under protection for conservation purposes, the total Florida crocodile population estimated between 1,400 and 2,000 individuals (not including hatchlings), the expansion of the nesting range on both the east and west coast of Florida, and with crocodiles seen throughout most of their historical range, we believe that the species now meets the definition of threatened. However, the rapid rate of development in coastal areas in south Florida will limit population future expansion through habitat loss, fragmentation, and interactions with humans (as discussed under Factor E) and therefore still poses a threat to full recovery of crocodiles in Florida because current populations are not sufficient to withstand habitat pressure. The current population size and distribution are not yet sufficient to consider the American crocodile in Florida free of threats, so additional habitat conservation will be necessary before the crocodile is ready for delisting. In addition, since most of the nesting occurs on artificial substrate that must be maintained through active management, recovery of the species will depend on continued maintenance of existing nesting areas and/or expansion of nesting into areas with natural substrates.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Prior to listing in 1975, crocodiles were frequently collected for museums and zoos, and at least occasionally shot for sport. Though it is difficult to estimate the magnitude of collection and sport hunting, several lines of evidence suggest that they may have significantly impacted the Florida population prior to listing. Moore (1953, p. 54) reported on a collector who advertised that he would pay for any live crocodiles anywhere in south Florida; these were added to his collection at a zoological garden. This collector claimed to have the largest collection of American crocodiles in the United States. Incidental and intentional killing by fishermen in Florida Bay was common (Moore 1953, pp. 55–56). At the time of listing in 1975, the final rule stated that poaching for skins and eggs still sometimes occurred and crocodiles were occasionally shot for sport from passing boats. Ogden (1978, p. 193) reported that 4 of the 10 human-caused crocodile deaths he was aware of between 1971 and 1975 resulted from shooting.

Since listing in 1975, few malicious killings have been recorded (Kushlan 1988, p. 784; Moler 1991a, pp. 3–4; P. Moler, 2006a). Kushlan (1988, p. 784) reported that only 3 of 13 human-caused mortalities between 1975 and 1984 resulted from shooting (approximately 23 percent). Moler (1991a, pp. 3–4) reported 27 human-caused mortalities from 1980 to 1991, of which only one shooting was reported (approximately 4 percent of human-caused mortalities). Since 1991, no crocodile mortalities resulting from shooting have been recorded. This declining trend in the number of recorded shootings suggests reduced risk to crocodiles from this threat. The few cases involving illegal take of crocodiles in south Florida have been publicized and may have deterred poaching and killing of crocodiles. Stories in newspapers and other popular press, as well as radio and television reports and documentaries, have aided in informing residents and visitors about the status and legal protection of American crocodiles.

CLNWR and TPPP both have restricted access and are in general closed to the public. ENP also restricts access to crocodile nesting areas during the breeding season. Adults and hatchlings produced in these areas are protected as a result of this restricted access.

We only receive a few requests for recovery permits during any given year for commercial or scientific purposes related to the crocodile in Florida. We have no reason to believe that trade or any other type of current or future utilization poses a risk to the American crocodile population in Florida, and therefore, the best available information on this factor contributes to reclassification to threatened status.

C. Disease or Predation

Depredation of crocodile nests by raccoons was cited as a threat in the original listing. Nest predation in ENP has been variable with an increasing trend that has not been tested for statistical significance (F. Mazzotti, 2004). For example, the majority of nests near Little Madeira Bay, within ENP, have been depredated by raccoons from year to year (Mazzotti and Cherkiss 2001, p. 4). While a few years ago most of the predation in ENP was on nests in artificial substrates, now most is on nests at beach sites, which are historically the most productive in ENP (F. Mazzotti, 2004). This is of concern as these are the only nests on natural habitat left in the United States. On average, 20.1 percent of nest failures resulted from raccoon depredation in all areas where nesting surveys were

conducted, including areas outside of ENP (Kushlan and Mazzotti 1989b, pp. 14–15; Mazzotti 1989, p. 222; Mazzotti *et al.* 2000, p. 4, 8; Mazzotti and Cherkiss 2001, p. 4, 7). Of the 56 to 59 nests at ENP in 2005, 13 (22 to 23 percent) were depredated by raccoons (M. Cherkiss, 2005c). Predation of nests by raccoons at TPPP and CLNWR has not been observed (F. Mazzotti, 2004).

Predation of nests by fire ants has occurred at ENP (one nest) and TPPP (several nests) (F. Mazzotti, 2004). No fire ant problems have been recorded at CLNWR.

While depredation of nests has not prevented an increase in the crocodile population to date, the increasing incidence of predation on natural beach nesting sites indicates that a threat remains.

There is no evidence of disease in the American crocodile population in Florida. Therefore, disease does not present a known threat to the crocodile in Florida.

D. The Inadequacy Of Existing Regulatory Mechanisms

The Act currently provides protection for the American crocodile as an endangered species, and these protections will not be significantly reduced by this reclassification to threatened status.

The State of Florida provides legal protection for the crocodile within its boundaries. In 1967, the State listed the crocodile as “protected.” This status was revised in 1972, when the crocodile was listed as “endangered” under Chapter 68A–27 of the Florida Wildlife Code. Chapter 68A–27.003 of the Florida Code, entitled “Designation of endangered species; prohibitions; permits” specifies that “no person shall pursue, molest, harm, harass, capture, possess, or sell” any of the endangered species that are listed. Violation of these prohibited acts can be considered a third degree felony, and is punishable by up to 5 years in prison and a \$10,000 fine (Florida Statute 372.0725). At this time, the FWC is not reviewing the crocodile’s status, but a change in Federal status is likely to initiate a State review (P. Moler, 2006b). The FWC currently operates under a cooperative agreement with us, under section 6 of the Act that formalizes a cooperative approach to the development and implementation of programs and projects for the conservation of threatened and endangered species.

On June 28, 1979, the American crocodile was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). This designation

reflected that the species, while not currently threatened with extinction, may become so without trade controls. On June 6, 1981, the crocodile was moved to Appendix I, indicating that it was considered to be in danger of extinction. Generally, no commercial trade is allowed for Appendix I species. Effective February 17, 2005, the Cuban population was downlisted to Appendix II. CITES is a treaty established to monitor international trade to prevent further decline in wild populations of plant and animal species. CITES permits may not be issued if import or export of the species may be detrimental to the species’ survival, or if specimens are not legally acquired. CITES does not regulate take or domestic trade, so it would not apply to take within Florida or the United States. Reclassification of the crocodile in Florida from endangered to threatened will not affect the species’ CITES status.

Several other Federal regulations may provide protection for crocodiles or their habitat. Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) requires the issuance of a permit from the Corps for the discharge of any dredged or fill material into waters of the United States. The Corps may deny the issuance of a permit if the project might adversely affect wildlife and other natural resources. Also, sections 401 and 403 of the Rivers and Harbors Act (33 U.S.C. 304 *et seq.*) prohibit the construction of bridges, roads, dams, docks, weirs, or other features that would inhibit the flow of water within any navigable waterway. The Rivers and Harbors Act ensures the protection of estuarine waters from impoundment or development and indirectly protects natural flow patterns that maintain crocodile habitat. In addition, the Federal agencies responsible for ensuring compliance with the Clean Water Act and the Rivers and Harbors Act are required to consult with the Service if the issuance of a permit may affect listed species or their designated critical habitat, under section 7(a)(2) of the Act (see “Available Conservation Measures” section below).

The Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661 *et seq.*, as amended) requires equal consideration and coordination of wildlife conservation with other water resources development. This statute allows us and State fish and game agencies to review proposed actions and address ways to conserve wildlife and prevent loss of or damage to wildlife resources. The Fish and Wildlife Coordination Act allows us to help ensure that crocodiles and their habitat are not degraded by water development projects and allows us to

incorporate improvements to habitat whenever practicable.

Additionally, ENP has established regulations for general wildlife protection in units of the National Park System that prohibit the taking of wildlife; the feeding, touching, teasing, frightening, or intentional disturbing of wildlife nesting, breeding, or other activities; and possessing unlawfully taken wildlife or portions thereof (36 CFR 2.2). CLNWR and TPPP do not have these issues as they are both generally closed to the public. The Service believes that the regulatory mechanisms in place have helped bring the species to the point where reclassification to threatened is appropriate and their continued implementation will aid in the species’ recovery.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As explained in the original listing (40 FR 44149), crocodile nest sites were vulnerable to disturbance from increasing human activity because of the remoteness and difficulty of patrolling nesting areas. Human disturbance can cause crocodiles to abandon habitat or nest sites (Kushlan and Mazzotti 1989b, p. 14). Acquisition of nesting, juvenile, and nursery sites and other crocodile habitat by Federal, State, and local governments and implementation of management plans on these properties have resulted in crocodile conservation.

Of the three primary properties that support nesting (ENP, CLNWR, and TPPP), only CLNWR and TPPP have a management plan in place that specifically addresses the crocodile. This plan calls for activities such as road maintenance, vehicle access, and construction to be conducted in crocodile habitat only at certain times or locations based on the crocodile’s activity to reduce human disturbance. In addition, TPPP is closed to access other than personnel who work at the facility. ENP has established rules that provide protection from disturbance to benefit the crocodile, even without a species-specific management plan. At ENP, protection from disturbance is based on guidelines for general public use, such as instructions to stay on marked trails. CLNWR is generally closed to public access. Activities on or near the nesting sites are conducted during the non-breeding season to minimize crocodile disturbance. CLNWR has finalized a management plan that formalizes ongoing actions and future projects and more specifically addresses crocodiles (Service 2006, p. 38), and ENP is preparing their General Management Plan (S. Snow, 2006). In addition, ENP

is preparing a draft plan that will benefit the crocodile mostly by general prescribed changes in public use in portions of ENP.

In addition to these primary nesting sites, disturbance as a threat is also being addressed on approximately 44 public properties, managed as conservation lands by Federal, State, or county governments, that provide potential habitat for crocodiles in south Florida. In addition, two other privately-owned sites provide potential crocodile habitat that are maintained as conservation lands or that conduct natural lands management. Thirty-five of these properties operate under current management plans. Only two specifically mention management actions intended to benefit the crocodile. However, actions mentioned in the other plans that will reduce disturbance to crocodiles include restrictions on public use, implementation of boat speed limits (including areas of no-wake zones), and prohibition of wildlife harassment. Managing potential human-crocodile conflicts remains an important factor in providing adequate protection for and reducing disturbance to crocodiles.

As the crocodile population and the human population in south Florida have grown, the number of human-crocodile interactions has increased (T. Regan, 2006). The FWC's response plan to manage these interactions both encourages tolerance of crocodiles and translocates crocodiles in situations that may threaten the safety of either crocodiles or humans. While this has led to the successful resolution of many complaints, it is likely that additional crocodiles will need to be translocated as development in south Florida continues. These human interactions may limit dispersal of individuals within the species' historic range. In addition, large, mature individuals that cannot be effectively translocated may have to be removed from the wild. The FWC, with participation from the Service and National Park Service, will continue to address this threat.

The original proposed listing cites the risk of a hurricane or another natural disaster as a serious threat to the crocodile (40 FR 17590, April 21, 1975). Hurricanes and freezing temperatures may kill some adults (Moler 1991a, p. 4), but their susceptibility to mortality from extreme weather is poorly documented. These events still have the potential to threaten the historically restricted nesting distribution of the American crocodile. However, increased nesting activity in western Florida Bay, Cape Sable, and TPPP has broadened the nesting range. Nesting now occurs

on the eastern, southern, and southwestern portions of the Florida peninsula. While a single storm could still easily affect all portions of the population, it is now less likely that the impact to all population segments would be severe.

The original listing rule cited the restriction of the flow of fresh water to the Everglades because of increasing human development as a potential threat to the American crocodile. Ongoing efforts to restore the Everglades ecosystem and restore a more natural hydropattern to south Florida will affect the amount of fresh water entering the estuarine systems. Because growth rates of hatchling crocodiles are closely tied to the salinity in the estuaries (Mazzotti and Cherkiss 2003, p. 13), restoration efforts will affect both quality and availability of suitable nursery habitat. Decreased salinity should increase growth rates and survival among hatchling crocodiles. Proposed restoration activities in and around Taylor Slough and the C-111 canal, as discussed in the Central and South Florida Project Comprehensive Review Study (Corps and SFWMD 1999, p. 4-28, K-135), could increase the amount of fresh water entering the estuarine system and extend the duration of freshwater flow into Florida Bay. Alternative D13R hydrologic plan simulation (Corps and SFWMD 1999, p. 1-20) predicts that the addition of fresh water could occur throughout many of the tributaries and small natural drainages along the shore of Florida Bay, instead of primarily from the mouth of the C-111 canal. Salinities in nesting areas, including Joe, Little Madeira, and Terrapin Bays, are projected to be lower for longer periods than they currently are within this area (based on alternative D13R hydrologic plan simulation) (Corps and SFWMD 1999, pp. D-24, D-A-81 to D-A-83, K-135). This restoration project should increase the amount and suitability of crocodile habitat in northern Florida Bay, and increase juvenile growth rates and survival (Mazzotti and Brandt 1995, p. 7).

Hydrological restoration may also affect crocodile habitat in Biscayne Bay. Reductions in freshwater discharge will occur in the Miami River, Snake Creek, north and central Biscayne Bay, and Barnes Sound (extreme southern end of the Biscayne Bay system) (P. Pitts, Service, 2005). These projected changes will likely reduce habitat quality in the more urbanized northern half of Biscayne Bay. Freshwater flows to south Biscayne Bay are predicted to increase with CERP, thus increasing habitat quality in this area. More importantly, a

primary objective of CERP's Biscayne Bay Coastal Wetlands and C-111 Spreader Canal projects is to rehydrate degraded coastal wetlands in south Biscayne Bay and Barnes Sound by redirecting fresh water from conveyance canals to wetlands. This will have the effect of lowering salinities in the wetlands, thus increasing habitat quality for crocodiles, particularly juveniles. Currently, the potential area affected by these projects in the Biscayne Bay system is on the order of 24,000 ha (60,000 acres). Considering the bay as a whole, Everglades restoration should increase the amount and suitability of crocodile habitat and benefit the species.

Mortality of crocodiles on south Florida roads has consistently been the primary source of adult mortality, and this trend has not changed (Mazzotti and Cherkiss 2003, p. 22, table 6). Road kills have occurred throughout the crocodile's range in Florida, but most have occurred on Key Largo and around Florida Bay, especially around Card and Barnes Sounds (Mazzotti and Cherkiss 2003, p. 22, table 6). Signs cautioning drivers of the risk of colliding with crocodiles have been posted along the major highways throughout crocodile habitat. As discussed above, measures identified to help reduce road kill mortality include installing fencing in appropriate places to prevent crocodiles from entering roadways and installation of box culverts under roadways so that crocodiles can safely cross roads. Many of the recorded crocodile road kills are adults, which may result from the increased likelihood of large individuals being reported. We cannot accurately estimate the proportion of road-killed crocodiles that are reported. Therefore, it is difficult to accurately assess the magnitude of this threat or its effect on the population.

The success of crocodile nesting is largely dependent on the maintenance of suitable egg cavity moisture throughout incubation, and flooding may also affect nest success. On Key Largo and other islands, failure of nests is typically attributed to desiccation due to low rainfall (Moler 1991b, p. 5). Data compiled by Mazzotti and Cherkiss (2003, p. 13, figure 5) document an average of 48 percent nest success from 1978 through 1999 (excluding 1991 and 1992 due to lack of data) at CLNWR on north Key Largo. Nest failures on the mainland may be associated with flooding or desiccation (Mazzotti *et al.* 1988, pp. 68-69; Mazzotti 1989, pp. 224-225). In certain areas, flooding and over-drying affect nest success. Data compiled by Mazzotti and Cherkiss (2003, p. 13, table 5, 7) document an

average of 64.4 percent nest success from 1970 through 1999 at ENP (excluding 1975, 1976, 1983, 1984, and 1996 due to lack of data) and 98 percent nest success from 1978 through 1999 at TPPP (excluding 1980 and 1982 due to lack of data). However, overall, the crocodile population in Florida has more than doubled its size since it was listed to an estimated 1,400 to 2,000 individuals and appears to be compensating for these threats.

The final listing rule did not reference contaminants as a potential threat. Several studies have shown that contaminants occur in crocodiles and their eggs in south Florida (Hall *et al.* 1979, p. 88; Stoneburner and Kushlan 1984, pp. 192–193), including organochlorine pesticides (DDT, DDE, and dieldrin, among others), and PCBs, however, no exceptional levels have been reported (Mazzotti and Cherkiss 2003, p. 18). Acute exposure to high levels of these contaminants may result in death, while prolonged exposure to lower concentrations may cause liver damage, reproductive failure, behavioral abnormalities, or deformities. Little information is known at this time about what constitutes dangerous levels of these contaminants in crocodiles or other crocodilians. Therefore, at this time we have no data to support a determination that contaminants pose a threat to further crocodile recovery.

Protection and management of the three primary nesting areas and other potential habitat along with the anticipated outcome of Everglades restoration efforts and a reduction in threat from hurricanes and other natural disasters contributed to our determination to reclassify the American crocodile in Florida. However, human-crocodile interactions, vehicle strikes, and environmental contaminants remain as threats to the crocodile.

Conclusion

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the crocodile in Florida in preparing this final rule. Based on this evaluation, we have determined that the crocodile in its range in Florida meets the criteria of a DPS as stated in our policy of February 17, 1996 (61 FR 4722). In regard to its status, we designate the American crocodile in Florida as a DPS, and reclassify it from an endangered species to a threatened species. The recovery plan for the crocodile states that, “Based on the fact that the population appears stable, and that all of the threats as described in the original listing have been eliminated or

reduced, reclassification of the crocodile will be possible, provided existing levels of protection continue to be afforded to crocodiles and their habitat, and that management efforts continue to maintain or enhance the amount and quality of available habitats necessary for all life stages.” We believe, based on our analysis of the 5 listing factors under the Act, that the Florida DPS of the American crocodile is no longer in danger of extinction, however, the crocodile continues to require protection under the Act as a threatened species because population size and distribution is insufficient to consider crocodiles free from threats. The following are still needed to avoid the threat of extinction:

(1) Crocodile habitat in Florida continues to need maintenance and enhancement to provide protection for all life stages of the existing crocodile population and to ensure that available habitat can support population growth and expansion; and

(2) Further acquisition of nesting and nursery sites and additional crocodile habitat by Federal, State, and local governments and implementation of management on these publicly-owned properties are necessary to ensure protection to crocodiles and their nests and enable expansion of populations size and distribution.

Available Conservation Measures

Two of the three primary nesting areas for crocodiles in Florida occur on Federal conservation lands and are consequently afforded protection from development and large-scale habitat disturbance. Crocodiles also occur on a variety of State-owned properties, and existing State and Federal regulations provide protection on these sites. The fact that crocodile habitat is primarily wetlands also assures the opportunity for consultation on most projects that occur in crocodile habitat under the authorities described below.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the crocodile, and promotes conservation actions by Federal, State, and local agencies; private organizations; and individuals. The Act provides for possible land acquisition and cooperation with the State, and requires that recovery actions be carried out. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to the crocodile and its designated critical habitat (41 FR 41914, September 24, 1976). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the crocodile or its designated critical habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the crocodile or result in the destruction or adverse modification of its critical habitat. Federal agency actions that may require consultation include the Corps’ involvement in projects such as residential development that requires dredge/fill permits, the construction of roads and bridges, and dredging projects. Power plant development and operation under license from the Federal Energy Regulatory Commission/Nuclear Regulatory Commission may also require consultation with respect to licensing and re-licensing. Road construction activities funded or authorized by the Federal Highway Administration may require consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, and pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to Cindy Schulz of the South Florida Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679-4176, facsimile 404/679-7081).

This final rule formally recognizes that the American crocodile DPS in Florida is no longer in danger of extinction throughout all or a significant portion of its range. This reclassification does not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing an American crocodile, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund or carry out are not likely to jeopardize the continued existence of the American crocodile or destroy or adversely modify its critical habitat.

Recovery actions directed at the crocodile will continue to be implemented as outlined in the MSRP, including: (1) Determining the current distribution and abundance; (2) protecting and enhancing existing crocodile colonies; (3) conducting research on biology and life history; (4) monitoring the population; and (5) informing the public about recovery needs of crocodiles. The MSRP also outlines restoration activities that should be undertaken to adequately restore the mangrove community occupied by the crocodile. These actions include: (1) Protecting nesting, basking, and nursery habitat; (2) managing and restoring suitable habitat; (3) conducting research on the habitat relationships of the crocodile; (4)

continuing to monitor habitat; and (5) increasing public awareness of habitat needs of the crocodile.

This final rule does not constitute an irreversible commitment on our part. Reclassification of the American crocodile in Florida to endangered status would be investigated if changes occur in management, population status, habitat, or other actions that detrimentally affect the population or increase threats to its survival.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations

that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited is available upon request from the South Florida Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is the South Florida Ecological Services Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by revising the entry in the List of Endangered and Threatened Wildlife for “Crocodile, American” under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Crocodile, American	<i>Crocodylus acutus</i> ..	U.S.A. (FL), Mexico, Caribbean, Central and South America.	Entire, except in U.S.A. (FL).	E	87	NA	NA
Do	do	do	U.S.A. (FL)	T	10, __	17.95(c)	NA
*	*	*	*	*	*		*

Dated: February 22, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7-5037 Filed 3-19-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039-7060-44; I.D. 031307D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,631 nm² (5,594 km²) in March and approximately 832 nm² (2854 km²) in April, southeast of Boston, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours March 22, 2007, through 2400 hours April 5, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded

from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey

personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 9, 2007, an aerial survey reported two sightings of right whales in two different areas: the first location is in the proximity of 41° 37' N lat. and 69° 32' W long. (7 whales), and the second is in the proximity of 41° 31' N lat. and 69° 21' W long. (3 whales). Both positions lie southeast of Boston, MA. After conducting an investigation, NMFS ascertained that the reports came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule. In March, the DAM Zone is bound by the following coordinates:

41° 57' N., 69° 24' W (NW Corner)
41° 57' N., 69° 07' W
41° 50' N., 69° 07' W
41° 50' N., 68° 57' W
41° 13' N., 68° 57' W
41° 13' N., 69° 46' W
41° 17' N., 69° 46' W
41° 17' N., 69° 58' W
41° 40' N., 69° 58' W and follow the coastline north to
41° 45' N., 69° 56' W
41° 45' N., 69° 33' W
41° 49' N., 69° 24' W
41° 57' N., 69° 24' W (NW Corner)

In April, when the restrictions on anchored gillnet and lobster trap/pot fishing gear become effective in the Great South Channel and overlap a portion of the DAM zone, the DAM zone is divided into a northern and southern sector. Special note for gillnet and lobster trap/pot fishermen: This DAM

action does not supersede the Great South Channel Restricted Area regulations in April found under the ALWTRP at 50 CFR 229.32. Gillnet fishermen fishing in the Sliver Area during the time specified in this letter must comply with the DAM gillnet gear modifications specified.

The April DAM zone is bounded by the following coordinates:

Northern DAM:

41° 57 N., 69° 24 W (NW Corner)
41° 57 N., 69° 07 W
41° 55 N., 69° 07 W
41° 49 N., 69° 24 W
41° 57 N., 69° 24 W (NW Corner)

Southern DAM:

41° 45 N., 69° 56 W (NW Corner)
41° 45 N., 69° 33 W
41° 44 N., 69° 36 W
41° 13 N., 69° 10 W
41° 13 N., 69° 46 W
41° 17 N., 69° 46 W
41° 17 N., 69° 58 W
41° 40 N., 69° 58 W and follow the coastline north to 41° 45 N., 69° 56 W (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps with the year-round Northeast Multispecies Closed Area I found at 50 CFR 648.81(f)(a). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area and the Great South Channel Restricted Lobster Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area, Great South Channel Restricted Gillnet Area, and the Great South Channel Sliver Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours March 22, 2007, through 2400 hours April 5, 2007, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet

gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final

rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: March 14, 2007.

Samuel D. Rauch III,

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

[FR Doc. 07-1352 Filed 3-15-07; 1:55 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226-7041-03; I.D. 082806B]

RIN 0648-AU57

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** on December 29, 2006. That final rule implemented Amendment 16-4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and established the 2007-2008 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California.

DATES: Effective March 20, 2007.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206-526-6147; fax: 206-526-6736 and; e-mail: gretchen.arentzen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This correcting notice also is accessible via the Internet at the Office of the **Federal Register's** website at <http://www.gpoaccess.gov/fr/index.html>. Background information

and documents are available at the Council's website at <http://www.pcouncil.org>.

Background

On September 29, 2006, NMFS published a proposed rule (71 FR 57764) to implement Amendment 16-4 to the Pacific Coast Groundfish FMP and establish the 2007-2008 harvest specifications and management measures for groundfish taken in the EEZ off the coasts of Washington, Oregon, and California. NMFS accepted public comment on the proposed rule and responded to these comments in the preamble to the final rule, which published in the **Federal Register** on December 29, 2006 (71 FR 78638). These final regulations revised portions of 50 CFR 660.302 through 660.394, and are the subject of this correcting amendment. These regulations affect persons operating fisheries for groundfish species off the U.S. West Coast. As published, the final regulations contain errors that may mislead the public and need to be corrected. This action provides fourteen corrections to the final regulations, all of which are either mis-numbered paragraphs, formatting mistakes, transposed numbers, removal of text that was mistakenly left in, or addition of text that was mistakenly left out.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B); providing prior notice and opportunity for comment would be unnecessary and contrary to the public interest. This correction notice revises §§ 660.302, 370, 373, 391, and 394. Providing notice and comment on these changes is unnecessary because all are non-substantive and have no effect on the public or the operation of the fishery.

One correction for § 660.302 removes a duplicate entry defining "Office of Law Enforcement". Removing this duplicate definition has no effect on the public except to eliminate any confusion that may have resulted from having two identical entries.

There are seven corrections to § 660.370 provided in this document. One correction corrects a formatting mistake in the heading of paragraph (d). Correcting the format of this heading has no effect on the public. One correction revises a misquotation of text from the prohibitions portion of the West Coast groundfish regulations at § 660.306(a)(7). Correcting this

misquotation of § 660.306(a)(7) has no effect on the public except to eliminate any confusion that may have resulted from the discrepancy between the regulations cited and the quoted text. The other five corrections correct species sorting requirements at § 660.370(h)(6) to reflect the prohibition on failing to sort at § 660.306(a)(7) of the Code of Federal Regulations. The prohibition at § 660.306(a)(7) prohibits failing to sort groundfish for which there is a “trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied;” these limits and harvest guidelines are designated for groundfish species and species groups in Tables 1–5 of part 660, subpart G. Correctly listing the species sorting requirements from those tables also has no effect on the public except to eliminate any confusion that may have occurred over the discrepancy between the prohibitions and Tables 1–5 of part 660, subpart G and the incorrect sorting requirement species list.

One correction for § 660.373(d) reinstates regulatory language that had been published in the proposed and final rules (71 FR 57764, and 71 FR 78638, respectively) but which the Office of the **Federal Register** had mistakenly omitted in the finalized Code of Federal Regulations. Reinstating this paragraph has no effect on the public except to eliminate any confusion for members of the public who had expected to see this language in the Code of Federal Regulations after having had an opportunity to review and comment on it in the proposed rule and review it again in the final rule.

One correction eliminates a duplicate paragraph in § 660.391. Paragraph § 660.391 (d)(22) duplicates paragraph (d)(23) and is removed, while paragraphs (d)(23) through (d)(332) are re-designated as (d)(22) through (d)(331) to ensure that all of the coordinates in § 660.391 are listed with no break in paragraph numbers. Paragraph § 660.391(d) provides a list of coordinates, expressed in degrees latitude and longitude, for a coastwide 30–fm (55–m) depth line. Correcting this duplication has no regulatory effect and no effect on the public except to eliminate any confusion that may have resulted from the duplicate entries. This correction also does not change the intent or application of the geographic area described in the proposed and final rule.

There are four corrections in § 660.394. There are currently two paragraphs § 660.394 (h), two paragraphs § 660.394(n) and no paragraph § 660.394(i) between the second § 660.394(h) and § 660.394(j). All of these paragraphs are lists of coordinates, expressed in degrees latitude and longitude, that define large-scale boundaries for Rockfish Conservation Areas off the Pacific coast. This correction removes the second paragraph § 660.394(n), which is a duplicate of the first § 660.394(n), and redesignates the second § 660.394(h) as § 660.394(i). Correcting these duplications has no regulatory effect and no effect on the public except to eliminate any confusion that may have resulted from the duplicate entries. This correction also does not change the intent or application of the geographic area described in the proposed and final rule. The last two corrections make non-substantive revisions to paragraphs (g) and (l) to ensure that all of the coordinates given are labeled with degree symbols (°) which were inadvertently removed when the final rule was codified. Ensuring that the coordinates have their appropriate degree symbols has no effect on the public except to eliminate any confusion that may have resulted from the missing symbols.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: March 13, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

■ For reasons explained in the preamble, 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

§ 660.302 [Amended]

■ 2. In § 660.302, a duplicate entry for the definition of *Office of Law Enforcement (OLE)* is removed.

■ 3. In § 660.370, paragraphs (h)(6)(ii)(D) is removed, and paragraphs (h)(6) introductory text, (h)(6)(i)(A) and (C), (h)(6)(ii)(A) and (C), are revised to read as follows:

§ 660.370 Specifications and management measures.

* * * * *

(h) * * *

(6) *Sorting*. Under § 660.306(a)(7), it is unlawful for any person to “fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied.” The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state fish tickets. This provision applies to both the limited entry and open access fisheries. The following species must be sorted:

(i) * * *

(A) Coastwide – widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish and Pacific whiting;

* * * * *

(C) South of 40° 10' N. lat. minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod and cabezon.

(ii) * * *

* * * * *

(A) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, Pacific whiting, and Pacific sanddabs;

* * * * *

(C) South of 40° 10' N. lat. – minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, cowcod and cabezon.

* * * * *

■ 4. In § 660.373, paragraph (d) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(d) *Eureka area trip limits*. Trip landing or frequency limits may be established, modified, or removed under

§ 660.370 or § 660.373, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00' to 40°30' N. lat.). Unless otherwise specified, no more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.302).

* * * * *

§ 660.391 [Amended]

■ 5. In § 660.391, paragraph (d)(22) is removed, and paragraphs (d)(23) through (332) are redesignated as (d)(22) through (331).

■ 6. In § 660.394, the first paragraph (n) is removed, the second paragraph (h) is redesignated as paragraph (i), and paragraphs (g) and (l)(32) through (50) and (l)(182) are revised, to read as follows:

§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(g) The 200–fm (366–m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

- (1) 48°14.75' N. lat., 125°41.73' W. long.;
- (2) 48°12.85' N. lat., 125°38.06' W. long.;
- (3) 48°07.10' N. lat., 125°45.65' W. long.;
- (4) 48°05.71' N. lat., 125°44.70' W. long.;
- (5) 48°04.07' N. lat., 125°36.96' W. long.;
- (6) 48°03.05' N. lat., 125°36.38' W. long.;
- (7) 48°01.98' N. lat., 125°37.41' W. long.;
- (8) 48°01.46' N. lat., 125°39.61' W. long.;
- (9) 47°56.94' N. lat., 125°36.65' W. long.;
- (10) 47°55.11' N. lat., 125°36.92' W. long.;
- (11) 47°54.10' N. lat., 125°34.98' W. long.;
- (12) 47°54.50' N. lat., 125°32.01' W. long.;
- (13) 47°55.77' N. lat., 125°30.13' W. long.;

- (14) 47°55.65' N. lat., 125°28.46' W. long.;
- (15) 47°58.11' N. lat., 125°26.60' W. long.;
- (16) 48°00.40' N. lat., 125°24.83' W. long.;
- (17) 48°02.04' N. lat., 125°22.90' W. long.;
- (18) 48°03.60' N. lat., 125°21.84' W. long.;
- (19) 48°03.98' N. lat., 125°20.65' W. long.;
- (20) 48°03.26' N. lat., 125°19.76' W. long.;
- (21) 48°01.50' N. lat., 125°18.80' W. long.;
- (22) 48°01.03' N. lat., 125°20.12' W. long.;
- (23) 48°00.04' N. lat., 125°20.26' W. long.;
- (24) 47°58.10' N. lat., 125°18.91' W. long.;
- (25) 47°58.17' N. lat., 125°17.50' W. long.;
- (26) 47°52.33' N. lat., 125°15.78' W. long.;
- (27) 47°49.20' N. lat., 125°10.67' W. long.;
- (28) 47°48.27' N. lat., 125°07.38' W. long.;
- (29) 47°47.24' N. lat., 125°05.38' W. long.;
- (30) 47°45.95' N. lat., 125°04.61' W. long.;
- (31) 47°44.58' N. lat., 125°07.12' W. long.;
- (32) 47°42.24' N. lat., 125°05.15' W. long.;
- (33) 47°38.54' N. lat., 125°06.76' W. long.;
- (34) 47°35.03' N. lat., 125°04.28' W. long.;
- (35) 47°28.82' N. lat., 124°56.24' W. long.;
- (36) 47°29.15' N. lat., 124°54.10' W. long.;
- (37) 47°28.43' N. lat., 124°51.58' W. long.;
- (38) 47°24.13' N. lat., 124°47.50' W. long.;
- (39) 47°18.31' N. lat., 124°46.17' W. long.;
- (40) 47°19.57' N. lat., 124°51.00' W. long.;
- (41) 47°18.12' N. lat., 124°53.66' W. long.;
- (42) 47°17.60' N. lat., 124°52.94' W. long.;
- (43) 47°17.71' N. lat., 124°51.63' W. long.;
- (44) 47°16.90' N. lat., 124°51.23' W. long.;
- (45) 47°16.10' N. lat., 124°53.67' W. long.;
- (46) 47°14.24' N. lat., 124°53.02' W. long.;
- (47) 47°12.16' N. lat., 124°56.77' W. long.;
- (48) 47°13.35' N. lat., 124°58.70' W. long.;

- (49) 47°09.53' N. lat., 124°58.32' W. long.;
- (50) 47°09.54' N. lat., 124°59.50' W. long.;
- (51) 47°05.87' N. lat., 124°59.30' W. long.;
- (52) 47°03.65' N. lat., 124°56.26' W. long.;
- (53) 47°00.87' N. lat., 124°59.52' W. long.;
- (54) 46°56.80' N. lat., 125°00.00' W. long.;
- (55) 46°51.55' N. lat., 125°00.00' W. long.;
- (56) 46°50.07' N. lat., 124°53.90' W. long.;
- (57) 46°44.88' N. lat., 124°51.97' W. long.;
- (58) 46°33.45' N. lat., 124°36.11' W. long.;
- (59) 46°33.20' N. lat., 124°30.64' W. long.;
- (60) 46°27.85' N. lat., 124°31.95' W. long.;
- (61) 46°18.27' N. lat., 124°39.28' W. long.;
- (62) 46°16.00' N. lat., 124°24.88' W. long.;
- (63) 46°14.22' N. lat., 124°26.29' W. long.;
- (64) 46°11.53' N. lat., 124°39.58' W. long.;
- (65) 46°08.77' N. lat., 124°41.71' W. long.;
- (66) 46°05.86' N. lat., 124°42.26' W. long.;
- (67) 46°03.85' N. lat., 124°48.20' W. long.;
- (68) 46°02.33' N. lat., 124°48.51' W. long.;
- (69) 45°58.99' N. lat., 124°44.42' W. long.;
- (70) 45°46.90' N. lat., 124°43.50' W. long.;
- (71) 45°46.00' N. lat., 124°44.27' W. long.;
- (72) 45°44.98' N. lat., 124°44.93' W. long.;
- (73) 45°43.46' N. lat., 124°44.93' W. long.;
- (74) 45°34.88' N. lat., 124°32.59' W. long.;
- (75) 45°20.25' N. lat., 124°25.47' W. long.;
- (76) 45°13.06' N. lat., 124°22.25' W. long.;
- (77) 45°03.83' N. lat., 124°27.13' W. long.;
- (78) 45°00.17' N. lat., 124°29.29' W. long.;
- (79) 44°55.60' N. lat., 124°32.36' W. long.;
- (80) 44°48.25' N. lat., 124°40.61' W. long.;
- (81) 44°42.24' N. lat., 124°48.05' W. long.;
- (82) 44°41.35' N. lat., 124°48.03' W. long.;
- (83) 44°40.27' N. lat., 124°49.11' W. long.;

(84) 44°38.52' N. lat., 124°49.11' W. long.;
 (85) 44°23.30' N. lat., 124°50.17' W. long.;
 (86) 44°13.19' N. lat., 124°58.66' W. long.;
 (87) 44°08.30' N. lat., 124°58.50' W. long.;
 (88) 43°57.89' N. lat., 124°58.13' W. long.;
 (89) 43°50.59' N. lat., 124°52.80' W. long.;
 (90) 43°50.10' N. lat., 124°40.27' W. long.;
 (91) 43°39.05' N. lat., 124°38.56' W. long.;
 (92) 43°28.85' N. lat., 124°40.00' W. long.;
 (93) 43°20.83' N. lat., 124°42.84' W. long.;
 (94) 43°20.22' N. lat., 124°43.05' W. long.;
 (95) 43°13.29' N. lat., 124°47.00' W. long.;
 (96) 43°13.15' N. lat., 124°52.61' W. long.;
 (97) 43°04.60' N. lat., 124°53.01' W. long.;
 (98) 42°57.56' N. lat., 124°54.10' W. long.;
 (99) 42°53.82' N. lat., 124°55.76' W. long.;
 (100) 42°53.41' N. lat., 124°54.35' W. long.;
 (101) 42°49.52' N. lat., 124°53.16' W. long.;
 (102) 42°47.47' N. lat., 124°50.24' W. long.;
 (103) 42°47.57' N. lat., 124°48.13' W. long.;
 (104) 42°46.19' N. lat., 124°44.52' W. long.;
 (105) 42°41.75' N. lat., 124°44.69' W. long.;
 (106) 42°40.50' N. lat., 124°44.02' W. long.;
 (107) 42°38.81' N. lat., 124°43.09' W. long.;
 (108) 42°31.82' N. lat., 124°46.24' W. long.;
 (109) 42°31.96' N. lat., 124°44.32' W. long.;
 (110) 42°30.95' N. lat., 124°44.50' W. long.;
 (111) 42°28.39' N. lat., 124°49.56' W. long.;
 (112) 42°23.34' N. lat., 124°44.91' W. long.;
 (113) 42°19.72' N. lat., 124°41.60' W. long.;
 (114) 42°15.12' N. lat., 124°38.34' W. long.;
 (115) 42°13.67' N. lat., 124°38.22' W. long.;
 (116) 42°12.35' N. lat., 124°38.09' W. long.;
 (117) 42°04.35' N. lat., 124°37.23' W. long.;
 (118) 42°00.00' N. lat., 124°36.80' W. long.;

(119) 41°47.84' N. lat., 124°30.48' W. long.;
 (120) 41°43.33' N. lat., 124°29.96' W. long.;
 (121) 41°23.46' N. lat., 124°30.36' W. long.;
 (122) 41°21.29' N. lat., 124°29.43' W. long.;
 (123) 41°13.52' N. lat., 124°24.48' W. long.;
 (124) 41°06.71' N. lat., 124°23.37' W. long.;
 (125) 40°54.66' N. lat., 124°28.20' W. long.;
 (126) 40°51.52' N. lat., 124°27.47' W. long.;
 (127) 40°40.62' N. lat., 124°32.75' W. long.;
 (128) 40°36.08' N. lat., 124°40.18' W. long.;
 (129) 40°32.90' N. lat., 124°41.90' W. long.;
 (130) 40°31.30' N. lat., 124°41.00' W. long.;
 (131) 40°30.00' N. lat., 124°38.15' W. long.;
 (132) 40°27.29' N. lat., 124°37.34' W. long.;
 (133) 40°24.98' N. lat., 124°36.44' W. long.;
 (134) 40°22.22' N. lat., 124°31.85' W. long.;
 (135) 40°16.94' N. lat., 124°32.00' W. long.;
 (136) 40°17.58' N. lat., 124°45.30' W. long.;
 (137) 40°13.24' N. lat., 124°32.43' W. long.;
 (138) 40°10.00' N. lat., 124°24.64' W. long.;
 (139) 40°06.43' N. lat., 124°19.26' W. long.;
 (140) 40°07.06' N. lat., 124°17.82' W. long.;
 (141) 40°04.70' N. lat., 124°18.17' W. long.;
 (142) 40°02.34' N. lat., 124°16.64' W. long.;
 (143) 40°01.52' N. lat., 124°09.89' W. long.;
 (144) 39°58.27' N. lat., 124°13.58' W. long.;
 (145) 39°56.59' N. lat., 124°12.09' W. long.;
 (146) 39°55.19' N. lat., 124°08.03' W. long.;
 (147) 39°52.54' N. lat., 124°09.47' W. long.;
 (148) 39°42.67' N. lat., 124°02.59' W. long.;
 (149) 39°35.95' N. lat., 123°59.56' W. long.;
 (150) 39°34.61' N. lat., 123°59.66' W. long.;
 (151) 39°33.77' N. lat., 123°56.89' W. long.;
 (152) 39°33.01' N. lat., 123°57.14' W. long.;
 (153) 39°32.20' N. lat., 123°59.20' W. long.;

(154) 39°07.84' N. lat., 123°59.14' W. long.;
 (155) 39°01.11' N. lat., 123°57.97' W. long.;
 (156) 39°00.51' N. lat., 123°56.96' W. long.;
 (157) 38°57.50' N. lat., 123°57.57' W. long.;
 (158) 38°56.57' N. lat., 123°57.80' W. long.;
 (159) 38°56.39' N. lat., 123°59.48' W. long.;
 (160) 38°50.22' N. lat., 123°55.55' W. long.;
 (161) 38°46.76' N. lat., 123°51.56' W. long.;
 (162) 38°45.27' N. lat., 123°51.63' W. long.;
 (163) 38°42.76' N. lat., 123°49.83' W. long.;
 (164) 38°41.53' N. lat., 123°47.83' W. long.;
 (165) 38°40.97' N. lat., 123°48.14' W. long.;
 (166) 38°38.02' N. lat., 123°45.85' W. long.;
 (167) 38°37.19' N. lat., 123°44.08' W. long.;
 (168) 38°33.43' N. lat., 123°41.82' W. long.;
 (169) 38°29.44' N. lat., 123°38.49' W. long.;
 (170) 38°28.08' N. lat., 123°38.33' W. long.;
 (171) 38°23.68' N. lat., 123°35.47' W. long.;
 (172) 38°19.63' N. lat., 123°34.05' W. long.;
 (173) 38°16.23' N. lat., 123°31.90' W. long.;
 (174) 38°14.79' N. lat., 123°29.98' W. long.;
 (175) 38°14.12' N. lat., 123°26.36' W. long.;
 (176) 38°10.85' N. lat., 123°25.84' W. long.;
 (177) 38°13.15' N. lat., 123°28.25' W. long.;
 (178) 38°12.28' N. lat., 123°29.88' W. long.;
 (179) 38°10.19' N. lat., 123°29.11' W. long.;
 (180) 38°07.94' N. lat., 123°28.52' W. long.;
 (181) 38°06.51' N. lat., 123°30.96' W. long.;
 (182) 38°04.21' N. lat., 123°32.03' W. long.;
 (183) 38°02.07' N. lat., 123°31.37' W. long.;
 (184) 38°00.00' N. lat., 123°29.62' W. long.;
 (185) 37°58.13' N. lat., 123°27.28' W. long.;
 (186) 37°55.01' N. lat., 123°27.53' W. long.;
 (187) 37°51.40' N. lat., 123°25.25' W. long.;
 (188) 37°43.97' N. lat., 123°11.56' W. long.;

(189) 37°35.67' N. lat., 123°02.32' W. long.;
 (190) 37°13.65' N. lat., 122°54.25' W. long.;
 (191) 37°11.00' N. lat., 122°50.97' W. long.;
 (192) 37°07.00' N. lat., 122°45.90' W. long.;
 (193) 37°00.66' N. lat., 122°37.91' W. long.;
 (194) 36°57.40' N. lat., 122°28.32' W. long.;
 (195) 36°59.25' N. lat., 122°25.61' W. long.;
 (196) 36°56.88' N. lat., 122°25.49' W. long.;
 (197) 36°57.40' N. lat., 122°22.69' W. long.;
 (198) 36°55.43' N. lat., 122°22.49' W. long.;
 (199) 36°52.29' N. lat., 122°13.25' W. long.;
 (200) 36°47.12' N. lat., 122°07.62' W. long.;
 (201) 36°47.10' N. lat., 122°02.17' W. long.;
 (202) 36°43.76' N. lat., 121°59.17' W. long.;
 (203) 36°38.85' N. lat., 122°02.26' W. long.;
 (204) 36°23.41' N. lat., 122°00.17' W. long.;
 (205) 36°19.68' N. lat., 122°06.99' W. long.;
 (206) 36°14.75' N. lat., 122°01.57' W. long.;
 (207) 36°09.74' N. lat., 121°45.06' W. long.;
 (208) 36°06.75' N. lat., 121°40.79' W. long.;
 (209) 36°00.00' N. lat., 121°35.98' W. long.;
 (210) 35°58.18' N. lat., 121°34.69' W. long.;
 (211) 35°52.31' N. lat., 121°32.51' W. long.;
 (212) 35°51.21' N. lat., 121°30.97' W. long.;
 (213) 35°46.32' N. lat., 121°30.36' W. long.;
 (214) 35°33.74' N. lat., 121°20.16' W. long.;
 (215) 35°31.37' N. lat., 121°15.29' W. long.;
 (216) 35°23.32' N. lat., 121°11.50' W. long.;
 (217) 35°15.28' N. lat., 121°04.51' W. long.;
 (218) 35°07.08' N. lat., 121°00.36' W. long.;

(219) 34°57.46' N. lat., 120°58.29' W. long.;
 (220) 34°44.25' N. lat., 120°58.35' W. long.;
 (221) 34°32.30' N. lat., 120°50.28' W. long.;
 (222) 34°27.00' N. lat., 120°42.61' W. long.;
 (223) 34°19.08' N. lat., 120°31.27' W. long.;
 (224) 34°17.72' N. lat., 120°19.32' W. long.;
 (225) 34°22.45' N. lat., 120°12.87' W. long.;
 (226) 34°21.36' N. lat., 119°54.94' W. long.;
 (227) 34°09.95' N. lat., 119°46.24' W. long.;
 (228) 34°09.08' N. lat., 119°57.59' W. long.;
 (229) 34°07.53' N. lat., 120°06.41' W. long.;
 (230) 34°10.54' N. lat., 120°19.13' W. long.;
 (231) 34°14.68' N. lat., 120°29.54' W. long.;
 (232) 34°09.51' N. lat., 120°38.38' W. long.;
 (233) 34°03.06' N. lat., 120°35.60' W. long.;
 (234) 33°56.39' N. lat., 120°28.53' W. long.;
 (235) 33°50.25' N. lat., 120°09.49' W. long.;
 (236) 33°37.96' N. lat., 120°00.14' W. long.;
 (237) 33°34.52' N. lat., 119°51.90' W. long.;
 (238) 33°35.51' N. lat., 119°48.55' W. long.;
 (239) 33°42.76' N. lat., 119°47.83' W. long.;
 (240) 33°53.62' N. lat., 119°53.34' W. long.;
 (241) 33°57.61' N. lat., 119°31.32' W. long.;
 (242) 33°56.34' N. lat., 119°26.46' W. long.;
 (243) 33°57.79' N. lat., 119°26.91' W. long.;
 (244) 33°58.88' N. lat., 119°20.12' W. long.;
 (245) 34°02.65' N. lat., 119°15.17' W. long.;
 (246) 33°59.02' N. lat., 119°03.05' W. long.;
 (247) 33°57.61' N. lat., 118°42.13' W. long.;
 (248) 33°50.76' N. lat., 118°38.03' W. long.;

(249) 33°39.41' N. lat., 118°18.74' W. long.;
 (250) 33°35.51' N. lat., 118°18.08' W. long.;
 (251) 33°30.68' N. lat., 118°10.40' W. long.;
 (252) 33°32.49' N. lat., 117°51.90' W. long.;
 (253) 32°58.87' N. lat., 117°20.41' W. long.; and
 (254) 32°35.53' N. lat., 117°29.72' W. long.
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 (1) * * *
 (32) 47°28.82' N. lat., 124°56.24' W. long.;
 (33) 47°29.15' N. lat., 124°54.10' W. long.;
 (34) 47°28.43' N. lat., 124°51.58' W. long.;
 (35) 47°24.13' N. lat., 124°47.50' W. long.;
 (36) 47°18.31' N. lat., 124°46.17' W. long.;
 (37) 47°19.57' N. lat., 124°51.00' W. long.;
 (38) 47°18.12' N. lat., 124°53.66' W. long.;
 (39) 47°17.60' N. lat., 124°52.94' W. long.;
 (40) 47°17.71' N. lat., 124°51.63' W. long.;
 (41) 47°16.90' N. lat., 124°51.23' W. long.;
 (42) 47°16.10' N. lat., 124°53.67' W. long.;
 (43) 47°14.24' N. lat., 124°53.02' W. long.;
 (44) 47°12.16' N. lat., 124°56.77' W. long.;
 (45) 47°13.35' N. lat., 124°58.70' W. long.;
 (46) 47°09.53' N. lat., 124°58.32' W. long.;
 (47) 47°09.54' N. lat., 124°59.50' W. long.;
 (48) 47°05.87' N. lat., 124°59.30' W. long.;
 (49) 47°03.65' N. lat., 124°56.26' W. long.;
 (50) 47°00.87' N. lat., 124°59.52' W. long.;
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(182) 36°24.12' N. lat., 121°59.74' W. long.;

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[FR Doc. 07-1319 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 72, No. 53

Tuesday, March 20, 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-2007-27619; Directorate Identifier 2005-NM-164-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This proposed AD would require repetitive measurements of the freeplay of certain joints of the trailing edge flap supports; repetitive lubrication of the support joints; and related investigative and corrective actions if necessary. The proposed AD also provides for modifying certain components of the trailing edge flap supports, which would extend the intervals for the repetitive measurements, and revising the maintenance practices of the maintenance planning data document. This proposed AD results from reports of excessive wear of the pins, bushings, and bearings, and corrosion at the joints of the outboard trailing edge flap supports. We are proposing this AD to prevent wear and corrosion at the flap support joints, which could result in loss of the trailing edge flap and possible loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 4, 2007.

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

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

and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.
- *Fax:* (202) 493-2251.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6443; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-27619; Directorate Identifier 2005-NM-164-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of excessive wear of the pins, bushings, and bearings, and corrosion at certain support joints on Boeing Model 777 airplanes. An operator investigating an unrelated issue during heavy maintenance first discovered these discrepancies. In addition, some flap support joints were completely dry due to blocked grease paths, and many pins were seized in the fittings. Inadequate lubrication and the use of clay-based lubricants can accelerate pin wear. The pins are made of titanium and coated with D-gun coating for wear resistance. The wear characteristics of titanium pins are unknown, so if the wear progresses through the D-gun coating, the pins could eventually crack and then fracture. Moreover, undetected wear of the joint bushings results in freeplay-induced dynamic loading of the pin that is in excess of design loads. Wear and corrosion at the flap support joints, if not corrected, could result in loss of the trailing edge flap and possible loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777-27A0066, Revision 1, dated May 18, 2006. The service bulletin describes procedures for repetitive measurements of the freeplay of support joints A, B, C, and D of the trailing edge flap supports, numbers 1 through 3 inclusive and 6 through 8 inclusive; and of joint B of the trailing edge flap supports, numbers 4 and 5. The service bulletin also describes procedures for disassembling any joint that exceeds the freeplay limits specified in the service bulletin, and doing the related investigative and corrective actions in the "support teardown inspection." The related

investigative and corrective actions are doing a detailed inspection of the joint for worn pins, bearings, and bushings, and for blocked lubrication paths; doing a dye penetrant inspection for cracks of pins with an acceptable surface finish; and replacing worn or cracked parts and unblocking the lubrication path if necessary.

As an option to the support teardown inspection, for certain airplanes, the service bulletin describes procedures for a "temporary return to service" inspection. The temporary return to service inspection is similar to the support teardown inspection, except inspection for wear of the bearings and bushings may be accomplished without removing the flap from the airplane by insuring that joint freeplay is limited to temporarily acceptable levels when combined with frequent repetitive freeplay inspections. Doing the temporary return to service inspection extends the compliance time before the service bulletin specifies the support teardown inspection should be done. The service bulletin notes that certain pins identified during the support teardown inspection or temporary return to service inspection are acceptable for continued, time-limited use if the wear is within certain limits specified in the service bulletin.

The service bulletin also describes procedures for repetitive lubrications of certain joints of the trailing edge flap supports, using Boeing Material Standard (BMS) 3-33 grease. The service bulletin specifies that part of this lubrication is verifying that grease emerges from the interface common to the pin outer diameter. If grease does not emerge, the service bulletin describes procedures for doing the following related investigative and corrective actions:

- Removing the pin and doing the detailed and dye penetrant inspection procedures described in the support teardown inspection, and replacing excessively worn or cracked parts if necessary;
- Inspecting for a blocked lubrication path, and clearing it if necessary; and
- Doing a detailed inspection for wear of the interfacing bearings and bushings and replacing them if necessary.

The service bulletin also refers to Boeing Alert Service Bulletin 777-27A0071, Revision 1, dated October 16,

2006 (described below), which eliminates the need for the repetitive measurements and lubrications of certain trailing edge flap supports after accomplishing the specified actions.

We have also reviewed Boeing Alert Service Bulletin 777-27A0071, Revision 1, dated October 16, 2006. The service bulletin describes procedures for modifying certain components of the trailing edge flap supports. The modification includes replacing the pins, ball sets, and bushings on the joints of the trailing edge flap at support numbers 1 through 8 inclusive, with new, improved components; doing a detailed inspection of the components that interface with the flap support pins for discrepancies (corrosion, damage, or excessive wear); doing a general visual inspection of those components for any blocked lubrication paths; and doing corrective actions if necessary. If any discrepancies are found, the corrective actions include replacing the components and clearing any blocked lubrication paths. The service bulletin also describes procedures for revising the maintenance practices of the Boeing 777 Maintenance Planning Data (MPD) Document to update certain lubrication and inspection intervals. Accomplishing these actions extends the intervals for the repetitive measurement of certain trailing edge flap supports specified in Boeing Service Bulletin 777-27A0066, Revision 1.

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 airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

Differences Between the Proposed AD and the Service Bulletins

Note (b) in Table 1 of Paragraph 1.E. "Compliance" of Boeing Service Bulletin 777-27A0066, Revision 1, recommends repeating the freeplay measurement every 6,000 flight cycles if the joints can be proven to have been lubricated with only BMS 3-33 grease every 1,000 flight cycles or every 240

days, whichever occurs first, after the airplane delivery or the last support teardown inspection. However, this proposed AD would require repeating the freeplay measurement under those conditions at intervals not to exceed 6,000 flight cycles, as specified in the service bulletin, but would add a compliance time of 120 months (whichever occurs first).

Note (c) in Table 1 of Paragraph 1.E. "Compliance" of Boeing Service Bulletin 777-27A0066, Revision 1, specifies that freeplay levels greater than 0.020 inch are not recommended later than 30 months after release of the service bulletin. This proposed AD would require the initial measurement of the freeplay, for airplanes that have accumulated 6,000 total flight cycles or more on or before the effective date of this AD or on which a teardown inspection has not been accomplished before the effective date of this AD; at the earlier of the following compliance times.

- Prior to the accumulation of 10,000 total flight cycles, or within 9 months after the effective date of this AD, whichever occurs later.
- Within 30 months after the effective date of this AD.

Boeing Alert Service Bulletin 777-27A0071 specifies revising the maintenance practices for performing periodic inspections and maintenance of the support joints of the trailing edge flap for the maintenance inspection program of the Boeing 777 MPD Document by doing the actions specified in Part 7 of the Accomplishment Instructions of the service bulletin. However, this proposed AD would mandate only the maintenance actions specified in paragraphs 1 and 3 of Part 7 of the service bulletin. Parts 3, 4, and 6 of the service bulletin include optional actions for certain structure in order to increase the interval of the repetitive freeplay measurement.

These differences have been coordinated with Boeing.

Costs of Compliance

There are about 546 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Freeplay measurement, per cycle	28	\$80	\$0	\$2,240, per cycle	145	\$324,800, per cycle.
Lubrication, per cycle	2	80	0	\$160, per cycle	145	\$23,200 per cycle.
Modification for flap support No. 3 and 6	135	80	58,521	\$69,321	145	\$10,051,545.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA-2007-27619; Directorate Identifier 2005-NM-164-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by May 4, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Boeing Model 777-200, -200LR, -300, and -300ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 777-27A0066, Revision 1, dated May 18, 2006.

Unsafe Condition

- (d) This AD results from reports of excessive wear of the pins, bushings, and bearings, and corrosion at the joints of the outboard trailing edge flap supports. We are issuing this AD to prevent wear and corrosion at the flap support joints, which could result in loss of the trailing edge flap and possible loss of control of the airplane.

Compliance

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

Initial Freeplay Measurement

- (f) At the applicable time in paragraph (f)(1) or (f)(2) of this AD: Measure the freeplay of support joints A, B, C, and D of the trailing edge flap supports, numbers 1 through 3 inclusive and 6 through 8 inclusive, and of joint B of the trailing edge

flap supports, numbers 4 and 5; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-27A0066, Revision 1, dated May 18, 2006.

- (1) For airplanes that have accumulated 6,000 total flight cycles or more on or before the effective date of this AD or on which a teardown inspection has not been accomplished before the effective date of this AD: At the earlier of the times in paragraph (f)(1)(i) or (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 10,000 total flight cycles, or within 9 months after the effective date of this AD, whichever occurs later.

- (ii) Within 30 months after the effective date of this AD.

- (2) For airplanes that have accumulated fewer than 6,000 total flight cycles on or before the effective date of this AD: At the later of the times in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total flight cycles, or within 120 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

- (ii) Within 30 months after the effective date of this AD.

Repetitive Intervals if the Freeplay Measurement Is Less Than 0.020 Inch

- (g) If, during any freeplay measurement required by paragraph (f), (g), or (h) of this AD, the freeplay measurement is less than 0.020 inch: Repeat the freeplay measurement required by paragraph (f) of this AD at the applicable interval in paragraph (g)(1) or (g)(2) of this AD. Accomplishing the actions specified in paragraph (j) or (k) of this AD, as applicable, extends the intervals for the repetitive measurements for the associated flap support only.

- (1) At intervals not to exceed 1,000 flight cycles.

- (2) At intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first, if a review of airplane maintenance records can conclusively determine that the joints have been lubricated with only BMS 3-33 grease at the earlier of intervals not to exceed 1,000 flight cycles or 240 days since the last support teardown inspection, or since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Related Investigative and Corrective Actions, and Repetitive Intervals if the Freeplay Measurement Is 0.020 Inch or Greater

(h) If, during any freeplay measurement required by paragraph (f), (g), or (h) of this AD, the freeplay measurement is 0.020 inch or greater: Do the applicable action in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Accomplishing the actions specified in paragraph (j) or (k) of this AD, as applicable, extends the intervals for repetitive measurements for the associated flap support only. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-27A0066, Revision 1, dated May 18, 2006, and note (e) of Table 1 in paragraph 1.E., "Compliance."

(1) For airplanes that have accumulated 6,000 total flight cycles or more as of the effective date of this AD, and for which the freeplay measurement is 0.020 inch to 0.100 inch inclusive: Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 500 flight cycles until the support teardown inspection in paragraph (h)(1)(i) or (h)(1)(ii) of this AD is done.

(i) Within 12 months after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the "Support Teardown Inspection," and repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(ii) Before further flight after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the "Temporary Return to Service Inspection" and, within 24 months after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the "Support Teardown Inspection." Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles, or 120 months, whichever occurs first.

(2) For airplanes that have accumulated 6,000 total flight cycles or more as of the effective date of this AD, and the freeplay measurement is greater than 0.100 inch: Do the action in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Before further flight after the first freeplay measurement of greater than 0.100 inch, do the applicable related investigative and corrective actions specified in the service bulletin as the "Support Teardown Inspection." Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(ii) Before further flight after the first freeplay measurement of greater than 0.100 inch, do applicable related investigative and corrective actions in the "Temporary Return to Service Inspection," and within 6 months after the first freeplay measurement of greater

than 0.100 inch, do the applicable related investigative and corrective actions in the "Support Teardown Inspection." Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(3) For airplanes that have accumulated fewer than 6,000 total flight cycles as of the effective date of this AD: Before further flight after the first freeplay measurement of 0.020 inch or greater, do the related investigative and corrective actions specified in the service bulletin as the "Support Teardown Inspection." Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

Repetitive Lubrications

(i) Within 12 months after the effective date of this AD: Lubricate the joints of the trailing edge flap supports using BMS 3-33 grease. Repeat the lubrication thereafter at intervals not to exceed 1,000 flight cycles, or 240 days, whichever occurs first. Do all actions in accordance with the Accomplishment Instructions, and note (d) of Table 1 in paragraph 1.E., "Compliance" of Boeing Service Bulletin 777-27A0066, Revision 1, dated May 18, 2006.

Modification/Repetitive Freeplay Measurements

(j) Before the accumulation of 23,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Replace the pins, ball sets, and bushings on the joints of the trailing edge flap at support numbers 3 and 6 with new, improved components by doing all the applicable actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-27A0071, Revision 1, dated October 16, 2006. Before further flight after doing the actions, do a detailed inspection of the components that interface with the flap support pins for discrepancies (corrosion, damage, or excessive wear), and a general visual inspection for any blocked lubrication paths; and do all applicable corrective actions. Repeat the freeplay measurements for the associated flap support at intervals not to exceed 16,000 flight cycles in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-27A0071, Revision 1, dated October 16, 2006. Accomplishing the actions in this paragraph constitutes terminating action for the actions specified in paragraphs (f), (g), (h), and (i) of this AD, for the associated trailing edge flap support only.

Optional Modification

(k) Accomplishing the actions specified in paragraph (j) of this AD at support numbers 1, 2, 4, 5, 7, and 8, extends the intervals for the repetitive measurements required by paragraph (g) of this AD for the associated flap support only.

Revise Maintenance Planning Data (MPD) Document

(l) Within 12 months after the effective date of this AD: Revise the maintenance

practices for performing periodic inspections and maintenance of the support joints of the trailing edge flap for the maintenance inspection program of the Boeing 777 MPD Document by doing the actions specified in paragraphs 1 and 3 only of Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777-27A0071, Revision 1, dated October 16, 2006.

Actions Accomplished Previously

(m) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777-27A0066, dated July 28, 2005, are acceptable for compliance with paragraphs (f), (g), (h), and (i) of this AD, as applicable. Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777-27A0071, dated March 30, 2006, are acceptable for compliance with paragraphs (j), (k), and (l) of this AD, as applicable.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on March 9, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E7-5013 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 255

Guides Concerning the Use of Endorsements and Testimonials in Advertising

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of comments.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is extending until June 18, 2007 the deadline for filing comments on the Guides and on two consumer surveys commissioned by the Commission

concerning the interpretation of consumer endorsements.

DATES: Comments on the proposed rule published January 18, 2007, must be received by June 18, 2007.

FOR FURTHER INFORMATION CONTACT:

Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326-3116.

SUPPLEMENTARY INFORMATION: On January 16, 2007, the Commission announced that it was seeking public comment in conjunction with its regulatory review of the Guides Concerning Use of Endorsements and Testimonials in Advertising ("the Guides"). See 72 FR 2214 (Jan. 18, 2007). The Commission's **Federal Register** notice: (1) Solicited comment on the Guides and on two consumer surveys commissioned by the Commission concerning the interpretation of consumer endorsements; and (2) requested empirical evidence on several issues relating to the Guides. The deadline established for the submission of comments was March 19, 2007.

The Electronic Retailing Association ("ERA") has requested a 90-day extension of the March 19 deadline. ERA states that it needs the additional time to review the two reports put on the public record in January and compile information from its members to submit for the record in this proceeding.

In light of the number and importance of the issues on which it has requested comment, the Commission has decided to extend the filing deadline until June 18, 2007.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7-5039 Filed 3-19-07; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Supplemental notice of proposed rulemaking: Termination of rulemaking.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has completed its review, pursuant to a

supplemental notice of proposed rulemaking ("SNPR"), of the testing procedures for multichannel "home theater" amplifiers under the Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products ("Rule" or "Amplifier Rule"). The Commission has determined not to amend the Rule at this time and to place the Rule on its regular review schedule for 2008 as part of the Commission's ongoing systematic review of Federal Trade Commission rules and guides. Until the Commission provides further guidance regarding which channels need be associated for purposes of rating multichannel amplifiers, the Commission will not enforce the association requirement of Section 432.2 of the Rule as it relates to the continuous power output per channel ratings for multichannel amplifiers. The Commission, however, will continue to enforce the other provisions of the Rule with regard to multichannel amplifiers.

DATES: This rulemaking is terminated as of March 20, 2007.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The notice also is available on the Internet at the Commission's Web site, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326-2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. E-mail: jchung@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Amplifier Rule, promulgated in 1974, assists consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics. The Commission issued the Rule in response to sellers making misleading or confusing power distortion and other performance claims based on differing or unrecognized test procedures. The Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier performance attributes.

The present regulatory review began on April 7, 1997 (62 FR 16500). On July 9, 1998, the Commission decided to retain the Rule, concluding that it continued to be valuable both to consumers and businesses (63 FR 37234). At the same time, the

Commission issued an advance notice of proposed rulemaking seeking comment on whether the Commission should initiate a rulemaking proceeding to address several technological and marketplace changes raised by industry (63 FR 37238).

On December 22, 2000, the Commission amended the Rule to clarify the testing procedure for self-powered speakers and eliminate or modify certain testing and disclosure requirements that had outlived their usefulness. At the same time, the Commission issued a SNPR soliciting comment on Commission proposals to amend the definition of "associated channels" in connection with the power rating testing of multichannel "home theater" amplifiers. Multichannel amplifiers incorporate five or more discrete or synthesized amplification channels and are designed to decode and/or amplify digitally encoded multichannel movie soundtracks or music program material recorded in various formats, including videocassette tapes or digital video discs (65 FR 80798). Section 432.2(a) of the Rule requires that an amplifier's continuous power output per channel be "[m]easured with all associated channels fully driven to rated per channel power."¹ Thus, manufacturers of multichannel audio/video receivers and amplifiers must decide which of the five or more discrete channels of amplification are considered "associated" and, therefore, subject to simultaneous operation at full rated power. In the SNPR, the Commission solicited public comment on three alternative designations of "associated channels" for such audio amplifiers.

The SNPR elicited one comment, submitted by the Consumer Electronics Association ("CEA"). CEA noted that there was no industry consensus on testing, measuring, and specifying the power output of multichannel amplifier products. Consequently, CEA formed an industry working group to establish a voluntary industry standard.

On January 15, 2002, the Commission deferred action on the proposed rule but kept the rulemaking record open to allow time for a self-regulatory approach to develop a consensus procedure for the testing of multichannel amplifiers (67 FR 1915). Although CEA issued a standard, designated CEA-490-A, the Commission's review has not found widespread adoption of this standard in advertisements or product specifications, and the Commission is

¹ This continuous measurement represents the maximum per-channel power an amplifier can deliver over a five minute period.

faced with the prospect of making regulatory decisions in a dynamic market based on a less than robust, outdated rulemaking record.²

The Commission, therefore, has determined that it would be in the public interest not to amend the Rule at this time. Instead, the Commission will place the Rule on its regulatory review schedule for 2008 as part of the Commission's ongoing systematic review of Federal Trade Commission rules and guides. At that time, the Commission will solicit comments to garner a more robust, contemporary record from which to determine what, if any, amendments are appropriate to address associated channels in a multi-channel system as well as to gauge the economic impact of, and the continuing need for, the Rule as a whole.

Until the Commission provides further guidance regarding which channels need be associated for purposes of rating multichannel amplifiers, the Commission will not enforce the association requirement of Section 432.2 of the Rule as it relates to the continuous power output per channel ratings for multichannel amplifiers. The Commission, however, will continue to enforce the other provisions of the Rule with regard to multichannel amplifiers.

II. Conclusion

For the reasons described above, the Commission has determined not to amend the Rule at this time.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. E7–5038 Filed 3–19–07; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2006–0109]

RIN 0960–AG41

Consultative Examination—Annual Onsite Review of Medical Providers

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the threshold billing amount that triggers annual onsite reviews of medical providers who conduct consultative examinations (CEs) for our disability programs under titles II and XVI of the Social Security Act (the Act). The proposed revision would raise the threshold amount to reflect the increase in billing amounts since we first established the threshold amount in 1991. This proposed revision is intended to restore the level of oversight originally required by our rules.

DATES: To be sure that your comments are considered, we must receive them by May 21, 2007.

ADDRESSES: You may give us your comments by: Internet through the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Charles M. Urban, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9029 or TTY 410–966–5609. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Why are we proposing to change our rules?

Since 1991, we have provided in §§ 404.1519s(d) and 416.919s(d) of our regulations that each State agency that makes disability determinations for us is responsible for comprehensive oversight management of its consultative examination program with special

emphasis on key providers. A consultative examination is a medical examination or test that we purchase at our expense when we need additional information to make a disability determination and we cannot obtain that information from existing medical sources. See §§ 404.1517, 404.1519, 416.917, and 416.919 of our regulations.

In §§ 404.1519s(e) and 416.919s(e) of our regulations, we explain that a “key consultative examination provider” is a provider that meets at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least \$100,000; or

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers in the State by dollar volume, as evidenced by prior year data.

We are proposing to change the threshold billing amount that triggers onsite review of medical providers in §§ 404.1519s(e)(1) and 416.919s(e)(1) in order to ensure that we annually review the largest providers of CEs. We have not changed the current threshold amount of \$100,000 in billings since we first published this provision in 1991. However, costs have risen in the more than 15 years since we first published this rule so that now many CE providers who perform relatively few CEs are subject to mandatory onsite reviews. This is contrary to the intent of the provision, which is to ensure that each State agency do periodic onsite reviews of the largest CE providers in its State. We believe that raising the amount to \$150,000 will continue to satisfy the intent to monitor our largest CE providers. We chose this amount by multiplying the \$100,000 threshold established in 1991 by the increase in the consumer price index for urban wage earners and clerical workers from 1991 (134.3) to November 2006 (196.8) and then, for administrative convenience, rounding the resulting amount (\$146,537.60) to \$150,000.

What rules are we proposing to revise?

We propose to revise §§ 404.1519s(e)(1) and 416.919s(e)(1). The revisions would specify a new threshold billing amount that will trigger the need for annual onsite review of CE providers.

² The dynamic nature of this marketplace is evidenced by the rapid disappearance of two multichannel formats cited in the SNPR, videotapes and laser discs, as well as by the increasing popularity of self-powered speakers containing amplifiers that do not share a common power supply.

What programs would these proposed regulations affect?

These proposed rules would affect disability determinations and decisions that we make under titles II and XVI of the Act.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

What is our authority to require States to conduct onsite reviews of CE providers?

Section 221(a)(2) of the Act provides that the "Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed" by State agencies that make disability determinations for us. In addition, with regard to the CE process, section 221(j)(3) of the Act provides that the "Commissioner of Social Security shall prescribe regulations which set forth, in detail * * * procedures by which the Commissioner of Social Security will monitor both the [CE] referral processes used and the product of professionals to whom cases are referred." These authorities are made applicable to title XVI as well by reference in section 1633(a) of the Act.

When will we start to use these rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each

agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only States. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Federalism and the Unfunded Mandates Reform Act

We have reviewed the proposed rules under the threshold criteria of Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995. These proposed rules would change the threshold billing amount above which the State agencies that make determinations of disability for the Commissioner under titles II and XVI of the Act perform an annual onsite review of CE providers. Although the State agencies perform these reviews, they do so as part of a voluntary agreement with us, and the Social Security Administration fully funds the necessary costs of providing this

service. We have determined that these proposed rules would not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 8, 2007.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)—(h), 216(i), 221(a), (i) and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)—(h), 416(i), 421(a), (i) and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Revise paragraph (e)(1) of § 404.1519s to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least \$150,000; or

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

4. Revise paragraph (e)(1) of § 416.919s to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least \$150,000; or

* * * * *

[FR Doc. E7–4958 Filed 3–19–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113365–04]

RIN 1545–BD19

Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed Rulemaking; Revised Initial Regulatory Flexibility Analysis.

SUMMARY: This document contains a revised initial regulatory flexibility analysis relating to proposed regulations under section 468B of the Internal Revenue Code on the taxation and reporting of income earned on escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property, and proposed regulations under section 7872 regarding below-market loans to facilitators of these exchanges. The proposed regulations affect taxpayers that engage in deferred like-kind exchanges and escrow holders, trustees, qualified intermediaries, and others that hold funds during deferred like-kind exchanges.

DATES: Written or electronic comments must be received by May 4, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–113365–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–113365–04), courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS–REG–113365–04).

FOR FURTHER INFORMATION CONTACT: Concerning the revised initial regulatory flexibility analysis and the proposed regulations under section 468B, Jeffrey Rodrick, (202) 622–4930; concerning the proposed regulations under section 7872, David Silber, (202) 622–3930; concerning submission of comments, Kelly Banks, (202) 622–3628 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On February 7, 2006, a partial withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing was published in the **Federal Register** (71 FR 6231). The initial regulatory flexibility analysis included in that notice of proposed rulemaking concluded that the number of transactions involving small businesses that will be affected and the full extent of the economic impact on small businesses could not be precisely determined and requested additional comments. This notice revises the initial regulatory flexibility analysis included in that notice of proposed rulemaking in response to comments provided in writing and at a public hearing. These comments asserted that the analysis did not adequately define the industry, determine the number of small businesses affected, describe the economic impact of the proposed regulations on small businesses, or discuss alternatives to the proposed rules that were considered and the bases for conclusions reached. The IRS and the Department of the Treasury have worked closely with the Small Business Administration's (SBA) Office of Advocacy (Advocacy) to obtain additional information from the affected industry to identify and quantify the small businesses affected and to determine the likely economic impact of the proposed regulations on small businesses. In a letter dated August 3, 2006, the president of the leading industry association for qualified intermediaries (QI), wrote that the association “believes we have or can develop information that would be

helpful in this [impact-study] effort,” and volunteered to provide this information to the IRS. The industry association surveyed its members based on questions developed by the IRS and the Department of the Treasury, and submitted a summary of the survey responses for consideration. The association, which according to its Web site has over 300 member companies (not all of which are QIs), received approximately 130 responses. Seventy-one respondents indicated they engage in the QI business exclusively, which represents 22 percent of the estimated number of 325 full-time QIs in the industry (as discussed in this notice, not all of which are small businesses). The summary of the survey responses submitted did not address a substantial number of the issues important to evaluating the effect of the proposed regulations on small business. The summary of the survey responses is available at <http://www.irs.gov/regs>. This notice seeks additional comments and reiterates questions that will assist in assessing the economic impact of the proposed regulations on small businesses in the QI industry and in considering reasonable alternatives. The survey information provided is discussed in this revised initial regulatory flexibility analysis and will be considered further in the development of final regulations.

Revised Initial Regulatory Flexibility Analysis

Reasons for Action and Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The proposed regulations are issued under the authority of section 7805, section 468B(g) (which provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax and that the Secretary shall prescribe regulations providing for the taxation of such accounts or funds whether as a grantor trust or otherwise), and section 7872.

Section 1.468B–6 of the Income Tax Regulations was included in proposed regulations issued in 1999 under section 468B(g) (the 1999 proposed regulations), and provided rules for the current taxation of income of a qualified escrow account or qualified trust used in a section 1031 deferred exchange of like-kind property. The 1999 proposed regulations included a facts and circumstances test to determine whether the taxpayer (the transferor or exchanger of the property), the QI, or a transferee is the owner of the assets in a qualified

escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the account or trust. The 1999 proposed regulations further provided that, if a QI or transferee is the owner of the assets transferred, the transaction may be characterized as a below-market loan from the taxpayer to the owner to which section 7872 may apply. Under this proposed rule, if a QI or transferee is the owner of the assets, the transaction is a loan to which section 7872 generally applies if the loan is below-market.

Comments received on the 1999 proposed regulations reflected differing interpretations of the 1999 proposed regulations and disagreement on the proper rules for taxing these transactions. Some commentators interpreted the 1999 proposed regulations as allowing a QI to "own" the funds held in connection with the deferred like-kind exchange and never characterize the arrangement between the taxpayer and the QI as a loan.

Rules based on a facts-and-circumstances test are inherently difficult for taxpayers to apply and for the IRS to administer, and are subject to inconsistent application. Therefore, the 2006 proposed regulations eliminate the facts and circumstances test and propose specific rules that determine whether the income of an escrow account, trust, or fund used in a deferred like-kind exchange is taxed to the taxpayer or to an exchange facilitator, which is a QI, transferee, or other party that holds the exchange funds. These rules are intended to provide greater certainty for taxpayers, enhance administrability, and ensure consistent treatment of taxpayers.

Description and Estimate of the Number of Small Businesses to Which the Proposed Regulations Will Apply

The 2006 proposed regulations affect exchange facilitators that hold exchange funds for taxpayers engaging in deferred exchanges of like-kind property. Exchange facilitators may be large or small businesses (including individuals operating as sole proprietors). For this purpose, the SBA size standards set forth at 13 CFR 121.201 for North American Industry Classification System (NAICS) code 531390 (other activities related to real estate), define a business with annual gross receipts of up to \$2 million as a small business. There is no NAICS code associated specifically with exchange facilitators or QIs. Although like-kind exchanges are not limited to real estate transactions, 70 percent of the respondents to the industry survey indicated that they use

NAICS code 531390. Therefore, notwithstanding comments criticizing the use of NAICS code 531390 for purposes of determining the applicable size standard with respect to the 2006 proposed regulations, after consultation with Advocacy, the IRS and the Department of the Treasury have determined that NAICS code 531390 is appropriate for this industry. Accordingly, the applicable size standard for determining what constitutes a small business with respect to the 2006 proposed regulations is \$2 million in annual gross receipts, the SBA's definition of a small business for NAICS code 531390.

The IRS and the Department of the Treasury estimate that there are approximately 325 businesses (primarily QIs) that are full-time exchange facilitators. This estimate is based on information originally provided by the industry association in connection with the development of the 2006 proposed regulations. The recent industry survey did not provide any additional information regarding this number. Seventy-one of 121 (58.7 percent) respondents to the survey indicated that they are engaged exclusively in the QI business, although it is unclear how many of these are small businesses. Although 84 percent of respondents reported having annual gross revenues (fees plus net retained interest, if any) from the QI business of \$1.5 million or less (the previous size standard for NAICS code 531390) for the most recent year, it is unclear how many of this number are exclusively in the QI business. The survey also indicated that almost 90 percent of respondents have 10 or fewer employees (including owners active in the business), and nearly 70 percent have fewer than 5 employees. An estimate of the percentage of the QI industry that consists of small businesses is difficult to make based on the available information. The summary of the survey responses did not correlate information on annual gross revenues reported with information on the number of respondents engaged exclusively in the QI business. Nonetheless, it appears that a significant portion of the QI industry consists of small businesses under the SBA's size standard. Accordingly, the IRS and the Department of the Treasury continue to seek information regarding the number of small businesses engaged in the QI industry. Specific comments are requested from QIs engaged exclusively in that business indicating whether their annual gross receipts are \$2 million or less, or more than \$2 million.

Searches for information through the Department of Commerce and the SBA disclosed no data collected or maintained on QIs or exchange facilitators as an industry.

Description of Compliance Requirements and Estimate of the Classes of Small Businesses That Will Be Affected by the Compliance Requirements

Under the 2006 proposed regulations, exchange funds are treated as loaned by the taxpayer to the exchange facilitator unless all of the income earned is paid to the taxpayer. If the exchange funds are treated as loaned to the exchange facilitator, interest generally is imputed to the taxpayer under section 7872 unless the exchange facilitator pays sufficient interest. If a loan between the taxpayer and the exchange facilitator does not provide for sufficient interest and the loan is not otherwise exempt from section 7872, interest income is imputed to the taxpayer at the applicable Federal rate (AFR) (or the difference between the rate paid and the AFR). Therefore, exchange facilitators must keep records of the amount of income paid to the taxpayer and may be required to report the income on Form 1099.

Under section 7872 and the 2006 proposed regulations, if the exchange funds are treated as loaned from the taxpayer to the QI and the loan is a below-market loan, income is deemed transferred to the exchange facilitator as compensation and retransferred to the taxpayer as interest. The taxpayer's imputed interest income is not offset by a deduction for the taxpayer's imputed payment to the exchange facilitator because compensation paid to the exchange facilitator is a cost of acquiring the replacement property that must be capitalized and added to the property's basis. The exchange facilitator has income from the imputed compensation and an offsetting deduction for the interest deemed paid to the taxpayer.

Seventy percent of respondents to the industry survey reported that they engage in at least 100 exchange transactions a year. According to information provided by the industry association from an earlier survey of its members, over 92 percent of the small business respondents currently pay to the taxpayer at least 20 percent of the income earned on exchange funds, including accounts that commingle the exchange funds of multiple taxpayers. The IRS and the Department of the Treasury request additional comments providing more specific information to clarify these results. The information

available suggests that an overwhelming majority of small businesses affected by the 2006 proposed regulations currently maintain records of the amount of income paid to the taxpayer and report the payments on Form 1099. Therefore, the IRS and the Department of the Treasury estimate that for most small businesses the 2006 proposed regulations should not increase significantly the compliance burden associated with keeping records and reporting income paid to the taxpayer.

Nonetheless, commentators have stated generally that complying with the 2006 proposed regulations would result in additional recordkeeping and reporting requirements. Fifty-eight percent of respondents to the recent industry survey indicated that the 2006 proposed regulations significantly will increase recordkeeping burdens and accounting costs, but the survey did not provide quantified data on the amount of any additional time or cost expected to result from the 2006 proposed regulations. Comments are requested estimating the annual number of transactions that will result in an increased recordkeeping and reporting burden, per transaction, under the 2006 proposed regulations, as well as the amount of time and additional cost that each additional recordkeeping and reporting burden would impose.

Commentators also have stated that accounting for individual taxpayers' earnings in commingled accounts would necessitate additional labor and system design costs that would fall disproportionately on small business QIs. The IRS and the Department of the Treasury have not received specific comments quantifying the effect of these costs on small businesses. Specific comments are requested estimating the amount of these costs.

Commentators have asserted that complying with the loan characterization rules of the 2006 proposed regulations will result in a substantial revenue loss and cause a large number of small businesses to fail or to reduce their workforces. They claimed that small business QIs would be disproportionately affected because the small business QIs predominantly apply a business model that would place them at a disadvantage under the 2006 proposed regulations.

In general, commentators have described two business models employed to facilitate deferred like-kind exchanges:

1. The exchange facilitator segregates the exchange funds in separate accounts, charges a separate fee for its services, and pays all earnings to the taxpayer, or

2. The exchange facilitator commingles the exchange funds, pays a portion of the earnings to the taxpayer and retains a portion of the earnings, or may retain all of the earnings. Some of these exchange facilitators also may charge a separate fee for their services. If a fee is charged, it is likely to be lower than the fee that would be charged if the exchange facilitator retains no earnings.

Some small businesses offer customers both forms of structuring the transaction. Comments from and discussions with industry members, however, have disclosed that the first model is employed most commonly by large businesses often "affiliated" (in the sense of having some level of corporate relationship and not necessarily within the meaning of section 1504) with banks. The second model also may be employed by large businesses but is used widely by independent, small business QIs. In the recent industry survey, 95.8 percent of respondents indicated that they are not affiliated with a bank, savings and loan company, brokerage firm, or similar financial institution.

The earlier industry survey indicated that 96 percent of the small business respondents retain at least a portion of the interest earned on the exchange funds. Commentators have stated that if these small businesses are required to impute interest on the exchange funds, taxpayers will demand that this interest be paid to them. According to commentators, to compensate for this loss of revenue these businesses will be required to change their business practices to pay all income to the taxpayer and to charge higher fees. Commentators further stated that absent charging higher fees, paying all interest to the taxpayer is expected to result in a reduction of revenues ranging from 10 to 80 percent. Specific comments are requested estimating the effect on revenues or profits of a change in business practices to pay all income to the taxpayer.

Some commentators have asserted that, in contrast, bank-affiliated QIs generally pay all the income to the taxpayer under their current business practices and therefore will not be required to change their business practices or charge higher fees as a result of the 2006 proposed regulations. These commentators claim that bank-affiliated QIs are able to pay all the income to the taxpayer and charge fees commensurate with the fees charged by independent QIs because bank-affiliated QIs are compensated through the receipt of fees paid by institutions in which the funds are deposited. Moreover, these commentators maintain that bank-

affiliated QIs indirectly benefit when funds are deposited with related-party depositary institutions that invest deposited exchange funds and earn income that is not required to be paid to the taxpayer under the 2006 proposed regulations. If, as these commentators claim, bank-affiliated QIs would not be required to change their business model as a result of the 2006 proposed regulations, the commentators predict that the 2006 proposed regulations will cause many small business QIs to be disadvantaged in competing with bank-affiliated QIs. Specific comments are requested estimating the number of QIs that would change their business model as a result of the 2006 proposed regulations.

Significant Alternatives Considered

Various alternatives to the rules contained in the 2006 proposed regulations were considered. For example, retaining the facts and circumstances test of the 1999 proposed regulations was considered but rejected because the test is difficult for taxpayers to apply, lacks administrability, is subject to misinterpretation, and may result in inconsistent tax treatment of similarly-situated taxpayers.

Rules that would allow the exchange facilitator and taxpayer to determine which party will be taxed on the earnings were considered but regarded as lacking certainty and administrability and violating established tax principles. Rules that would tax the party that receives the income (and thus treat only income paid and not income retained by the QI as the taxpayer's taxable income) were considered but not adopted. Under some circumstances, a QI's retention of income earned by an exchange fund is properly characterized as a payment of compensation by the taxpayer for the QI's services. Therefore, under the appropriate circumstances, a rule that taxed only the QI on retained earnings would violate the doctrine of *Old Colony Trust v. Commissioner*, 279 U.S. 716 (1929), that a payment that satisfies the obligation of a taxpayer to a third party is includible in the income of the taxpayer.

A rule that would treat all the earnings of the exchange funds in all circumstances as the taxpayer's income was considered but lacked flexibility and did not conform in all cases to the substance of the transaction. Other alternatives were considered and not adopted because they were considered inconsistent with section 7872. In the legislative history to section 7872, Congress stated that when a service provider is permitted to retain customer funds without paying interest to the

customer, and the benefit the service provider derives from the funds is in lieu of a fee for services, the transaction is a compensation-related loan under section 7872. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1019 (1984) (1984–3 (Vol. 2) CB 272). Moreover, it was determined that exchange funds are not received in consideration for the sale or exchange of property (within the meaning of section 1274(c)(1)) or received as a deferred payment on account of a sale or exchange of property (within the meaning of section 483).

The industry survey indicates that 30 percent of respondents closed at least half of their deferred like-kind exchange transactions within 60 days or less. Only eight percent completed at least half of their transactions in more than 150 days. In addition, 42 percent of survey respondents reported that at least half of their transactions typically involve exchange funds of \$250,000 or less, while about 8 percent of respondents reported that most of their transactions involve exchange funds in excess of \$1 million. In light of this information, comments specifically are requested regarding the average duration of exchange transactions, the average dollar amount of exchange funds, and the appropriateness and nature of a de minimis rule that would except certain exchange transactions from the application of section 7872.

If exchange funds are characterized as loaned by the taxpayer to the exchange facilitator, interest may be imputed if the exchange facilitator does not pay sufficient interest to the taxpayer. To reduce the administrative burden of determining imputed interest, the 2006 proposed regulations provide a special AFR, equal to the investment rate on a 182-day Treasury bill, in lieu of the short-term AFR (which applies to loans of 3 years or less), to qualify as sufficient interest for purposes of determining whether interest must be imputed. This special AFR was intended to be a more accurate measure of a market rate of interest for these loans than the short-term AFR, and was expected to result in characterization of fewer transactions as below-market loans than if the short-term AFR were used. Commentators have stated that the special AFR is significantly higher than the market rate paid on funds held for the periods of time that exchange funds typically are held by QIs. They state, for example, that few if any QIs that pay less than all the income to the taxpayer pay an amount that is equal to or greater than the special AFR provided in the 2006 proposed regulations. Specific comments are requested identifying the

rate of return typically earned by small business QIs on exchange funds, the interest rate QIs typically pay to taxpayers, and an appropriate rate for testing exchange facilitator loans for sufficient interest under section 7872.

Duplicative, Overlapping, and Conflicting Rules

The IRS and the Department of the Treasury are not aware of any duplicative, overlapping, or conflicting Federal rules.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–4968 Filed 3–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146247–06]

RIN 1545–BG15

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance regarding the satisfaction of the continuity of interest requirement for corporate reorganizations. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by June 18, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–146247–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146247–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS and REG–146247–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa S. Dobson at (202) 622–7790;

concerning submissions of comments and requests for a public hearing, Kelly Banks at (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 368, which provides for general nonrecognition treatment for reorganizations. In addition to complying with the statutory and certain other requirements, to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Lisa S. Dobson of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.368–1 is amended by:

1. Revising paragraph (e)(2).
2. Revising and redesignating the text of paragraph (e)(8) as paragraph (e)(8)(i).
3. Adding paragraph (e)(8)(ii).

The revisions and addition read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

[The text of the proposed amendment to § 1.368–1(e)(2) and (e)(8) is the same as the text of § 1.368–1T(e)(2) and (e)(8) published elsewhere in this issue of the *Federal Register*.]

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–5045 Filed 3–19–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Docket No. EPA–R02–OAR–2006–0963; FRL–8289–4]

Clean Air Act Title V Operating Permit Program Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New Jersey title V Operating Permit Program submitted by the New Jersey Department of Environmental Protection (NJDEP) on October 4, 2006. The New Jersey Operating Permit Program is

implemented through its Operating Permits Rule, codified at Subchapter 22 of Chapter 27 of Title 7 of the New Jersey Administrative Code. The October 4, 2006 revision changes the title V fee program that funds the New Jersey Operating Permit Program, and various sections of the Operating Permits Rule relating to definitions, general provisions, general application procedures, operating permit application contents and completeness review. These changes resulted in both substantial and nonsubstantial revisions to New Jersey's Operating Permit Program. EPA is proposing to approve these revisions. The intended affect of this action is to improve the State's Operating Permit Program.

DATES: Comments must be received on or before April 19, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2006–0963, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* Werner.Raymond@epa.gov
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. 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, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2006–0963. 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>.

FOR FURTHER INFORMATION CONTACT:

Suiling Chan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4019.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. Background

The Clean Air Act (the Act) Amendments of 1990 required all states to develop Operating Permit Programs pursuant to title V of the Act, 42 U.S.C. 7661–7661f, and the regulations promulgated under title V, which are found at 40 CFR part 70. EPA granted interim approval (effective June 17, 1996) of the Operating Permit Program submitted by New Jersey in response to this directive. 61 FR 24715 (May 16, 1996); 40 CFR part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to New Jersey's title V Operating Permit Program. 66 FR 63168 (December 5, 2001).

The current revision to the Operating Permits Rule adjusts the title V fee schedules to conform with the Omnibus Legislation adopted by the New Jersey state legislature in 2002, and ensures that requisite funding needs of the New Jersey Operating Permit Program are met. The revised Operating Permits Rule also includes changes that improve New Jersey's Operating Permit Program. New Jersey submitted its program revision request to the EPA on October 4, 2006. The revision request describes the specific changes made to New Jersey's Operating Permits Rule.

II. What Is Being Addressed in This Action?

In today's action, EPA is proposing to approve revisions to N.J.A.C. 7:27–22, as identified below, which NJDEP adopted

on June 9, 2006, and submitted to EPA for approval on October 4, 2006.

A. Definitions

NJDEP revised N.J.A.C. 7:27–22.1 to delete definitions that have become unnecessary because of the changes made to the Operating Permits Rule. The terms “Category I” and “Category II” are deleted because they are no longer used by NJDEP in determining title V fees for significant permit modifications under the new fee schedules. Significant modifications used to be classified as “Category I” (for which lesser fees were charged), or “Category II” (for which higher fees were charged). The differences in fees were based on the assumption that Category I source types are either not required to meet, or have already met, “state of the art” emission control requirements thereby obviating the need for review in this regard. However, the revised rule eliminates this presumption. All applications for significant permit modifications will be screened first to determine what level of review is needed, which in turn determines the amount of fees required pursuant to the revised fee schedules found at N.J.A.C. 7:27–22.31(r) and (s).

A definition for “probe” has been added to the definitions section to aid in assessing the appropriate fees for stack test protocol reviews. The amount of fees charged is based on the number of probes used in the stack test.

Definitions for “registration,” “registration form,” and “registrant,” are also added to the definitions section because these terms are used in the new application procedures established under N.J.A.C. 7:27–22.14. Facilities may apply for a general operating permit by submitting the appropriate registration form.

DEP also added to the definitions section the terms “on-specification used oil,” “space heater,” and “used oil” as they were defined in N.J.A.C. 7:27–20.1 (Used Oil Combustion Rule). These terms were not previously defined in N.J.A.C. 7:27–22 and are now added to maintain consistency between N.J.A.C. 7:27–20 and N.J.A.C. 7:27–22.

B. General Provisions

DEP amended N.J.A.C. 7:27–22.3(rr) to clarify the application procedures pertaining to environmental improvement pilot tests. Previously, the rule stated that environmental improvement pilot test approvals may be renewed by application but did not provide more details on the renewal process. The revised rule clarifies that a new application for preconstruction approval must be submitted if an

environmental improvement pilot test needs to be extended for up to an additional 90 days after the expiration of the initially approved 90-day period.

C. General Application Procedures

NJDEP revised N.J.A.C. 7:27–22.4 to establish milestones for phasing out paper application submissions, and phasing in electronic submission of all applications, except for renewals. Electronic submission includes a non-Internet-based electronic system known as RADIUS, or an internet-based system known as e-NJEMS. The revisions in this section of the rule provide incentives, such as lower fees, to encourage electronic filing.

D. Operating Permit Application Contents

NJDEP amended N.J.A.C. 7:27–22.6(a) to eliminate the requirement that application fees be submitted with an application in order for it to be deemed administratively complete. Fees are no longer required to accompany an application. Instead, NJDEP will determine the appropriate fees upon receipt of an application in accordance with the new fee schedules found at N.J.A.C. 7:27–22.31(r) and (s). The fee information is forwarded to the Department of Treasury for billing and collection.

E. Completeness Review

NJDEP amended N.J.A.C. 7:27–22.10(f) by replacing the word “the” before “fee requirement” with the word “any.” Under the revised rule, certain applications require no fees. The word “any” is intended to indicate that there may or may not be a fee required for an application.

F. Title V Fees

NJDEP revised N.J.A.C. 7:27–22.31(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (p), (r), (s), (t) and (u) to establish or revise the Base and Supplementary Fee Schedules for various title V permitting activities in order to conform with the Omnibus Fee Legislation of 2002, and to assure adequate funding for New Jersey’s title V Operating Permit Program. NJDEP deleted all provisions that applied to past fiscal years and added new provisions in accordance with the new fee schedules. A summary of the changes made to N.J.A.C. 7:27–22.31 follows.

Previously, NJDEP charged fees for processing minor and significant permit modifications based on the number of significant source operations being modified for fiscal years prior to 1998. The revised rule requires no fee for minor modifications but increases fees

for significant modifications and applications for environmental improvement pilot tests. Also, new fees are added for operating permit renewal applications and registration under a general operating permit for used-oil space heaters.

NJDEP also revised the rule to clarify that the emissions-based fees must be submitted by subject facilities every year. The annual emissions-based fee rate was increased from \$25 to \$60 per ton of regulated pollutant in 1989 dollars, adjusted by the Consumer Price Index (CPI) as required by the 2002 Omnibus Legislation. Provisions have been included in the revised rule to keep the existing annual emission fee rate unchanged should the CPI drop to a negative value in any given year. The minimum annual emissions-based fees have been increased from \$1,000 to \$3,000 per facility. The annual emissions fee exemption for carbon monoxide (CO) was deleted in the revised rule because it was valid from 1998 through 2002 only. CO emissions are no longer exempted from fee calculations from FY 2003 forward. However, the revised rule does exempt carbon dioxide emissions from fees as an incentive to encourage dry cleaners to replace dry cleaning equipment that uses perchloroethylene, a known carcinogen, with equipment that uses the non-harmful liquid carbon dioxide as its sole dry cleaning agent.

The fee collection process has been changed to implement New Jersey’s “uniform process.” Previously, facilities were required to submit all required fees with or before the applications for initial permits, and with applications for modifications. The revised rule no longer requires the requisite fees to be determined by the applicants and submitted with the applications. Under the revised rule, fees are determined by NJDEP’s Bureau of Operating Permits upon receipt of applications for initial permits, significant modifications, or renewals. The New Jersey Treasury Department bills and collects the fees. The bases used in calculating the fees for each application are stipulated in N.J.A.C. 7:27–22.31. To better track who has paid the required fees, the option to pay by money order is eliminated.

G. Appendix

DEP corrected a typographical error found in *Table B* of the Appendix of the New Jersey Operating Permits Rule which incorrectly listed “2-Methoxyethanol” with CAS number 108864. The correct CAS number for “2-Methoxyethanol” is 109864.

III. What Is Our Proposed Action?

EPA is proposing to approve revisions to New Jersey's regulations as described above. The State of New Jersey has adopted the above rule revisions in accordance with state rulemaking procedures. EPA is therefore proposing to approve the revisions to New Jersey's Operating Permits Rule, codified at N.J.A.C. 7:27-22, as a revision to New Jersey's Operating Permit Program.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

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

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

Dated: March 6, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7-5026 Filed 3-19-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Hine's Emerald Dragonfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period and notice of availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the availability of the draft economic analysis for the proposed designation of critical habitat for the endangered Hine's emerald dragonfly (*Somatochlora hineana*) under the Endangered Species Act of 1973, as amended (Act). We are also revising our proposed rule, published on July 26, 2006 (71 FR 42442), to include an additional proposed critical habitat unit in Door County, Wisconsin, and amending the Required Determinations for the proposal. The draft economic analysis forecasts that costs associated with conservation activities for the Hine's emerald dragonfly would range from \$16.8 million to \$46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). We are reopening the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, our revision to the proposed rule, the associated draft economic analysis, and the amended Required Determinations. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and fully considered in preparation of the final rule.

DATES: We will accept public comments until April 3, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and information concerning this proposal, identified by "Attn: Hine's Emerald Dragonfly Critical Habitat," by any one of several methods:

(1) Mail or hand-deliver to: John Rogner, Field Supervisor, U.S. Fish and Wildlife Service, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010.

(2) Send by electronic mail (e-mail) to hedch@fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) Fax your comments to: (847) 381-2285.

(4) Submit comments via the Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: John Rogner, Field Supervisor, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, Illinois 60010 (telephone (847) 381-2253, extension 28; facsimile (847) 381-2285).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. Comments particularly are being sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any adverse impacts to the species due to designation;

(2) Specific information on the amount and distribution of Hine's emerald dragonfly habitat, particularly what areas should be included in the designations that were occupied at the time of listing and that contain features that are essential for the conservation of the species and why; and what areas that were not occupied at the time of listing are essential to the conservation of the species and why;

(3) Information that would add further clarity or specificity to the physical and biological features determined to be essential for the conservation of the Hine's emerald dragonfly (*i.e.*, primary constituent elements), particularly whether the primary constituent elements as described fulfill the needs for the various life stages of the Hine's emerald dragonfly (*e.g.*, whether old fields adjacent to and in near proximity to larval areas are essential features);

(4) Whether lands not currently occupied by the species should be included in the designation, and if so, the basis for such an inclusion;

(5) Whether the methodology used to map critical habitat units captures all of the biological and physical features essential to the conservation of the Hine's emerald dragonfly;

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(7) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act;

(8) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(9) We are considering excluding areas under the jurisdiction of the Hiawatha National Forest in Michigan, the Mark Twain National Forest in Missouri, and the Missouri Department of Conservation and units under private ownership in Missouri from the final designation of critical habitat under section 4(b)(2) of the Act on the basis of conservation programs and partnerships. We will also review other relevant information for units being proposed in this rule as we receive it to determine whether other units may be appropriate for exclusion from the final designation under section 4(b)(2) of the Act. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas have features that are essential to the conservation of the species or are otherwise essential to the conservation of the species;

(b) Whether these, or other areas proposed, but not specifically addressed in this proposal, warrant exclusion;

(c) Relevant factors that should be considered by us when evaluating the basis for not designating these areas as critical habitat under section 4(b)(2) of the Act;

(d) Whether management plans in place adequately provide conservation measures and protect the Hine's emerald dragonfly, its habitat, and features essential to its conservation;

(e) Whether designation would assist in the regulation of any threats not addressed by existing management plans; and

(f) Whether designating these lands may result in an increased degree of threat to the species on these lands;

(10) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(11) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(12) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(13) Whether the draft economic analysis appropriately identifies all costs and benefits that could result from the designation; and

(14) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations to be made "solely on the basis of the best scientific and commercial data available." Please submit comments electronically to hedch@fws.gov in ASCII or Microsoft Word file format. Please also include "Attn: Hine's Emerald Dragonfly Critical Habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling the Chicago Illinois Ecological Services Field Office at telephone number (847) 381-2253. Please note that the e-mail address hedch@fws.gov will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/midwest/Endangered/> or from the Chicago Illinois Ecological Services Field Office (see **ADDRESSES**).

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. Previous comments and information submitted during the initial comment period on the July 26, 2006, proposed rule (71 FR 42442) need not be resubmitted. On the basis of information received during the public comment periods, we may, during the development of our final critical habitat determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Background

The Hine's emerald dragonfly has bright emerald-green eyes and a metallic green body with yellow stripes on its sides. Its body is about 2.5 inches (in) (6.4 centimeters (cm)) long; its wingspan reaches about 3.3 in (8.4 cm). It lives in calcareous (high in calcium carbonate), spring-fed marshes and sedge meadows overlaying dolomite bedrock. Threats that resulted in the species' listing on January 26, 1995 (60 FR 5267) include habitat destruction, contamination of wetlands by pesticides or other pollutants, and decreases in the amount or quality of ground water flowing to the dragonfly's habitat.

On July 26, 2006, we published a proposed rule to designate critical habitat for the Hine's emerald dragonfly (71 FR 42442). In total, approximately 27,689 acres (ac) (11,205 hectares (ha)) fall within the boundaries of the proposed critical habitat designation in 49 units located in Cook, DuPage, and Will Counties in Illinois; Alpena, Mackinac, and Presque Isle Counties in Michigan; Dent, Iron, Morgan, Phelps, Reynolds, Ripley, Shannon, Washington, and Wayne Counties in Missouri; and Door and Ozaukee Counties in Wisconsin. We are considering excluding, under section

4(b)(2) of the Act, all 26 units in Missouri and 2 units in Michigan from the final critical habitat designation. In the proposal, we addressed a number of general issues that are relevant to the exclusions we are considering, including conservation partnerships on non-Federal lands, conservation agreements, and National Forest plans.

As a result of corrections described below, the proposed critical habitat now encompasses approximately 27,836 acres (ac) (11,264 hectares (ha)), including those areas we are considering for exclusion from the final designation. Other than the changes described herein, the proposed rule of July 26, 2006, remains intact. We will submit for publication in the **Federal Register** a final critical habitat designation for the Hine's emerald dragonfly on or before May 7, 2007.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Additional Proposed Critical Habitat Unit

As discussed in the July 26, 2006, proposal (71 FR 42442), additional sites in Wisconsin were evaluated to determine if they are essential for the conservation of the Hine's emerald dragonfly. Based on our evaluation of research results from 2006 fieldwork, we have determined that Kellner's Fen in Door County, Wisconsin, is essential to the conservation of Hine's emerald dragonfly. We are, therefore, proposing to include it in the critical habitat designation. Adult Hine's emerald dragonflies have been observed in this area, but breeding has not been confirmed. The additional proposed critical habitat unit, Wisconsin Unit 11, is described below.

Wisconsin Unit 11—Door County, Wisconsin

Wisconsin Unit 11 consists of approximately 147 acres (59 hectares) in Door County, Wisconsin. This unit was not known to be occupied at the time of listing. All primary constituent elements for the Hine's emerald dragonfly are present in this unit. Adults have been observed in this unit over multiple years. Male patrolling behavior has been observed, and crayfish burrows are present. The unit consists of larval and adult habitat, including a floating sedge mat and lowland and upland conifer and deciduous forest. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. Known threats to the primary constituent elements which may require special management or protections include loss of habitat due to residential and/or commercial development, alteration of the hydrology of the wetlands, contamination of surface and ground water, logging, and invasive plants. All land in the unit is privately owned.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis based on the July 26, 2006, proposed rule (71 FR 42442) to designate critical habitat for the Hine's emerald dragonfly; the additional proposed unit in Door County, Wisconsin, is included in that analysis. The draft economic analysis estimates the reasonably foreseeable economic impacts of Hine's emerald dragonfly conservation measures within the proposed critical habitat designation. The analysis measures lost economic efficiency associated with (1) Residential and commercial development, (2) water use, (3) utility and road maintenance, (4) road and railway use, (5) species management, and (6) recreation. The draft economic analysis considers the potential economic effects of all actions relating to the conservation of the Hine's emerald dragonfly, including costs associated with sections 4, 7, and 10 of the Act, and those attributable to designating critical habitat.

The draft economic analysis considers the potential economic effects of all actions relating to the conservation of

the Hine's emerald dragonfly, including costs coextensive with listing. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Hine's emerald dragonfly in proposed critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date the species was listed as endangered and considers those costs that may occur in the 20 years following designation of critical habitat. As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period.

The draft economic analysis forecasts that costs associated with conservation activities for the Hine's emerald dragonfly would range from \$16.8 million to \$46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). Overall, the residential and commercial development industry is calculated to experience the highest estimated costs. According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly development-related losses range from \$13.0 to \$22.6 million (undiscounted) over 20 years, or \$10.1 to \$15.9 million assuming a 3 percent discount rate, and \$8.0 to \$11.2 assuming a 7 percent discount rate.

Required Determinations—Amended

In our July 26, 2006, proposed rule (71 FR 42442), we indicated that we were deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Orders 13132 and Executive Order 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act; Executive Order 13211, Executive Order 12630; and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise legal and policy issues. Based on our draft economic analysis, potential post-designation (2007–2026) costs are estimated to range from \$16.8 to \$46.6 million in undiscounted 2006 dollars. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). Therefore, we do not believe that the proposed designation of critical habitat for the Hine's emerald dragonfly would result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying draft economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal

regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received as part of the final rulemaking. According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail

and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed Hine's emerald dragonfly critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected.

If the proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Hine's emerald dragonfly and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of Hine's emerald dragonfly conservation efforts in six categories: Development activities, water use, utility and infrastructure maintenance, road and railway use, species management and habitat protection activities, and recreation. The following is a summary of information contained in the draft economic analysis:

(a) Development Activities

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly development-related losses ranges from \$13.0 to \$22.6 million (undiscounted) over 20 years, or \$10.1 to \$15.9 million assuming a 3 percent discount rate and \$8.0 to \$11.2 million assuming a 7 percent discount rate. The costs consist of the following: (1) Losses in residential land value in Wisconsin and Michigan due to potential limitations on residential development; (2) impacts to Material Services Corporation (MSC) quarrying operations in Illinois; and (3) dragonfly conservation efforts associated with the construction of the Interstate 355 Extension. Given the small average size and value of private land parcels in Wisconsin and Michigan, the non-institutional landowners (those for which land value losses were computed; institutionally owned properties do not have assessed property values) are most likely individuals, who are not considered small entities by the SBA. MSC has 800 employees in Illinois and Indiana, and was recently purchased by Hanson, PLC, which has more than 27,000 employees worldwide. The SBA Small Business Standard for Crushed and Broken Limestone Mining and Quarrying industry sector is 500 employees. Therefore, MSC is not considered a small entity. The conservation-related costs associated with the construction of the Interstate 355 Extension are borne by the Illinois Tollway Authority. The Illinois Tollway Authority does not meet the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small development businesses.

(b) Water Use

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly water use-related losses range from \$46,000 to \$7.0 million (undiscounted) over 20 years, or \$33,000 to \$5.4 million assuming a 3 percent discount rate and \$21,000 to \$4.0 million assuming a 7 percent discount rate. Public water systems may incur costs associated with drilling deep water aquifer wells. The U.S. Environmental Protection Agency has defined small entity water systems as those that serve 10,000 or fewer people. None of the municipalities that could be required to construct deep aquifer wells as a result of conservation efforts for the Hine's emerald dragonfly has populations below 10,000. As a result of

this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of small municipalities.

(c) Utility and Infrastructure Maintenance

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly utility and infrastructure maintenance-related losses is estimated to be \$1.5 million (undiscounted) over 20 years, or \$1.3 million assuming a 3 percent discount rate and \$1.1 million assuming a 7 percent discount rate. The costs are associated with necessary utility and infrastructure maintenance using dragonfly-sensitive procedures. Within proposed critical habitat units, Commonwealth Edison is responsible for electrical line maintenance, county road authorities for road maintenance, and MidWest Generation for railroad track maintenance in Illinois units 1 and 2. Neither company is considered a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

(d) Road and Railway Use

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly road and railway use-related losses range from \$1.7 to \$15.0 million (undiscounted) over 20 years, or \$1.5 to \$11.7 million assuming a 3 percent discount rate and \$1.3 to \$8.8 million assuming a 7 percent discount rate. The costs are associated with necessary railway upgrades for dragonfly conservation. MidWest Generation is responsible for railroad track improvements in Illinois. Neither MidWest Generation nor the individual travelers who would be affected by slower road speeds are considered small entities. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

(e) Species Management and Habitat Protection Activities

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly species management and habitat protection-related losses is estimated at \$886,000 (undiscounted) over 20 years, or \$710,000 assuming a 3 percent discount rate and \$563,000 assuming a 7 percent discount rate. The costs primarily consist of species monitoring, maintenance of habitat,

invasive species and feral hog control, and beaver dam mitigation. Species management and habitat protection costs will be borne by The Nature Conservancy (Wisconsin chapter), The Ridges Sanctuary, the Service, the U.S. Forest Service, the Michigan Department of Natural Resources, and the Missouri Department of Conservation. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

(f) Recreation

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly recreation-related losses are estimated at \$19,000. Recreational off-road vehicles and equestrian activities have the potential to alter Hine's emerald dragonfly habitat and extirpate populations. The costs are associated with mitigating the effects of those recreational activities. Those costs will be borne by the Michigan Department of Natural Resources, Missouri Department of Conservation, the U.S. Forest Service, and various county police departments. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

Based on the previous, sector-by-sector analysis, we have determined that this proposed critical habitat designation would not result in a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix A of the draft economic analysis provides a discussion and analysis of this determination. The Midwest Generation facilities that rely on the transportation of coal through Illinois Units 1 and 2 generate 1,960 megawatts of electricity. The dragonfly conservation measures advocated by the Service (through a

"Right-of-Way Management Team" formed as a result of an informal consultation that was done on a 404 permit to reestablish the use of the rail line), are not intended to alter the operation of these facilities. Rather, the recommended conservation activities focus on improving maintenance and railway upgrades. Thus, no energy-related impacts associated with Hine's emerald dragonfly conservation activities within proposed critical habitat are expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a

condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Hine's emerald dragonfly, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with development and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Hine's emerald dragonfly within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the Hine's emerald dragonfly will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 ("Government Actions and Interference with constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Hine's emerald dragonfly. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for this species does

not pose significant takings implications.

Author

The primary author of this notice is Kris Lah of the Chicago Illinois Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Hine's emerald dragonfly (*Somatochlora hineana*) in § 17.95(i), which was proposed to be added on July 26, 2006, at 71 FR 42442, is proposed to be amended by adding an additional proposed critical habitat unit as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Hine's emerald dragonfly
(*Somatochlora hineana*)

* * * * *

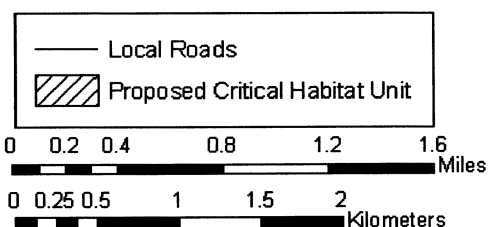
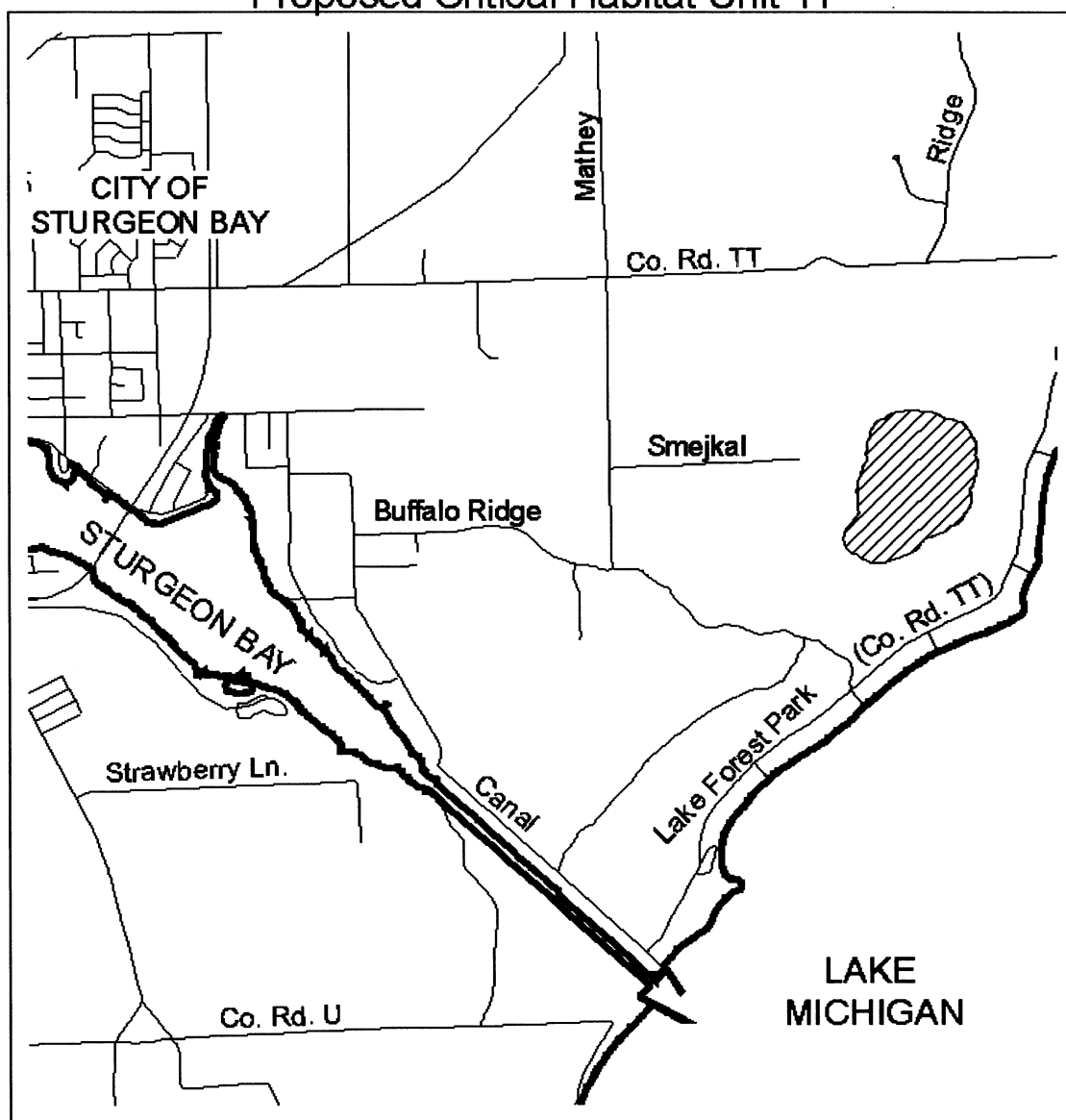
(30) Wisconsin Unit 11, Door County, Wisconsin.

(i) Wisconsin Unit 11: Door County. Located in T27N, R26E, SE ¼ Sec. 11, Sec. 12, NW ¼ Sec. 13, and NE ¼ Sec. 14 of the Sturgeon Bay East 7.5' USGS topographic quadrangle. Lands are located south of County Road TT, east of Mathey Road, north of Buffalo Ridge Trail, west of Lake Forest Park Road (also County Road TT), about 1½ miles west of the City of Sturgeon Bay, and include portions of Kellner's Fen.

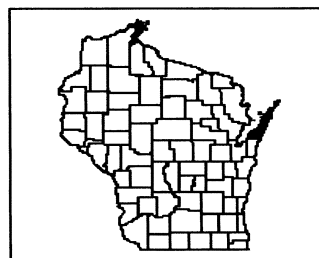
(ii) Note: Map of Wisconsin proposed critical habitat Unit 11 (Wisconsin Map 7) follows:

BILLING CODE 4310–55–P

Wisconsin Map 7. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 11




DOOR CO.



Dated: March 14, 2007.

David M. Verhey,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 07-1368 Filed 3-15-07; 5:05 pm]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 070312058–7058–01; I.D. 020507A]

RIN 0648–AU34

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 4

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement new management measures for the monkfish fishery through Framework Adjustment 4 (Framework 4) to the Monkfish Fishery Management Plan (FMP). Due to concerns over the status of the monkfish resource and the fact that monkfish is nearing the end of the rebuilding program, NMFS intends to delay making a decision on Framework 4 until the results of an upcoming monkfish stock assessment are available in July 2007. Since a decision on Framework 4 would be delayed beyond the start of the fishing year, NMFS is proposing two options for interim management measures for the start of the fishing year on May 1, 2007, that are partially based on the information and management measures contained in Framework 4: Implement the proposed target total allowable catch (TAC), trip limits, and days-at-sea (DAS) contained in Framework 4 for the Northern Fishery Management Area (NFMA), but maintaining the fishing year (FY) 2006 target TAC, trip limits, and DAS for the Southern Fishery Management Area (SFMA); or implement the proposed target TAC, trip limits, and DAS contained in Framework 4 for the NFMA, but close the directed monkfish fishery in the SFMA. In addition, the proposed interim rule would temporarily implement Framework 4 measures that have been determined not to result in any additional negative biological effects. The intent of these proposed actions is to eliminate overfishing and rebuild the monkfish resource in accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements.

DATES: Comments on the proposed Framework 4 measures must be received by 5 p.m. on April 19, 2007. Comments on the proposed interim measures must be received by 5 p.m. on April 4, 2007.

ADDRESSES: Written comments on the proposed rule may be submitted by any of the following methods:

- *E-mail:* E-mail comments for Framework 4 may be submitted to monkfishFW4@noaa.gov. Include in the subject line the following “Comments on the Proposed Rule for Framework Adjustment 4.” Email comments for the proposed interim rule to the Monkfish FMP may be submitted to monkfish-interim07@noaa.gov. Include in the subject line the following “Comments on Proposed Monkfish Interim Measures.”

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.

- *Mail:* Comments submitted by mail should be sent to Patricia A. Kurkul, Administrator, Northeast Region, NMFS (Regional Administrator), One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope “Comments on the Proposed Rule for Framework Adjustment 4 to the Monkfish FMP” if commenting on Framework 4, or “Comments on Proposed Interim Rule for the Monkfish FMP” if commenting on the proposed interim rule.

- *Facsimile (fax):* Comments submitted by fax should be faxed to (978) 281–9135.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address listed above and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395–7285.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 4 are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA 01950. The document is also available online at www.nefmc.org.

FOR FURTHER INFORMATION CONTACT:

Allison McHale, Fishery Policy Analyst, e-mail Allison.McHale@noaa.gov, phone (978) 281–9103, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-

Atlantic Fishery Management Councils (Councils), with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: the NFMA and the SFMA. Both stocks will be entering the final 3 years of the monkfish rebuilding plan at the start of FY 2007 on May 1, 2007. Despite early increases in stock biomass, the biomass indices for both monkfish stocks have declined in recent years and are lagging behind their respective rebuilding schedules. As a result of this decline, both stocks are again below their minimum biomass thresholds ($B_{threshold}$), and are considered to be overfished. The management measures contained in Framework 4 are intended to achieve the rebuilding objectives contained in the FMP.

The original Monkfish FMP (64 FR 54732; October 7, 1999) established a framework adjustment process that required an annual review by the Monkfish Monitoring Committee (MFMC) for the purpose of evaluating the effectiveness of the FMP with respect to meeting its conservation objectives. This annual review was a fairly general process calling for the development of target TACs for the upcoming fishing year based on the best scientific information available and consistent with the goals and objectives of the FMP. The annual review and target TAC setting process contained in the FMP was modified through the implementation of Framework Adjustment 2 (Framework 2) (68 FR 22325; April 28, 2003) to establish a more specific and prescribed process for setting annual target TACs. Specifically, Framework 2 added a target TAC setting control rule based on the ratio of a 3 year running average of the NMFS fall trawl survey biomass index to an established annual biomass index target, compared to landings from the previous year. Based on the experiences of the last several years, it has become apparent that the Framework 2 control rule may result in measures that are inconsistent with the rebuilding goals of the FMP because changes to the target TACs are based, in large part, on prior landings. As such, under this control rule, target TACs could be increased even if annual biomass rebuilding targets are not met. Based upon concerns over the Framework 2 control rule and the status of the monkfish resource with respect to the rebuilding schedule established in the FMP, the Councils initiated Framework 4 during the spring of 2006 with the intent of addressing the apparent problems with Framework 2 by eliminating the control

rule, and to establish measures consistent with the stock rebuilding goals established in the original FMP. In eliminating the Framework 2 control rule, other proposed changes to the annual adjustment process, including removal of the trip limit analysis description and modification of the DAS allocation description, are necessary to clarify and make the annual review and adjustment process more consistent with the changes being proposed in Framework 4.

Delay of Framework 4 and Implementation of Interim Measures

Due to concerns over the status of the monkfish resource and the fact that monkfish is in the seventh year of a 10-year rebuilding plan, NMFS is initiating a Stock Assessment Review Committee (SARC) and plans to hold an integrated Stock Assessment Workshop (SAW)/SARC meeting to perform a monkfish stock assessment. Results of the workshop are expected to be available in July 2007. The tasks to be performed include a determination of stock status relative to the existing biological reference points (BRPs), a review of the existing BRPs and potential revision or redefinition of the BRPs along with a stock status determination, and review and potential revision of existing control rules for rebuilding the stock relative to the recommended BRPs.

Since the upcoming SAW/SARC will occur after the start of the 2007 fishing year, NMFS intends to delay making a final decision on Framework 4 until after the results of the stock assessment are available. Instead, NMFS intends to implement precautionary interim management measures for the start of the fishing year on May 1, 2007, in accordance with section 305(c) of the Magnuson-Stevens Act, based upon the information and management measures contained in Framework 4. The purpose of the interim rule would be to implement management measures that would result in no additional negative biological impacts to the monkfish resource while NMFS has the opportunity to conduct a thorough review of the status of the monkfish resource using the best and most recent information available. NMFS is considering two options for such an interim rule: (1) Implement the proposed target TAC, trip limits, and DAS requirements contained in Framework 4 for the NFMA, but maintaining the FY 2006 target TAC, trip limits, and DAS for the SFMA; or (2) implement the proposed target TAC, trip limits, and DAS requirements contained in Framework 4 for the NFMA, but close the directed monkfish

fishery in the SFMA. This interim rule would also temporarily implement other management measures contained in Framework 4, as deemed necessary, that have been determined not to result in any additional negative biological effects. These measures include: A revision to the monkfish incidental catch limit in the NFMA, a revision to the boundary line for limited access monkfish Category H permit holders, and a revision to the monkfish incidental catch limit applicable to limited access scallop vessels fishing in the Scallop Access. Therefore, this action requests public comments on the proposed interim measures described above, and also requests public comments on the proposed measures contained in Framework 4.

Proposed Framework 4 Management Measures

1. Target TACs for the NFMA and SFMA

In addition to the proposed changes to the annual adjustment process (i.e., the removal of the Framework 2 control rule), this action would establish target TACs of 5,000 mt and 5,100 mt for the NFMA and SFMA, respectively, for the final 3 years of the rebuilding plan (FY 2007-FY 2009), unless otherwise modified by the MFMC during their annual review process. Essentially, this framework adjustment would remove the Framework 2 control rule and replace it with target TACs that were developed based upon an analysis conducted by the Monkfish Plan Development Team (PDT). The target TACs developed by the PDT incorporate a range of nine different potential methods for calculating target TACs for the monkfish fishery. These target TACs represent the PDT's best estimate of target catch levels that could facilitate stock rebuilding but maintain a limited directed monkfish fishery, and are the basis for calculating DAS allocations and trip limits for each management area. The proposed target TAC for the NFMA is 35 percent lower than the target TAC in effect for FY 2006, and 67 percent lower than the average of target TACs in effect since FY 2002. The proposed target TAC for the SFMA is 39 percent higher than the target TAC in effect for FY 2006, but is 33 percent lower than the average of the target TACs in effect since FY 2002. Therefore, both target TACs represent a decrease in overall effort since the implementation of the FMP. A copy of the target TAC analysis conducted by the PDT is contained in Appendix I of the Framework 4 document (see ADDRESSES).

Although the proposed target TACs would result in an overall decrease in

effort, the target TAC proposed for the SFMA is 1,433 mt higher than the target TAC in effect for FY 2006. Considering the status of the monkfish resource in both management areas, NMFS is concerned that any increase in effort over the status quo may delay rebuilding, preventing the rebuilding targets established in the FMP from being met by the end of the rebuilding program. NMFS is specifically seeking public comments on the proposed target TACs, with particular focus on the target TAC proposed for the SFMA.

2. DAS Requirement for the NFMA

The proposed action would require limited access monkfish vessels that are fishing in the NFMA to declare a monkfish DAS if the vessel exceeds, or is anticipating to exceed, the applicable monkfish incidental catch limit. Under this proposed measure, if the vessel is equipped with a vessel monitoring system (VMS) unit and is fishing under a NE multispecies Category A DAS in the NFMA, it may declare a monkfish DAS any time prior to crossing the VMS demarcation line upon returning to port or leaving the NFMA if the applicable monkfish incidental catch limit is exceeded during the course of the trip.

The purpose of the at-sea declaration component of this alternative is to minimize discards and promote safety. For example, if a vessel fishing for NE multispecies under a Category A DAS in the NFMA exceeds the monkfish incidental catch limit, this provision would enable the vessel to retain the additional monkfish by declaring a monkfish DAS. Otherwise, the vessel would be required to discard the additional monkfish or stay at sea long enough to account for the overage of the incidental limit, which is based on a NE multispecies DAS. The proposal to only apply this at-sea declaration provision to vessels fishing in the NFMA is a recognition of the differences in how the monkfish fishery is prosecuted in each management area, particularly in the degree of directivity (i.e., the ability to target monkfish with minimal bycatch of NE multispecies). As such, vessels holding both limited access NE multispecies and limited access monkfish permits are far more likely to exceed the monkfish incidental limit while fishing for NE multispecies on a NE multispecies DAS in the NFMA than they are in the SFMA. For these reasons, the original FMP applied different gear requirements in the two areas, and placed no restrictions on the monkfish catch on monkfish limited access vessels fishing on a NE multispecies DAS in the NFMA. For the same reasons, the need to provide limited

access monkfish vessels fishing in the NFMA with the flexibility provided by this at-sea declaration provision outweighs any potential abuse of this provision in that area, in contrast to the SFMA, where the need for such flexibility is much less, and does not outweigh the potential for abuse of this provision in that area.

3. Trip Limits and DAS Allocations for the NFMA

This action would establish an annual monkfish DAS allocation of 31 DAS for limited access monkfish vessels fishing in the NFMA. This action would also establish NFMA trip limits of 1,250 lb (567 kg) tail weight per DAS for limited access monkfish Category A and C vessels, and 470 lb (213 kg) tail weight per DAS for limited access monkfish Category B and D vessels.

4. Trip limits and DAS Allocations for the SFMA

The proposed action would restrict limited access monkfish vessels fishing in the SFMA to 23 monkfish DAS annually. Due to the difference between the proposed DAS allocations for the NFMA and the SFMA contained in Framework 4, this action would establish an annual allocation of 31 monkfish DAS for all limited access monkfish vessels, but would restrict vessels to using no more than 23 of their allocated 31 monkfish DAS in the SFMA.

This action would also establish SFMA trip limits of 550 lb (249 kg) tail weight for limited access monkfish Category A, C, and G vessels; and 450 lb (204 kg) tail weight per DAS for limited access monkfish Category B, D, and H vessels. These are the same trip limits in effect during FY 2006.

5. Monkfish Incidental Catch Limit for the NFMA

The proposed action would reduce the monkfish incidental catch limit applicable to limited access monkfish vessels (Categories A, B, C, D, F, G, and H) and open access monkfish vessels (Category E) fishing under a NE multispecies DAS in the NFMA from 400 lb (181 kg) tail weight per NE multispecies DAS, or 50 percent of the weight of fish on board, to 300 lb (136 kg) tail weight per DAS, or 25 percent of the weight of fish on board. The proposed incidental catch limit is equivalent to that implemented in the original FMP (64 FR 54732; October 7, 1999).

6. Target TAC Overage Backstop Provision

The proposed target TACs and associated management measures are intended to remain in effect for the final 3 years of the rebuilding program. The method that has been used to calculate trip limits and DAS allocations for the SFMA since FY 2002 has proven to be effective at keeping landings at or near the annual target TACs. However, there is no assurance that the success of this method will continue, or that similar results will occur for the NFMA, where there has been no monkfish trip limit since the implementation of the FMP. As a result, the Councils have recommended a target TAC backstop provision in Framework 4 that would enable the Regional Administrator to adjust the DAS available in either or both management areas for FY 2009 if the target TACs are exceeded by between 10 and 30 percent during FY 2007. If the target TACs are exceeded by more than 30 percent, the directed monkfish fishery would be closed in FY 2009 in the area in which this overage occurred.

7. Extension of Measures Beyond FY 2009

If a subsequent regulatory action is not in place prior to the end of the rebuilding program, Framework 4 contains a provision for extending management measures beyond FY 2009. Under the proposed action, the management measures in place for FY 2009 would remain in effect, unless the target TAC overage backstop provision (see 16) results in the closure of the directed monkfish fishery during FY 2009. In this case, the management measures that would be in effect for FY 2010 and beyond would be those in effect for FY 2008 in the area where the directed fishery had been closed.

8. Revision to Boundary Line for Category H Permit Holders

This action would revise the northern boundary line applicable to limited access monkfish Category H permit holders. These vessels were allowed to enter the fishery through an extension to the monkfish limited access program established in Amendment 2 to the FMP. A total of seven vessels qualified for Category H permits under this program. Under the provisions of the program contained in Amendment 2, these vessels were restricted to fishing in the area south of 38°20' N lat. These vessels have a limited season when monkfish are available during the late spring. In addition, these vessels are constrained by sea turtle closures that

essentially restrict the fishery to an area that is 20 nautical miles (37 km) wide. As a result, in Framework 4, the Councils are recommending that the northern boundary line applicable to limited access monkfish Category H vessels be shifted 20 nautical miles (37 km) northward to 38°40' N lat. to increase the opportunity for the affected vessels to prosecute the monkfish fishery, and provide some additional area to move into, in the event that sea turtles appear in the area north of 38°00' N lat., which is the northern boundary of the sea turtle closure area.

9. Scallop Closed Area Access Program Monkfish Incidental Catch Limit

Prior to the final approval of Framework 4, representatives from the scallop industry requested that the Councils clarify their intent with respect to the monkfish incidental catch limits applicable to scallop dredge vessels fishing in the Scallop Area Access Program, since changes to the program resulting from Scallop Framework 18 changed the monkfish incidental catch limit applicable to these areas. The final rule implementing Framework 18 to the Scallop FMP removed DAS counting for vessels fishing in Area Access Program. As a result, the monkfish possession limit dropped from 300 lb (136 kg) tail weight per scallop DAS to 50 lb (23 kg) tail weight per day fished, up to a maximum of 150 lb (68 kg) tail weight in the access areas. Based on input from the scallop industry, the Councils are recommending in Framework 4 that the monkfish possession limit applicable to limited access scallop vessels fishing in the Scallop Area Access Program be increased to 300 lb (136 kg) tail weight per day fished within the access area, not to include steaming time.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An initial regulatory flexibility analysis (IRFA) was prepared for Framework 4, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** of this proposed

rule. A copy of this analysis is available from the NEFMC (see **ADDRESSES**). A summary of the analysis follows, but has been expanded to include the management measures being proposed for the temporary interim rule to the Monkfish FMP:

As noted in the preamble to this proposed rule, both monkfish stocks are behind their respective rebuilding schedules. As a result, it is necessary to revise the management program to ensure that the 10-year rebuilding program implemented in the FMP can be met. In addition, the retirement of the R/V Albatross will complicate the assessment of the monkfish stock condition, necessitating a change in the way the target TACs are determined. There are also concerns that reductions in multispecies fishing opportunities may lead to more directed fishing on monkfish by limited access multispecies permit holders that also possess limited access monkfish permits. As a result, it may be necessary to more closely regulate the monkfish fishery in the NFMA to ensure that stock rebuilding goals are met. The proposed action would also address the socio-economic problem created in the SFMA by the current target TAC setting method established in Framework 2, where vessels have been subjected to sometimes wide swings in target TACs and, subsequently, in annual trip limits and DAS allocations. The current method for setting target TACs has made it difficult for industry members to develop business plans and fishing strategies.

The regulations implementing the FMP, found at 50 CFR 648, subpart F, authorize the Councils to adjust management measures as needed to achieve the goals of the FMP. The objective of this action is to achieve the rebuilding goals of the FMP through adjustments to monkfish target TACs, trip limits, and DAS allocations for FY 2007 through FY 2009, and to mitigate, to the extent possible, the economic effects of the rebuilding plan. Therefore, the proposed action is consistent with the goals of the FMP and its implementing regulations.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (\$4 million in gross sales). Therefore, there is no disproportionate impact on small entities compared to large entities. As of October 13, 2006, there were 731 limited access monkfish permit holders and approximately 2,121 vessels holding an open access Category E monkfish permit. This action would

affect all active limited access vessels and any open access monkfish vessels that land monkfish from the NFMA.

Vessel activity reports for FY 2005 indicate that 627 limited access monkfish permit holders participated in the monkfish fishery. Of these vessels, 150 fished exclusively in the NFMA and 226 fished exclusively in the SFMA, with the remaining 251 fishing in both management areas. During the same time period, vessel activity reports indicate that 570 incidental permit holders reported landing monkfish. Of these vessels, 163 landed monkfish only from the NFMA, 344 landed monkfish only from the SFMA, and 63 landed monkfish from both management areas. The proposed measures would affect at least the 627 vessels that fished for monkfish during FY 2005 and the 226 incidental permit holders landing monkfish from the NFMA.

Economic Impacts Proposed Framework 4 Measures

1. Target TACs for the NFMA and SFMA

The proposed target TACs would affect all limited access monkfish vessels, with differential impacts depending upon the management area in which the vessels fish. The level of these impacts depends not only on the area in which the vessels fish, but also the extent to which participating vessels must change their fishing behavior due to the imposition of DAS requirements (i.e., in the NFMA), changes to current DAS allocations, or changes to current trip limits.

The combined target TACs proposed in Framework 4 would reduce overall monkfish fishing effort by 11 percent compared to FY 2006. While the proposed target TAC for the NFMA would be decreased by approximately 35 percent, the proposed target TAC for the SFMA would be increased by approximately 39 percent. The NFMA target TAC being proposed for the interim rule would be the same as the target TAC contained in Framework 4, and therefore would result in the same impacts to small entities. However, the proposed interim SFMA target TAC would be 28 percent less than the one contained in Framework 4, but equivalent to the target TAC in currently in effect for FY 2006. Therefore, the impacts to small entities resulting from the proposed interim target TAC would be similar to the impacts currently being experienced by the limited access monkfish vessels that fish in the SFMA or in both management areas. These impacts were analyzed in the IRFA prepared for the 2006 Monkfish Annual Adjustment.

The other option being considered for the SFMA is to shut down the directed fishery in this area. An analysis of the impacts to small entities of shutting down the directed monkfish fishery in both management areas is contained in the IRFA prepared for Framework 4. According to this analysis, vessels fishing only in the SFMA would experience a 4.2-percent reduction in average vessel return, a 5.3-percent reduction in average crew return, and a 57.9 percent reduction in average monkfish revenue. If the directed fishery were to be closed in both management areas, vessels that fish in both management areas would experience a 3.1-percent reduction in average vessel return, a 3.5 percent reduction in average crew return, and a 19.1-percent reduction in average monkfish return (assuming an incidental catch limit of 300 lb tail weight per DAS). If the directed fishery were only to be closed in the SFMA, it is expected that the projected impacts to vessels fishing in both areas would be slightly less.

2. DAS Requirement for the NFMA

In FY 2005, there were 233 limited access monkfish vessels that also held a limited access NE multispecies DSA permit that landed more than the existing 400-lb (181-kg) tail weight trip limit for monkfish while fishing in the NFMA. Furthermore, there were 249 such vessels that landed more than the proposed incidental catch limit of 300 lb (136 kg) tail weight. Under the proposed measures, these 249 vessels would be required to call in a monkfish DAS in the NFMA if they wish to land more than the incidental catch limit. This is a minor administrative burden, but is not expected to entail a change in fishing practices.

3. Trip Limits and DAS Alternatives

The trip limit and DAS alternatives contained in Framework 4 would impact limited access monkfish vessels fishing for monkfish in either management area, to the extent that these measures impact their normal fishing activities. The estimation of relative economic impacts was accomplished through the use of a trip limit model to estimate average changes in per-trip vessel returns net of operating costs and crew payments, and changes in monkfish revenue. That analysis uses data from observed trips to simulate outcomes under alternative trip limits and DAS allocations. Because FY 2006 data are not yet complete, the trip limit data are compiled from FY 2005 vessel trip reports and dealer weighout slips. The relative change in

net return to the vessel was estimated by calculating the average per-trip returns to the vessel owner using both the FY 2006 trip limits and the trip limits being proposed for FY 2007–FY 2009 in Framework 4.

For vessels fishing only in the NFMA, the results of the trip limit model indicate that the per trip average vessel return on monkfish trips would decline by 4.9 percent under the proposed action, with a range of 2.8 to 12 percent under the other trip limit and DAS alternatives considered. Average crew return would decline by 8.3 percent under the proposed action, with a range of 4.6 to 20.1 percent under the alternatives considered. Finally, average monkfish revenue would decline by 18.6 percent under the proposed action, with a range of 10.4 to 45.7 percent under the other alternatives considered.

For vessels fishing only in the SFMA, the results of the trip limit model indicate uniformly positive impacts due to the increase in the target TAC and resulting DAS allocation, but are likely an understatement of the true impacts due to problems with linking data sources, and assumptions concerning incidental catch limits that needed to be made in order to conduct the analysis. According to this analysis, the per trip average vessel return on monkfish trips would increase by 2.5 under the proposed action, and by 3.4 percent under the other alternative considered. Average crew return would increase by 3.4 percent under the proposed action, and by 4.6 percent under the other alternative considered. Finally, average monkfish revenue would increase by 34.1 percent under the proposed action, and by 46.9 percent under the other alternative considered. Of the alternatives considered, the results of this analysis indicate that the non-preferred alternative would have the largest positive impact on limited access monkfish vessels that fish only in the SFMA.

Vessels fishing in both the NFMA and the SFMA would be simultaneously affected by the incidental trip limit alternative selected for the NFMA, the DAS and trip limit alternative selected for the NFMA, and the DAS and trip limit alternative selected for the SFMA. While these vessels have the demonstrated ability to shift between management areas and are more likely to change fishing locations than vessels that have historically fishing in only one area, the trip limit model does not incorporate this possibility. Rather, the model assumes that vessels will continue fishing in the same locations they did previously. Overall, the ability of these vessels to shift between

management areas mitigates the impacts of changes in regulations to either area. Under the proposed action, for vessels that fish in both management areas, average per trip vessel return would decline by 0.2 percent, average crew return would decline by 0.5 percent, and average monkfish revenue would decline by 12.6 percent. Out of all the NFMA and SFMA trip limit and DAS alternatives considered, including the NFMA incidental catch limit alternatives, the best combination of these alternatives, based on the trip limit model, is the combination of a 400-lb (181-kg) incidental catch limit in the NFMA, no trip limit for directed trips and 21 DAS in the NFMA, and a 550-lb (249-kg) tail weight trip limit for monkfish limited access Category A, C, and G vessels, a 450-lb (204-kg) tail weight trip limit for Category B, D, and H vessels, and 23 DAS in the SFMA. This combination would lead to a 3.6-percent reduction in monkfish revenue, but would result in marginal increases in vessel and crew return.

The impacts to small entities of implementing the DAS requirements and trip limits proposed in Framework 4 through an interim rule would be the same as described above. However, the impacts to small entities of maintaining the same DAS restrictions and trip limits for the SFMA that are currently in effect for FY 2006 would be similar to the impacts currently being experienced by the limited access monkfish vessels that fish in the SFMA or in both management areas. These impacts were analyzed in the IRFA prepared for the 2006 Monkfish Annual Adjustment.

4. Monkfish Incidental Catch Limit for the NFMA

The proposed action would impact all monkfish vessels (limited access and open access incidental permit holders) fishing in the NFMA and landing more than the proposed trip limit of 300 lb (136 kg) tail weight, or 25 percent of the weight of fish on board. Under the proposed measure, limited access monkfish vessels would have some number of DAS that can be used to fish at more than the incidental limit and would only be constrained to the extent that they would have to reduce their monkfish landings on days fished over their monkfish DAS allocation. In FY 2005, 78.2 percent of all trips by monkfish vessels fishing in the NFMA landed less than the proposed 300-lb (136-kg) tail weight limit, while 82.4 percent of these trips landed less than the current 400-lb (181-kg) tail weight limit. Therefore, in general, most vessels would be minimally impacted by the

proposed trip limit change. However, monkfish limited access Category A and C vessels had a larger percentage of trips in excess of the current and proposed incidental catch limits. During FY 2005, only 13.2 percent of trips by monkfish limited access Category A vessels were less than 400 lb (181 kg) tail weight and 5.3 percent of trips were less than 300 lb (136 kg) tail weight. For limited access Category C vessels, 48.8 percent of the FY 2005 trips were less than 400 lb (181 kg) tail weight and 42.2 percent of the trips were less than 300 lb (136 kg) tail weight. However, as previously noted, these vessels would have monkfish DAS that they could utilize in the NFMA to land monkfish in excess of the proposed incidental catch limit, mitigating the impact of the proposed measure on these vessels.

5. Target TAC Overage Backstop Provision

The proposed target TAC overage backstop measure would potentially affect all vessels landing more than the incidental catch limit in either management area, since it could lead to a closure of the directed fishery in either or both management areas during FY 2009. The analysis of this measure is based on the closure of the directed fishery during FY 2009, since this is the worst case scenario under the proposed measure.

For vessels fishing only in the NFMA, decreases in average vessel return would range from 0.8 to 2.7 percent under the trip limit and DAS alternatives considered, and would be 2.2 percent under the proposed trip limit and DAS alternative for the NFMA. Decreases in average crew return would range from 1.4 to 4.9 percent, and would be 4.0 percent under the proposed action. Declines in average monkfish revenue would range from 3.5 to 12.1 percent, and would be 9.9 percent under the proposed action.

For vessels that fish only in the SFMA, decreases in average vessel return would be 6.5 percent under the proposed trip limit and DAS alternative for the SFMA, and 7.3 percent under the other trip limit and DAS alternative considered. Decreases in average crew return would be 8.5 percent under the proposed action and 9.5 percent under the other alternative considered. Declines in average monkfish revenue would be 68.6 percent under the proposed action and 71.4 percent under the other alternative considered.

For vessels that fish in both areas, the ability to fish in both areas tends to mitigate the impacts of changes to management measures in either area. The proposed action would result in

declines of 2.9, 3.0, and 7.4 percent in average vessel return, net payment to crew, and monkfish revenue, respectively. These results represent the worst case scenario of both the NFMA and SFMA closing under the proposed target TAC overage backstop alternative.

6. Extension of Measures Beyond FY 2009

The two alternatives, including no action, describe the measures that would be in place beyond the final 3 years of the rebuilding program if the Councils take no additional action to implement a revised management program. Under the no action alternative, whatever measures are in effect in 2009 would remain in place, even if the directed fishery is shut down under the target TAC overage backstop provision (if adopted). Under the proposed action, if the directed fishery is shut down under the TAC overage backstop provision, and the Councils take no action to revise the management program for FY 2010 and beyond, then the measures in place in FY 2008 would be in effect. The economic impact of these two options cannot be quantified at this time, but qualitatively, the closure of the directed fishery continuing into FY 2010 and beyond (if that occurs) would likely have a greater negative impact on vessels and communities dependent on monkfish than allowing a directed fishery to occur due to the lost revenues from the relatively high value monkfish fishery, to the extent those lost revenues are not made up for by any increased revenues from other fisheries as vessels seek to compensate for the closure.

7. Revision to Boundary Line for Category H Permit Holders

Amendment 2 established a new fishery for some vessels that did not qualify for a limited access permit in the initial FMP. Seven vessels qualified for this fishery and six are actively fishing. These vessels have been constrained by area closures to protect sea turtles, so that the area available to them for fishing is approximately 20 nautical miles (37 km) wide. This, coupled with the limited season when monkfish are available in the area, led the industry to request that the boundary for the fishery be moved northward 20 nautical miles (37 km) from 38°20' N lat. to 38°40' N lat. The proposed action would increase the fishing opportunities available to the affected vessels.

8. Scallop Closed Area Access Program Monkfish Incidental Catch Limit

Under the no action alternative, scallop vessels fishing in the Closed

Area Access Program have a monkfish incidental limit applicable to vessels fishing with a dredge and not on a scallop DAS, or 50 lb (23 kg) tail weight per day to a maximum of 150 lb (68 kg) tail weight. Under the proposed action, the incidental limit applicable to those vessels would be the same as applies to scallop vessels fishing on a scallop DAS, or 300 lb (136 kg) tail weight per DAS, except that the incidental limit would be based only on the time that the vessel is in the applicable scallop access area, not including steaming time. The proposed action would have a slightly positive economic effect compared to the no action alternative, because it would enable scallop vessels to convert discards to landings and realize the revenue from that catch. The magnitude of this effect, however, is not expected to be significant relative to the value of the scallop landings on those trips. The Councils do not expect that the proposed action presents any new incentive for scallop vessels to target monkfish under the increased incidental limit, given the relative value of the scallop catch to the difference in allowable monkfish landings under the two alternatives.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the provision that would allow limited access monkfish vessels fishing in the NFMA to change their VMS declaration while at sea is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Northeast Regional Office at the

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

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 14, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, the paragraph headings for (a)(9)(i)(A)(6) and (7) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(9) * * *

(i) * * *

(A) * * *

(6) *Category G permit (vessels restricted to fishing south of 38°40' N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* * * *

(7) *Category H permit (vessels restricted to fishing south of 38°40' N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* * * *

* * * * *

3. In § 648.92, paragraphs (b)(1), (b)(2)(i), (b)(2)(ii)(B), and (b)(9)(i) are revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.*—(i) *General provision.* Limited access monkfish permit holders shall be allocated 31 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by

§ 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 23 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c). Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage provisions described in paragraph (b)(2)(i) of this section.

(iv) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as

follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS divided by 750 permits), or 30.3 DAS.

(2) * * *

(i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 20, and the vessel fished 20 of its 31 monkfish DAS, 20 NE multispecies Category A DAS would also be used. However, after all 20 NE multispecies Category A DAS are used, the vessel may utilize its remaining 11 monkfish DAS to fish for monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.

(ii) * * *

(A) * * *

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), must forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 31 unused monkfish DAS and 35 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS to

another vessel, the lessor would forfeit 6 of its monkfish DAS (10 - (35 NE multispecies DAS - 31 monkfish DAS) = 6).

(9) * * *

(i) Vessels issued monkfish limited access Category G or H permits may only fish under a monkfish DAS in the area south of 30°40' N. lat.

* * * * *

4. In § 648.94, paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (c)(1)(i), and (c)(8) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA—(i) Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 1,150 lb (1,882 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 470 lb (213 kg) tail weight or 1,560 lb (708 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(2) *Vessels fishing under the monkfish DAS program in the SFMA—(i) Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

* * * * *

(3) *Category C, D, F, G and H vessels fishing under the multispecies DAS program—(i) NFMA.* Limited access monkfish Category C, D, F, G, or H vessels that are fishing under a NE

multispecies DAS, and not a monkfish DAS, exclusively in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section. Category C, D, F, G and H vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels*. Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G, and H vessels*. Limited access monkfish Category G and H vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not under a monkfish DAS, are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

* * * * *

(c) * * *

(1) * * *

(i) *NFMA*. Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(8) Scallop vessels not fishing under a scallop DAS with dredge gear—(i) General provisions. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid General

Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section.

(ii) Limited access scallop vessels fishing in Sea Scallop Access Areas. A vessel issued a valid monkfish incidental catch (Category E) permit and a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit.

* * * * *

5. In § 648.96, the section heading is revised, paragraph (a) heading, (b)(1) through (4) are revised, and paragraphs (b)(5) and (b)(6) are added to read as follows:

§ 648.96 Monkfish annual target TACs and framework specifications.

(a) *Annual review*. * * *

(b) * * *

(1) *Annual Target TACs for FY 2007 through FY 2009*—(i) *NFMA*. The annual target TAC for the NFMA is 5,000 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(ii) *SFMA*. The annual target TAC for the SFMA is 5,100 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(2) *Annual Target TACS for FY 2010 and beyond*. If a regulatory action is not implemented to establish target TACs for the monkfish fishery for FY 2010 or subsequent years, either through the annual review procedure described in paragraph (a) of this section or another type of regulatory action, the target

TACs in effect during FY 2007–FY 2009 will remain in effect until new measures are implemented. The management measures for FY 2010 or subsequent years that would be associated with these target TACs is described in paragraph (b)(6) of this section.

(3) *Setting DAS allocations*—(i) The process of determining the appropriate DAS allocations for each management area involves first estimating incidental landings for each management area and then estimating the proportional catch for permit categories A and C, and permit categories B, D, and H based upon vessel trip reports for the most recently completed fishing year for which a complete set of landings data exists. The landings proportions generated for each permit category group (A and C versus B, D, and H) are then used to estimate the landings that would be associated with each permit category group under a given target TAC, less projected incidental landings. For example, a target TAC of 5,100 mt equates to 11,243,580 lb (5,100,000 kg). If incidental landings for the SFMA are projected to be 2,070,000 lb, the total amount of the target TAC available to limited access vessels would be 9,173,580 lb (4,161,066 kg). If the proportion of landings for permit category A and C vessels is 37 percent, and the proportion for permit category B, C, and H vessels is 63 percent, then the landing levels associated with each permit category group under this target TAC would be 3,394,225 lb (1,539,595 kg) and 5,779,355 lb (2,621,471 kg), respectively.

(ii) Landings are assumed to be fixed at a constant rate per day for each vessel, equivalent to the average daily landings of each vessel in the reference year, of the last applicable full year of landings data (a year is applicable if the TAC in that year was lower than the TAC in the year to be calculated).

(iii) To adjust for the ability of vessels to carryover up to 10 unused monkfish DAS from the previous fishing year to the current fishing year, adjustments to DAS usage shall be made by first reducing the landings for all permit holders who have used more than the annual DAS allocation specified in § 648.94(b)(1)(i) (e.g., 31 monkfish DAS) by the proportion of DAS exceeding that annual DAS allocation, and then resetting the upper limit of DAS usage at the annual DAS allocation.

(iv) Linear interpolation is then used to determine which DAS level would closest achieve the estimated landing levels for each permit category group under a given target TAC.

(4) *Council TAC Recommendations*. The Councils shall consider any target

TAC(s) recommended by the MFMC as part of its annual review specified in paragraph (a) of this section, and then forward their target TAC recommendation to the Regional Administrator. If the Councils recommend target TAC(s) to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall promulgate the target TAC(s) and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(5) *Target TAC Overages*—(i) If monkfish landings exceed the annual target TAC for either management area by more than 10 percent but less than or equal to 30 percent during FY 2007, the Regional Administrator shall adjust

the annual monkfish DAS allocation for the management area in which the overage occurred, through rulemaking consistent with the APA, for FY 2009 using catch and effort information for FY 2007 according to the procedures outlined in paragraph (b)(3) of this section.

(ii) If monkfish landings exceed the annual target TAC for either management area by more than 30 percent during FY 2007, the Regional Administrator shall reduce the annual monkfish DAS allocation to zero for FY 2009 for the management area in which the overage occurred, through rulemaking consistent with the APA.

(6) *Management measures for FY 2010 and beyond*. If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, either through the annual review process or another type of regulatory action, the management measures in

effect during FY 2009 (i.e., trip limits and DAS allocations) will remain in effect until new measures are implemented, with the following exception. If the monkfish DAS allocation is reduced to zero in either management area during FY 2009 as a result of the target TAC overage provision described in paragraph (b)(3) of this section, the annual DAS allocation and associated trip limits for that management area for FY 2010 and beyond will be equivalent to the annual monkfish DAS allocation and trip limits in effect during FY 2008, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, or until superceded by a subsequent regulatory action.

* * * * *

[FR Doc. E7-5051 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-22-S

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

Foreign Agricultural Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment and Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture (Secretary), in coordination with the United States Trade Representative (USTR), intends to reestablish the Agricultural policy advisory Committee (APAC) for Trade and the six existing Agricultural Technical Advisory Committees (ATAC) for Trade. The Foreign Agricultural Service (FAS) is requesting nominations for persons to serve on these seven committees for a term of four years.

DATES: Written nominations must be received by FAS before the close of business on April 13, 2007.

ADDRESSES: Nominations must be hand-delivered (including FedEx, DHL, UPS, etc.) to the Office of Negotiations and Agreements, Foreign Agricultural Service, USDA, Room 5603-S, 1400 Independence Avenue, SW., Mail Stop 1048, Washington, DC 20250-1001.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding the reestablishment of these committees also may be sent by electronic mail to Michelle.Moore@fas.usda.gov, or by fax to (202) 720-0340. The Office of Negotiations and Agreements may be reached by telephone at (202) 720-6219, with inquiries directed to Michelle Moore.

SUPPLEMENTARY INFORMATION:

Introduction

The APAC and the ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. No. 93-618, 19 U.S.C. 2155 (2000)). The purpose of these committees is to advise the Secretary and the U.S. Trade Representative concerning agricultural trade policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. government.

Rechartering of Existing Committees

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. (2000)), FAS gives notice that the Secretary and the USTR intend to reestablish the APAC and the following six ATACs:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and,
- Tobacco, Cotton, Peanuts, and Planting Seeds.

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations;
- Five general policy advisory committees, including the APAC; and,
- Twenty-two technical advisory committees, including the ATACs.

The establishment and renewal of such committees is in the public interest in connection with the duties of the USDA imposed by the Trade Act of 1974, as amended.

Committee Membership Information

- All committee members are appointed by the Secretary and the USTR and serve at the discretion of the Secretary and the USTR.
- Committee size will be limited up to approximately 35 members each.
- All committee appointments will expire in four years, but the Secretary and the USTR may renew an appointment for one or more additional terms.

- All committee members must be U.S. citizens and must not be required to register under the Foreign Agents Registration Act.

- To attend certain meetings, committee members must have a current security clearance or have submitted an application for a security clearance.

- Committee members serve without compensation; they are not reimbursed for their travel expenses.

- No person may serve on more than one USDA advisory committee at the same time.

General Committee Information

- Each committee has a chairperson, who is elected from the membership of that committee.

- Committees meet approximately four times per year, and all committee meetings are held in Washington, DC.

- Committee meetings may be closed to the public, if the USTR determines that a committee will be discussing issues that justify closing a meeting or portion of a meeting, in accordance with 5 U.S.C. 552(b).

- Throughout the year, members are requested to review sensitive trade policy information via a secure website and provide comments regarding trade negotiations.

- In addition to their other advisory responsibilities, at the conclusion of negotiations of any trade agreement, all committees are required to provide a report on each agreement to the President, Congress, and the USTR.

Agricultural Policy Advisory Committee for Trade

The APAC is composed of a broad spectrum of agricultural interests. The APAC provides advice concerning the following:

- Negotiating objectives and bargaining positions before the United States enters into a trade agreement;
- The operation of various U.S. trade agreements; and
- Other matters arising from the administration of U.S. trade policy.

Agricultural Technical Advisory Committees for Trade

The ATACs provide advice and information regarding trade issues that affect both domestic and foreign production in the commodities of the respective sector, drawing upon the technical competence and experience of

the members. There will be six ATACs, one for each of the following sectors:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;
- Processed Foods;
- Sweeteners and Sweetener

Products; and,

- Tobacco, Cotton, Peanuts, and Planning Seeds.

Nominations and Appointment of Members

Nominations for APAC and ATAC membership are open to all individuals representing U.S. entities with an interest in agricultural trade without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that the recommendations of the committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members must have expertise and knowledge of agricultural trade as it relates to policy and commodity specific products. No person, company, producer, farm organization, trade association, or other entity has a right to membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees: from producers, farm and commodity organizations, processors, traders, and consumers. Geographical balance on each committee will also be sought.

Nominating a person to serve on any of the committees requires submission of a current resume for the nominee and the following form:

- AD-755 (Advisory Committee Membership Background Information), available on the Internet at <http://www.fas.usda.gov/admin/ad755.pdf>.

In addition, FAS encourages the submission of the optional form AD-1086 (Applicant for Advisory Committee Supplemental Sheet), available on the Internet at <http://www.fas.usda.gov/admin/ad1086.pdf>. Forms may also be requested by sending an email to Michelle.Moore@fas.usda.gov, or by phone at 202-720-6219.

Foreign Firms: Persons who are employed by firms that are 50 percent plus one share foreign-owned must state the extent to which the organization or interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests. If the nominee is to represent an entity or

corporation with 10 percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Issued at Washington, DC, this 7th day of March, 2007.

W. Kirk Miller,

Administrator, Foreign Agricultural Service.
[FR Doc. 07-1339 Filed 3-19-07; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on April 5, 2007, starting at 9 a.m. at Jefferson County Firehall on the corner of Adam and "J" Street in Oregon. Agenda items will include a briefing on the progress for Travel Management, PAC upcoming program of work and scheduling, an update on the Five Buttes project on the Crescent Ranger District, and a membership round robin. All Deschutes Province Advisory Committee Meetings are open to the public and an open public forum is scheduled from 3:30 to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR, 97754, Phone (541) 433-3216.

Mike Johnson,

Acting Deschutes National Forest Supervisor.
[FR Doc. 07-1332 Filed 3-19-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting of the Southwest Oregon Provincial Advisory Committee

SUMMARY: The Southwest Oregon Provincial Advisory Committee will meet on Tuesday, April 10, and Wednesday, April 11, 2007, in Medford, Oregon. The purpose of the meeting is to advise the Bureau of Land Management on the current Western Oregon Plan Revision currently taking place. The meeting will be held at the Medford BLM Office, 3040 Biddle Road,

Medford, Oregon, in Rooms A and B. The meeting is from 1 to 5 p.m. pm April 10 and 8 a.m. to noon on April 11. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Cliff Dils at the Umpqua National Forest, 2900 NW., Stewart Parkway, Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT:

Umpqua National Forest Public Affairs Officer Cheryl Walters at 541-957-3270 or crwalters@fs.fed.us or 2900 NW., Stewart Parkway, Roseburg, OR 97470.

Dated: March 13, 2007.

Greg Lesch,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 07-1335 Filed 3-19-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service—Tennessee

Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standards Residue and Tillage Management, Mulch Till; Residue and Tillage Management, No-till/Strip Till/Direct Seed; and Residue and Tillage Management, Ridge Till to account for improved technology. These practice standards can be used in conservation systems designed to treat highly erodible cropland.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT:

Inquire in writing to Kevin Brown, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone number (615) 277-2531. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996

states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standards.

Dated: March 8, 2007.

Kevin Brown,

State Conservationist.

[FR Doc. E7-4961 Filed 3-19-07; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1507]

Expansion of Foreign-Trade Zone 32, Miami, Florida

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 Greater Miami Foreign-Trade Zone, Incorporated, grantee of Foreign-Trade Zone 32, submitted an application to the Board for authority to expand the zone to include a site in Medley, Florida, and to restore zone status to one acre at Site 1, within the Miami Customs and Border Protection port of entry (FTZ Docket 32-2006; filed 8/10/06);

WHEREAS, notice inviting public comment was given in the **Federal Register** (71 FR 48909, 8/22/06) 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 32 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-5056 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1505]

Designation of New Grantee for Foreign-Trade Zone 144, Brunswick, Georgia, Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 6/30/2006) submitted by the Brunswick Foreign Trade Zone, Inc., grantee of FTZ 144, Brunswick, Georgia, requesting reissuance of the grant of authority for said zone to the Brunswick and Glynn County Development Authority, a public corporation, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Brunswick and Glynn County Development Authority as the new grantee of Foreign-Trade Zone 144, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-5079 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1506]

Expansion/Reorganization of Foreign-Trade Zone 126, Reno, Nevada

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 Economic Development Authority of Western Nevada, grantee of Foreign-Trade Zone 126, submitted an application to the Board for authority to expand and reorganize the zone in the Reno, Nevada, area, within the Reno Customs and Border Protection port of entry (FTZ Docket 24-2006; 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 and reorganize FTZ 126 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a sunset provision that would terminate authority on March 31, 2012, for any of the proposed sites (Sites 4-13) that have not been activated under FTZ procedures before that date.

Signed at Washington, DC, this 12th day of March 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-5077 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[Docket T-1-2007]****Foreign-Trade Zone 38 – Spartanburg County, SC, Application for Temporary/Interim Manufacturing Authority, Kittel Supplier USA, Inc., (Automotive Door Trim Components), Duncan, SC**

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting temporary/interim manufacturing (T/IM) authority within FTZ 38 at the Kittel Supplier USA, Inc. (KSU) facility in Duncan, South Carolina. The application was filed on March 12, 2007.

The KSU facility (25 employees) is located at 201 Commerce Court within the Highway 290 Commerce Park in Duncan (Site 3). Under T/IM procedures, KSU would assemble automotive door trim components (HTSUS 8708.29) for the U.S. market and export. Foreign components that would be used in the assembly activity (up to 100% of total purchases) include: aluminum frames, B pillars, C and D pillars, waist race bolts, division bars, fasteners, and rubber seals (duty rates: 2.0, 2.5%).

FTZ procedures would exempt KSU from Customs duty payments on the foreign components used in production for export to non-NAFTA countries. On domestic shipments transferred in-bond to U.S. automobile assembly plants with subzone status, no duties would be paid on the foreign components within the door trim components until the finished vehicles are subsequently entered for consumption, at which time the finished automobile duty rate (2.5%) could be applied to the foreign components. For the finished door trim components withdrawn directly by KSU for customs entry, the finished automotive part rate (2.5%) could be applied to the foreign inputs noted above.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002. For further information, contact Pierre Duy at pierre_duy@ita.doc.gov, or (202) 482-1378. The closing period for receipt of comments is April 19, 2007.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address listed above.

Dated: March 12, 2007.

Andrew McGilvray,*Executive Secretary.*

[FR Doc. E7-5063 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****[Docket 10-2007]****Foreign-Trade Zone 38 – Spartanburg County, South Carolina, Application for Subzone, Kravet, Inc. (Textile Sampling), Anderson, South Carolina**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the textile distribution and sampling facility of Kravet, Inc. (Kravet), located in Anderson, South Carolina. The application was submitted pursuant to the provisions of 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 6, 2007.

The Kravet facility (335 employees, 66.5 acres) is located at 1500 U.S. Highway 29 South, in Anderson, South Carolina. The facility is used for the processing of commercial textile samples. Materials sourced from abroad, representing some 40% of all merchandise include: silk, wool, woven fabric, cotton yarn, dyed cotton, twill, printed cotton woven, other cotton fabric, hemp, woven flax, woven jute, woven synthetic fabric, woven nylon fabric, other fabrics, acrylics, rayon, satin, carpets, cotton gauze, vegetable fiber gauze, tulle, ribbons, embroidery, quilted textile products, plastic and rubber textiles, wall covers, man-made fibers, pile fabrics, knit, knitted or crocheted fabrics, warp knit fabrics, and double knit fabrics (duty rates range from duty-free to 25%).

FTZ procedures would exempt Kravet from customs duty payments on the foreign components used in export production. Some 15 percent of the plant's shipments are exported. On its domestic shipments, Kravet would be able to choose the duty rates during customs entry procedures that apply to samples (duty-free) for the textile samples produced at the facility. On the non-sample textile shipments, the

company would be able to defer duty on the imported merchandise until it is entered for consumption. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

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. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 21, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 4, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 555 North Pleasantburg Drive, Building 1, Suite 109, Greenville, South Carolina, 29607. Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave., NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth_Whiteman@ita.doc.gov or (202) 482-0473.

Dated: March 6, 2007.

Andrew McGilvray,*Executive Secretary.*

[FR Doc. E7-5064 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****[Docket 8-2007]****Foreign-Trade Zone 183 – Austin, Texas, Expansion of Manufacturing Authority -- Subzone 183B, Samsung Austin Semiconductor L.L.C., Austin, Texas**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority on behalf of Samsung Austin Semiconductor L.L.C. (Samsung), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 183B at the Samsung facilities in Austin, Texas. The application was submitted pursuant to the provisions of 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 February 28, 2007.

Subzone 183B (1,348 employees) was approved by the Board in 2005 for the manufacture of semiconductor memory devices for export (Board Order 1421, 70 FR 72293, 12/2/05). The subzone consists of three sites (192.1 acres total; 876,453 sq. ft. of enclosed space): Site 1--Samsung Austin Semiconductor facilities (186.1 acres; 764,453 sq. ft.)--located at 12100 Samsung Boulevard in Austin, Texas; Site 2--HISCO facilities (4.1 acres; 62,000 sq. ft.)--located at 8330 Cross Park Drive in Austin; and Site 3--Three Way Inc. facilities (1.9 acres; 50,000 sq. ft.)--located at 4009 Commercial Center Drive in Austin.

The current request involves an increase in capacity due to the construction of a new fabrication unit within Site 1 that will add 1,621,482 square feet of enclosed space. No additional finished products have been requested; however, Samsung is seeking to add certain gases used in the manufacturing process to its scope of authority. The gases that may be sourced from abroad include: methane, xenon, tetrachlorosilane, boron trichloride/nitrogen, methyl fluoride, aluminum borohydride trimethylamine and tetrakis (ethylmethylamido) zirconium (HTS 2711.29, 2804.29, 2812.10, 2903.03, 2921.11 and 2931.00, duty rate ranges from 3.7–5.5%). The company is requesting export only authority for the expanded capacity and additional inputs, and the scope otherwise would remain unchanged.

Zone procedures for the expanded facilities and inputs would exempt Samsung from customs duty payments on the foreign components used in export production. Currently, foreign inputs account for approximately 7 percent of the value of the finished semiconductor memory devices. Samsung would also be able to avoid duty on foreign inputs that become scrap/waste. Samsung may also realize logistical/procedural and other benefits from subzone status. The application indicates that the savings from zone procedures help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 21, 2007. Rebuttal

comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 4, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 221 E. 11th St., 4th Floor, Austin, Texas 78701.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave., NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth_Whiteman@ita.doc.gov or (202) 482–0473.

Dated: February 28, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–5067 Filed 3–19–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Fiber Materials, Inc.

**In the Matter of: Fiber Materials, Inc.,
5 Morin Street, Biddeford, ME 04005,
Respondent; Order Denying Export
Privileges**

A. Denial of Export Privileges of Fiber Materials, Inc.

On November 18, 2005, in the U.S. District Court in the District of Massachusetts, Fiber Materials, Inc. ("FMI") was convicted of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (the "Act").¹ Specifically, FMI was convicted of knowingly exporting and causing to be exported from the United States to India, a controlled commodity, to wit, a component, accessory and controls for an isostatic press, that is, a control panel which consisted of, among other things, an operating control cabinet, a power/pressure control cabinet, and digital controllers and recorder, without having first obtained the required export license from the U.S. Department of Commerce.

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA").

In addition to the violation of the Act, the FMI was convicted of conspiring to violate the Act in violation of 18 U.S.C. 371 (2000). FMI was ordered to pay a fine of \$250,000.

Section 11(h) of the Act and Section 766.25 of the Export Administration Regulations ("Regulations")² provide, in pertinent part, that "[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Act," for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of the FMI's conviction for violating the Act, and I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny the FMI's export privileges under the Regulations for a period of 10 years from the date of its conviction. Due to exceptional circumstances, this Order is being issued without prior notice or opportunity to respond.

Accordingly, it is hereby

Ordered

I. Until November 18, 2015, Fiber Materials, Inc., 5 Morin Street, Biddeford, ME 04005, its successors or assigns, and when acting for or on behalf of FMI, its officers, representatives, agents, or employees ("Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any

² The Regulations are currently codified at 15 CFR Parts 730–774 (2006).

other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in § 766.23 of the Regulations, any other person, firm, corporation, or business organization related to FMI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until November 18, 2015.

VI. In accordance with part 756 of the Regulations, FMI may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VII. A copy of this Order shall be delivered to FMI. This Order shall be published in the **Federal Register**.

Dated: March 12, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07-1337 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Walter L. Lachman

In the Matter of: Walter L. Lachman, 1159 Old Marlboro Road, Concord, MA 01742, Respondent; Order Denying Export Privileges

A. Denial of Export Privileges of Walter L. Lachman

On November 18, 2005, in the U.S. District Court in the District of Massachusetts, Walter L. Lachman ("Lachman") was convicted of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (2000)) (the "Act").¹ Specifically, Lachman was convicted of knowingly exporting and causing to be exported from the United States to India, a controlled commodity, to wit, a component, accessory and controls for an isostatic press, that is, a control panel which consisted of, among other things, an operating control cabinet, a power/pressure control cabinet, and digital controllers and recorder, without having first obtained the required export license from the U.S. Department of Commerce.

In addition to the violation of the Act, Lachman was convicted of conspiring to violate the Act in violation of 18 U.S.C. 371 (2000) and aiding and abetting in violation of 18 U.S.C. 2 (2000). Lachman was ordered to serve 36 months

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

probation with the first year in home confinement and a fine of \$250,000.

Section 11(h) of the Act and Section 766.25 of the Export Administration Regulations ("Regulations")² provide, in pertinent part, that "[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Act," for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest at the time of his conviction.

I have received notice of Lachman's conviction for violating the Act, and I, following consultations with Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny Lachman's export privileges under the Regulations for a period of 10 years from the date of his conviction. Due to exceptional circumstances, this Order is being issued without prior notice or opportunity to respond.

Accordingly, it is hereby

Ordered

I. Until November 18, 2015, Walter L. Lachman, 1159 Old Marlboro Road, Concord, MA 01742, his successors or assigns, and when acting for or on behalf of Lachman, his officers, representatives, agents, or employees ("Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States

² The Regulations are currently codified at 15 CFR Parts 730-774 (2006).

that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Lachman by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until November 18, 2015.

VI. In accordance with Part 756 of the Regulations, Lachman may file an appeal of this Order with the Under

Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Lachman. This Order shall be published in the **Federal Register**.

Dated: March 12, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07-1336 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Materials International, Inc.

In the Matter of: Materials International, Inc., 289 Great Road, Unit 103, Acton, MA 01720, Respondent; Order Denying Export Privileges

A. Denial of Export Privileges of Materials International, Inc.

On November 18, 2005, in the U.S. District Court in the District of Massachusetts, Materials International, Inc. ("MI") was convicted of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (2000)) (the "Act")¹. Specifically, MI was convicted of knowingly exporting and causing to be exported from the United States to India, a controlled commodity, to wit, a component, accessory and controls for an isostatic press, that is, a control panel which consisted of, among other things, an operating control cabinet, a power/pressure control cabinet, and digital controllers and recorder, without having first obtained the required export license from the U.S. Department of Commerce.

In addition to the violation of the Act, the MI was convicted of conspiring to violate the Act in violation of 18 U.S.C. 371 (2000). MI paid a special assessment of \$400.

Section 11(h) of the Act and Section 766.25 of the Export Administration Regulations ("Regulations")² provide, in pertinent part, that "[t]he Director of

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

² The Regulations are currently codified at 15 CFR Parts 730-774 (2006).

Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Act," for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of the MI's conviction for violating the Act, and I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny the MI's export privileges under the Regulations for a period of 10 years from the date of its conviction. Due to exceptional circumstances, this Order is being issued without prior notice or opportunity to respond.

Accordingly, it is hereby

Ordered

I. Until November 18, 2015, Materials International, Inc., 289 Great Road, Unit 103, Acton, MA 01720, its successors or assigns, and when acting for or on behalf of MI, its officers, representatives, agents, or employees ("Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to MI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until November 18, 2015.

VI. In accordance with Part 756 of the Regulations, MI may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to MI. This Order shall be published in the **Federal Register**.

Dated: March 12, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07-1334 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Maurice Subilia

In the Matter of: Maurice Subilia, 17 Oakwood Road, Kennebunkport, ME 04046; Respondent; Order Denying Export Privileges

A. Denial of Export Privileges of Maurice Subilia

On November 18, 2005, in the U.S. District Court in the District of Massachusetts, Maurice Subilia ("Subilia") was convicted of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (2000)) (the "Act")¹. Specifically, Subilia was convicted of knowingly exporting and causing to be exported from the United States to India, a controlled commodity, to wit, a component, accessory and controls for an isostatic press, that is, a control panel which consisted of, among other things, an operating control cabinet, a power/pressure control cabinet, and digital controllers and recorder, without having first obtained the required export license from the U.S. Department of Commerce.

In addition to the violation of the Act, the Subilia was convicted of conspiring to violate the Act in violation of 18 U.S.C. 371(2000) and aiding and abetting in violation of 18 U.S.C. 2 (2000). Subilia was ordered to serve six months community confinement, and one year home confinement followed by one and one half years probation, as well as a \$250,000 fine.

Section 11(h) of the Act and Section 766.25 of the Export Administration Regulations ("Regulations")² provide, in pertinent part, that "[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Act, "

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706(2000)) ("IEEPA").

² The Regulations are currently codified at 15 CFR Parts 730-774 (2006).

for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (b). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of the Subilia's conviction for violating the Act, and I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny the Subilia's export privileges under the Regulations for a period of 10 years from the date of his conviction. Due to exceptional circumstances, this Order is being issued without prior notice or opportunity to respond.

Accordingly, it is hereby
Ordered

I. Until November 18, 2015, Maurice Subilia, 17 Oakwood Road, Kennebunkport, ME 04046, his successors or assigns, and when acting for or on behalf of Subilia, his officers, representatives, agents, or employees ("Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported to or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United

States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Subilia by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until November 18, 2015.

VI. In accordance with Part 756 of the Regulations, Subilia may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Subilia. This Order shall be published in the **Federal Register**.

Dated: March 12, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07-1333 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-816]

Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 11, 2006, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review for certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea). *See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 53370 (September 11, 2006) (*Preliminary Results*). This review covers four manufacturers/exporters of the subject merchandise: Union Steel Manufacturing Co., Ltd. (Union); Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group); Hyundai HYSCO (HYSCO); and Dongbu Steel Co., Ltd. (Dongbu) (collectively, respondents). The period of review (POR) is August 1, 2004, through July 31, 2005.

As a result of our analysis of the comments received, these final results differ from the preliminary results. For our final results, we have found that during the POR, Union and Dongbu sold subject merchandise at less than normal value (NV). We have also found that HYSCO and the POSCO Group did not make sales of the subject merchandise at less than NV (*i.e.*, they have a zero or *de minimis* dumping margin).

EFFECTIVE DATE: March 20, 2007.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska (Union), Preeti Tolani (Dongbu), Victoria Cho (the POSCO Group), and Joy Zhang (HYSCO), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-8362, (202) 482-0395, (202) 482-5075, and (202) 482-1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2006, the Department published the *Preliminary*

Results. On January 3, 2007, the Department published the notice of extension of final results of the antidumping administrative review of CORE from Korea, extending the date for these final results to March 12, 2007. *See Corrosion-Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review*, 72 FR 102 (January 3, 2007).

Comments from Interested Parties

We invited parties to comment on our *Preliminary Results*. On October 20, 2006, Mittal Steel USA ISG, Inc. (Mittal) and United States Steel Corporation (US Steel) filed case briefs concerning all respondents and all respondents filed a case brief.¹ On October 31, 2006, Mittal filed a rebuttal brief concerning all respondents and U.S. Steel filed rebuttal briefs concerning Union, Dongbu, and POSCO. On October 31, 2006, all respondents filed a rebuttal brief.

Scope of the Order

This order covers cold-rolled (cold-reduced) carbon steel flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030,

¹ The Nucor Corporation, a domestic interested party, did not submit a case brief or a rebuttal brief.

7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted-average margins exist:

Producer/Manufacturer	Weighted-Average Margin
Dongbu	2.07 %
Union	1.45 %
The POSCO Group	0.35 % (de minimis)
HYSCO	0.09 % (de minimis)

Assessment

The Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these final results.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 17.70 percent, the “All Others” rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping

duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 12, 2007.

David M. Spooner,
Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Accompanying Issues and Decision Memorandum

A. General Issues

Comment 1: Model-Match Methodology and Laminated Products
Comment 2: Treatment of CEP Offset
Comment 3: Adjustments to U.S. Prices for Duty Drawback Paid in Korea
Comment 4: Treatment of Indirect Selling Expenses incurred in Korea
Comment 5: Treatment of Production Yields

B. Company-Specific Issues

Dongbu Steel Co., Ltd.

Comment 6: Treatment of All Sales Entered During the POR in Dongbu's Margin Calculation

Hyundai HYSCO

Comment 7: Cash Deposit Rate for HYSCO

Union Steel Manufacturing Co., Ltd.

Comment 8: DINDIRSU Calculation
Comment 9: Treatment of Union's Indirect Selling Expense Ratio
Comment 10: Treatment of Union's Calculation of DKA's Short Term Interest Rate
Comment 11: Treatment of Union's Overrun Sales in the Home Market
Comment 12: Treatment of Union's Home Market Sales of Non-Prime Merchandise in the Calculation of Normal Value
Comment 13: Ministerial Error with respect to QTYCVNU Field

Comment 14: Ministerial Error Regarding Union's Home Market Credit Expenses

Pohang Iron & Steel Company, Ltd. and Pohang Coated Steel Co., Ltd.

Comment 15: Treatment of the POSCO's Group Home Market Credit Expenses on Freight billed to its Customers

Comment 16: The Department's Calculation of the POSCO Group's Sales Database Affecting Certain Conversion Factors

Comment 17: Treatment of the POSCO Group's Short-Term Interest Rate Used for U.S. Credit Expenses

Comment 18: Treatment of the POSCO Group's of Overrun Sales in the Home Market

Comment 19: The Department's Calculation of the POSCO Group's Certain Merchandise Sales in the Home Market

Comment 20: Treatment of the POSCO Group's Cash Deposit Instructions

Comment 21: Treatment of POSAM's (Pohang Steel America Corp.) Indirect Selling Expenses

[FR Doc. E7-5041 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-808]

Stainless Steel Wire Rod from India: Notice of Initiation of Antidumping Duty New-Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 20, 2007.

SUMMARY: On December 29, 2006, the Department of Commerce received a request to conduct a new-shipper review of the antidumping duty order on stainless steel wire rod from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating a new-shipper review of Sunflag Iron & Steel Co., Ltd., the exporter and producer that requested the new-shipper review.

FOR FURTHER INFORMATION CONTACT: Catherine Cartos or Minoo Hatten at (202) 482-1757 or (202) 482-1690, respectively, 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 notice announcing the antidumping duty order on stainless steel wire rod from India was published on December 1, 1993. See *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993). On December 29, 2006, the Department of Commerce (the Department) received a timely request for a new-shipper review of the order from Sunflag Iron & Steel Co., Ltd. (Sunflag). See section 751(a)(2)(B) of the Act and 19 CFR 351.214(c). Sunflag is both the Indian producer and exporter of the subject merchandise to the United States on which its request for a new-shipper review is based. As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Sunflag certified that it is a producer and exporter of the subject merchandise, that it did not export stainless steel wire rod to the United States during the period of investigation (POI) (July 1, 1992, through December 31, 1992), and that, since the initiation of the investigation, it has never been affiliated with any exporter or producer that exported stainless steel wire rod to the United States during the POI.¹

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the following: (1) the date on which it first shipped the subject merchandise for export to the United States; (2) the volume of its first shipment and its subsequent shipment;² and (3) the date of its first sale to an unaffiliated customer in the United States.

On January 31, 2007, the Department postponed its decision regarding whether to initiate the new-shipper review because, based upon its routine examination of Customs and Border Protection entry data, it was not clear whether the merchandise exported by Sunflag to the United States qualified as subject merchandise. See Memorandum from Catherine Cartos through Minoo Hatten to the File, New-Shipper Review of Stainless Steel Wire Rod from India: Customs and Border Protection Entry Data, dated January 31, 2007. Under 19 CFR 351.302(b), the Department may extend any time limit established by its regulations for good cause unless expressly precluded by the statute. See Letter from Laurie Parkhill to Mr. M.D. Ghumare, General Manager of Exports for Sunflag, dated January 31, 2007. The status of the Sunflag entries is no longer at issue because the Department has

determined that the merchandise exported by Sunflag to the United States qualifies as subject merchandise. See Memorandum from Catherine Cartos through Minoo Hatten to the File, New-Shipper Review of Stainless Steel Wire Rod from India: Customs and Border Protection Entry Data and Documents, dated March 13, 2007.

Initiation of New-Shipper Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b)(2) and (d)(1), we find that Sunflag's request meets the threshold requirements for initiation of a new-shipper review. See March 13, 2007, Memorandum to the File through Laurie Parkhill, Director, AD/CVD Operations, Office 5, from the team regarding the new-shipper review initiation checklist. Accordingly, we are initiating a new-shipper review of the antidumping duty order on stainless steel wire rod from India for shipments produced and exported by Sunflag. The period of review is December 1, 2005, through November 30, 2006. See 19 CFR 351.214(g)(1)(i)(A). We intend to issue the preliminary results of this new-shipper review no later than 180 days after initiation of this review. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i). We intend to issue the final results of this review no later than 90 days after the date on which the preliminary results are issued. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i). On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new-shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) in lieu of a cash deposit is not available in this case. Importers of subject merchandise manufactured and exported by Sunflag must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current all-others rate of 48.80 percent.

Interested parties that need access to proprietary information in this new-shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214(d), and 19 CFR 351.221(c)(1)(i).

¹ See Sunflag's Request for New Shipper Review, dated December 29, 2006.

² In its December 29, 2006, Request for New Shipper Review, Sunflag provided information on its subsequent shipment.

Dated: March 13, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-5040 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice of public teleconference meeting.

SUMMARY: The President's Advisory Commission on Asian Americans and Pacific Islanders (Commission) will convene a teleconference meeting on April 5, 2007 to deliberate the draft Commission report to the President. This meeting is open to the public and interested persons may listen to the teleconference by using the call-in number and pass code provided below (see **ADDRESSES**).

DATES: Thursday, April 5, 2007, beginning at 1:15 p.m. (EST).

ADDRESSES: By telephone: Beginning at 1 p.m. (EST) on Thursday, April 5, 2007, members of the public may call 1-800-619-6733 and dial pass code 4656049 to access the teleconference. Advance registration is not required.

FOR FURTHER INFORMATION CONTACT: For information regarding the Commission, please contact Ms. Cianna Ferrer, Executive Assistant, Office of the White House Initiative on Asian Americans and Pacific Islanders, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 5612, Washington DC 20230; telephone (202) 482-3949; facsimile (202) 482-501-6239; e-mail: info@aapi.gov. Note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce is subject to extensive security screening.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), public announcement is made of the Commission's intent to convene a teleconference meeting on April 5, 2007. This meeting is open to the public and

interested persons may listen to the teleconference by using the call-in number and pass code set forth above (see **ADDRESSES**). Advance registration is not required to access the teleconference.

Prospective agenda items for the meeting include a deliberation of the draft Commission report to the President, administrative tasks and such other Commission business as may arise during the course of the meeting. In addition, the Commission welcomes interested persons to submit written comments to the Office of the White House Initiative on Asian Americans and Pacific Islanders (see **FOR FURTHER INFORMATION CONTACT**) at any time before or after the meeting. To facilitate distribution of written comments to Commission members prior to the meeting, the Commission suggests that comments be submitted by facsimile or by e-mail no later than April 2, 2007. The Commission will not be receiving public comment during the meeting.

Dated: March 15, 2007.

Ronald Marin,

Financial Management Officer, Minority Business Development Agency.

[FR Doc. E7-5054 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-21-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022007E]

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

ACTION: Notice.

SUMMARY: NMFS issues this notice to notify the public that the United States has accepted conservation and management measures and resolutions pertaining to fishing in Antarctic waters managed by the Commission for the Conservation of Antarctic Marine Living Resources (Commission or CCAMLR). The Commission adopted these measures at its twenty-fifth meeting in Hobart, Tasmania, October 23 to November 3, 2006. The measures have been agreed upon by the Member countries of CCAMLR, including the United States, in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention). The measures include measures previously

adopted by the Commission and remaining in force; measures adopted for the 2006/2007 fishing season to restrict overall catches, research catch and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; and set forth: fishing seasons fishery-by-fishery, revisions to previously adopted measures; new measures, and new resolutions. The Commission also adopted a list of vessels suspected to be engaged in illegal, unregulated or unreported fishing in the Convention Area.

ADDRESSES: Copies of the CCAMLR conservation and management measures may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301-713-2282.

SUPPLEMENTARY INFORMATION:

Background

The full text of the conservation and management measures and resolutions agreed to by consensus by CCAMLR at its 2006 meeting were published by the U.S. Department of State in a formal notice in the **Federal Register** on January 29, 2007 (72 FR 4068).

Public comments were invited on the notice; one comment was received. The commenter suggested that the use of gillnets and longlines be banned in the Convention Area. As indicated in the Department of State notice, CCAMLR has adopted an interim prohibition on the use of deep-sea gillnets. The prohibition will remain in force until the CCAMLR Scientific Committee has investigated and reported on the potential impacts of gillnets in the Convention Area. Regarding longline fishing, CCAMLR first adopted measures requiring fishers to employ techniques minimizing the incidental mortality of seabirds in the course of longline fishing in 1991. At its 2006 meeting, CCAMLR's Ad Hoc Working Group on Incidental Mortality Associated with Fishing noted the resulting continuing low levels of incidental mortality of seabirds in regulated longline fisheries in most parts of the Convention Area. There were no reports of incidental mortality of marine mammals in longline gear in the 2005/2006 fishing season.

Through this action, NMFS notifies the public that the United States has accepted the measures and resolutions adopted at CCAMLR's twenty-fifth meeting. NMFS provides the following

summary of these measures and resolutions as a courtesy.

Prohibitions on Directed Fishing

The Commission retained the continuing prohibitions for directed fishing for finfish in Statistical Subareas 48.1 and 48.2; for *Notothenia rossii* in Statistical Subareas 48.1, 48.2 and 48.3; for *Gobionotothen gibberifrons*, *Chaenocephalus aceratus*, *Pseudochaenichthys georgianus*, *Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subareas 48.3; for *Lepidonotothen squamifrons* in Statistical Division 58.4.4; for *Dissostichus* species in Statistical Division 58.4.4 outside areas of national jurisdiction; for *Dissostichus eleginoides* in Statistical Subarea 58.6; for *Dissostichus eleginoides* in Statistical Subarea 58.7; for *Dissostichus eleginoides* in Statistical Division 58.5.1 outside areas of national jurisdiction; for *Dissostichus eleginoides* in Statistical Division 58.5.2 east of 79°20'E and outside of the EEZ to the west of 79°20'E; for *Dissostichus* species in Statistical Subarea 88.2 north of 65° S; for *Dissostichus* species in Statistical Subarea 88.3; and for *Electrona carlsbergi* in Statistical Subarea 48.3.

The Commission prohibited directed fishing for *Dissostichus* species in Subarea 48.5 during the 2006/2007 fishing season.

The Commission adopted a new measure that prohibits directed fishing on shark species in the Convention Area, other than for research purposes. Shark fishing will be prohibited at least until the status of shark populations and the effects of fishing are assessed.

Bycatch

The Commission agreed to extend the existing bycatch limits in Division 58.5.2 into the 2006/2007 season. The Commission also agreed to extend the existing bycatch limits and move-on rules for exploratory fisheries into the 2006/2007 season, taking account of the revised catch limit for *Dissostichus* species in Subareas 88.1 and 88.2 and the consequential change to the bycatch limits in those subareas.

The Commission adopted a measure requiring that bycatch of sharks, especially juveniles and gravid females, taken accidentally in other fisheries will, as far as possible, be released alive.

The Commission revised its resolution promoting international actions to reduce the incidental mortality of seabirds to further address fishing outside the CCAMLR Convention Area. The Commission requested that Contracting Parties engage with other Regional Fisheries

Management Organizations (RFMO), strengthen input into RFMO meetings by including seabird experts on delegations and become involved in the development and implementation of seabird resolutions and other measures to reduce bycatch of albatrosses and petrels within RFMO jurisdictions. Such resolutions and measures might include mitigation measures, sharing information, exchanging observer-collected data on seabird mortalities, establishing of bycatch working groups, and evaluating fishery impacts on seabird populations. The Commission urged Contracting Parties to implement measures to reduce or eliminate seabird incidental mortality in fisheries outside the CCAMLR Convention Area; require their flagged vessels fishing in these areas to collect and report rates of incidental mortality of seabirds associated with each fishery, details of the seabird species involved, and estimate of total seabird mortality; and report to the CCAMLR Secretariat annually on the implementation of mitigation measures, including their effectiveness in reducing seabird incidental mortality.

New and Exploratory Fishing

Twelve Members submitted notifications for longline exploratory fisheries for toothfish in 2006/2007 in Subareas 48.6, 88.1, 88.2 and Divisions 58.4.1, 58.4.2, 58.4.3a and 58.4.3b. There were no notifications for new fisheries or for fisheries in closed areas.

The Commission revised the general measures for exploratory fisheries for *Dissostichus* species in the Convention Area for the 2006/2007 season by requiring the Flag State of the vessel fishing for *Dissostichus* species to assume the responsibility for tagging, tag recovery and correct reporting. The Commission clarified that the fishing vessel must cooperate with the CCAMLR scientific observer in undertaking the tagging program and further elaborated the requirements of the tagging program.

The Commission amended its measures on new and exploratory fisheries to clarify that the use of bottom trawls in high seas areas of the Convention Area is considered a new or exploratory fishery. The Commission now requires that information on the known and anticipated impacts of bottom trawls on vulnerable marine ecosystems, including on the benthos and benthic communities, must be included in the notifications of new or exploratory fisheries.

Icefish

The Commission adopted area specific conservation measures for *Champsocephalus gunnari* for the 2006/2007 season.

The Commission set the overall catch limit for the *C. gunnari* trawl fishery in Subarea 48.3 for the November 15, 2006 to November 14, 2007 season at 4,337 tons, limited the catch of this total to 1,084 tons during the spawning period (March 1, 2007 through May 31, 2007) and continued previously adopted restrictions on the fishery. The Commission endorsed the Scientific Committee's recommendation that vessels in this fishery be encouraged to use net binding as a means to reduce seabird interaction and potential incidental mortality.

The Commission set the catch limit for the *C. gunnari* trawl fishery within defined areas of Division 58.5.2 for the 2006/2007 season at 42 tons and retained previously adopted restrictions on, and reporting requirements for, the fishery.

Crab

The Commission set the total allowable catch level for the pot fishery for crab for the 2006/2007 fishing season at 1,600 tons and continued to limit participation to one vessel per member country conducted as an experimental harvest regime.

Squid

The Commission set the total allowable catch limit for the exploratory jig fishery for *Martialia hyadesi* for the 2006/2007 fishing season at 2,500 tons.

Krill

The Commission carried forward the precautionary catch limits for krill in Statistical Area 48 at 4.0 million tons overall and, as divided by subareas, at 1.008 million tons in Subarea 48.1, 1.104 million tons in Subarea 48.2, 1.056 million tons in Subarea 48.3, and 0.832 million tons in Subarea 48.4.

Dissostichus Species

The Commission set a combined catch limit of 3,554 tons for the longline and pot fisheries for *D. eleginoides* in the Shag Rocks and South Georgia areas of Subarea 48.3 in the 2006/2007 season. The Commission closed the West Shag Rocks area and set bycatch limits on other species.

The Commission set a combined catch limit of 2,427 tons of *D. eleginoides* in Division 58.5.2 west of 79°20' E from December 1, 2006, to November 30, 2007, for trawl and pot fishing and from May 1, 2007, to August 31, 2007, for longline fishing. The Commission

extended the season to September 30 for vessels which complete longline sink rate testing using CCAMLR testing protocols.

The Commission designated several *Dissostichus* fisheries as exploratory fisheries for the 2006/2007 fishing season. These fisheries are total allowable catch fisheries and are open only to the flagged vessels of countries that notified CCAMLR of an interest by named vessels to participate in the fisheries.

The exploratory fisheries for *Dissostichus* species authorized by the Commission for the 2006/2007 fishing season are: (1) longline fishing in Statistical Subarea 48.6 by no more than one vessel per country at any time by Japan, Republic of Korea, New Zealand and Norway; (2) longline fishing in Statistical Division 58.4.1 by Australia (one vessel), Republic of Korea (two vessels), Namibia (one vessel), New Zealand (three vessels), Spain (one vessel) and Uruguay (one vessel); (3) longline fishing in Statistical Division 58.4.2 by Australia (one vessel), Republic of Korea (three vessels), Namibia (one vessel), New Zealand (two vessels), Spain (one vessel) and Uruguay (one vessel); (4) longline fishing in Statistical Division 58.4.3a (the Elan Bank) outside areas under national jurisdiction to no more than one vessel per country at any time by Japan, Republic of Korea and Spain; (5) longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) outside areas of national jurisdiction to no more than one vessel per country at any time by Australia, Republic of Korea, Namibia, Spain and Uruguay; (6) longline fishing in Statistical Subarea 88.1 by Argentina (two vessels), Republic of Korea (three vessels), New Zealand (four vessels), Norway (one vessel), Russia (two vessels), South Africa (one vessel), Spain (one vessel), United Kingdom (two vessels), and Uruguay (five vessels); and (7) longline fishing in Statistical Subarea 88.2 by Argentina (two vessels), New Zealand (four vessels), Norway (one vessel), Russia (two vessels), Spain (one vessel), United Kingdom (two vessels), and Uruguay (four vessels).

Environmental Protection

The Commission consolidated the environmental protection provisions of its annual fishery measures into a single conservation measure of continuing application. The new conservation measure applies to all directed fishing. These measures include provisions: (1) prohibiting the use on fishing vessels of plastic packaging bands to secure bait boxes; (2) prohibiting the use of other

plastic packaging bands for other purposes on fishing vessels which do not use onboard incinerators (closed systems); (3) requiring packaging bands once removed from packages to be cut so that they do not form a continuous loop and then incinerated at the earliest opportunity in an onboard incinerator; (4) requiring that all plastic residue be stored on board the vessel until reaching port and in no case discarded at sea; (5) prohibiting vessels fishing south of 60° S from dumping or discharging: oil or fuel products or oily residues into the sea (except as permitted under Annex I of MARPOL 73/78), garbage, food wastes not capable of passing through a screen with openings no greater than 25 mm, poultry or parts (including egg shells), sewage within 12 n miles of land or ice shelves, sewage while the ship is traveling at speeds of less than 4 knots, offal or incineration ash. Live poultry or other living birds may not be brought into areas south of 60° S and any dressed poultry not consumed must be removed from those areas. Requirements in previously adopted conservation measures prohibiting or regulating the discharge of offal in areas of the Convention north of 60° S were retained in the measures on incidental mortality of seabirds and marine mammals in longlines and trawls.

Interim Prohibitions on the Use of Certain Gear

The Commission adopted a measure restricting the use of bottom trawling gear in the high seas areas within the Convention Area through the 2007/08 fishing season. The Scientific Committee will review scientific evidence available by 2007 in order to establish relevant criteria to determine the impacts of bottom trawl fishing on oceanic ecosystems and, in particular, vulnerable bottom marine ecosystems in the Convention Area. The Commission revised existing measures regulating new fisheries and exploratory fisheries to require approval by the Commission of new or exploratory bottom trawling fishing operations before such operations can occur within the Convention Area.

The Commission adopted a measure imposing an interim prohibition on the use of gillnets, for purposes other than scientific research, in the Convention Area. Gillnets are defined by the measure as strings of single, double or triple netting walls, vertical, near by the surface, in midwater or on the bottom, in which fish will gill, entangle or enmesh. Gillnets have floats on the upper line (headrope) and, in general, weights on the ground-line (footrope). Gillnets consist of single or less

commonly, double or triple netting (known as "trammel net") mounted together, on the same frame ropes. Several types of nets may be combined in one gear (for example, trammel net combined with gillnet). These nets can be used either alone or, as is more usual, in large numbers placed in line ("fleets" of nets). The gear can be set, anchored to the bottom or left drifting, free or connected with the vessel. The use of gillnets in the Convention Area is prohibited until the Scientific Committee has investigated and reported on the potential impacts of this gear.

Fishing Vessel Reporting

The Commission revised its measure on the licensing and inspection obligations of Contracting Parties to require that fishing vessels licensed by the Contracting Party report, where possible, sightings of fishing vessels and support vessels in the Convention Area. The report must include as much information as possible on the name and description of the vessel; the vessel call sign; the registration and Lloyd's/IMO number of the vessel; the Flag State of the vessel; photographs of the vessel to support the report; and any other information regarding the observed activities of the sighted vessel. The report must be forwarded by the master of the vessel licensed by the Contracting Party to its Flag State as soon as possible.

The Commission revised its measure on automated satellite-linked vessel monitoring systems to require that for vessels intending to enter an area of the Convention Area closed to fishing, or an area of the Convention Area for which it is not licensed to fish, the Flag State shall provide notification to the Secretariat of the vessel's intention. The Flag State may permit or direct that such notifications be provided by the vessel directly to the CCAMLR Secretariat.

Contracting Party Data Reporting

The Commission adopted a measure requiring that all Contracting Parties intending to fish for krill in the Convention Area notify the Secretariat no later than four months in advance of the regular annual meeting of the Commission, immediately prior to the season in which they intend to fish.

The Commission revised its measure on automated satellite-linked vessel monitoring systems to require that when the CCAMLR Secretariat receives VMS data that indicates the presence of a vessel (1) in an area or subarea for which no license details have been provided by the Flag State to the

Secretariat, or (2) in any area or subarea for which the Flag State or fishing vessel has not provided prior notification, the Secretariat shall notify the Flag State and require an explanation. The explanation will be forwarded to the Secretariat for evaluation by the Commission at its next annual meeting.

Catch Documentation Scheme

The Commission revised its measure on the Catch Documentation Scheme (CDS) to include a procedure for cooperation with CCAMLR by non-Contracting Parties involved in the trade of *Dissostichus* species. The Commission also revised the CDS measure to clarify that only government officials may request and examine the documentation of each shipment of *Dissostichus* species imported into or exported from its territory to verify that it includes validated documents.

Illegal, Unregulated and Unreported Fishing

The Commission approved a combined list of Contracting Party Vessels and non-Contracting Party Vessels suspected of illegal, unregulated or unreported fishing or trading (the IUU Vessel List). A number of vessels on the combined IUU Vessel List have been identified on previous lists by other names and flags. The combined list is posted on the public section of the CCAMLR website (www.ccamlr.org). A vessel on the IUU Vessel List will not be permitted to participate in exploratory fisheries. Contracting Parties are urged to prohibit trade with the vessels on the CCAMLR IUU Vessel List.

The Commission revised the schemes to promote compliance by Contracting Party and non-Contracting Party vessels with CCAMLR conservation measures. As revised the schemes now require that Contracting Parties deny port access to vessels on the IUU Vessel List unless for the purpose of enforcement action or for reasons of force majeure or for rendering assistance to vessels, or persons on those vessels, in danger or distress. Vessels allowed entry to a Contracting Party port are to be inspected in accordance with CCAMLR conservation measures on inspection. Where port access is granted to such vessels Contracting Parties are required to examine documentation and other information, including *Dissostichus* Catch Documents, with a view to verifying the area in which the catch was taken. Where the origin of the catch cannot be adequately verified, Contracting Parties are required to detain the catch or refuse any landing or transshipment of the catch. When catch

is found to be in contravention of CCAMLR conservation measures, Contracting Parties should, where possible, confiscate the catch; and prohibit all support to vessels with such catch, including non-emergency refueling, resupplying and repairs.

The Commission adopted a new scheme to promote compliance by Contracting Party nationals with CCAMLR conservation measures. The scheme requires Contracting Parties to take appropriate measures to verify if any natural or legal persons subject to their jurisdiction are engaged in IUU fishing activities and take appropriate actions, including seeking cooperation by industries within their jurisdiction. Contracting Parties are required to submit reports on actions taken with respect to the scheme to the CCAMLR Secretariat and to Contracting Parties and non-Contracting Parties cooperating with CCAMLR for purposes of implementing the CDS. The scheme will be binding on Contracting Parties beginning July 1, 2008.

The Commission adopted a resolution urging Contracting Parties to pursue diplomatic and other actions with non-Contracting Parties to combat IUU fishing.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: March 14, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E7-5050 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081806E]

Marine Mammals and Endangered Species; File No. 1076-1789

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Alliance of Marine Mammal Parks and Aquariums (The Alliance), 418 North Pitt Street, Alexandria, Virginia 22314 (Kristi West, Ph.D., Principal Investigator) has been issued a permit to import and export parts from all cetaceans and pinnipeds species (excluding walrus) for purposes of scientific research.

ADDRESSES: The application and related documents are available for review

upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713-2289.

SUPPLEMENTARY INFORMATION: On November 17, 2005, notice was published in the **Federal Register** (70 FR 69743) that a request for a scientific research permit had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Alliance has been issued a scientific research permit to receive, import and export a specified number of marine mammal specimens (cetaceans and pinnipeds, except for walrus) under the jurisdiction of NMFS to study and document the health and biology of wild marine mammals as well as those marine mammals maintained in public display, research, or stranding facilities or from samples taken during other permitted research. Only specimens collected legally and in a humane manner would be authorized by the permit. Sources of samples may include animals that have already died and from captive animals during routine husbandry procedures. No animals may be intentionally killed for the purpose of collecting specimens, and no money can be offered for the specimens. Specimens may be taken world-wide at anytime of the year for up to five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources,

NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; <http://www.nmfs.noaa.gov/pr/permits/review.htm>;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814-4700; phone (808)973-2935; fax (808)973-2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281-9200; fax (978)281-9371; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824-5312; fax (727)824-5309.

Dated: March 14, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-5053 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.#031207C]

Marine Mammals; File No. 774-1847-01

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center, Antarctic Marine Living Resources Program (Rennie Holt, Ph.D., Principal Investigator), 8604 La Jolla Shores Drive, La Jolla, CA 92037 has been issued an amendment to scientific research Permit No. 774-1847.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301)713-2289.

SUPPLEMENTARY INFORMATION: On January 23, 2007 notice was published in the **Federal Register** (72 FR 2868) that an amendment of Permit No. 774-1847, issued September 11, 2006 (71 FR 53423) had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 774-1847 authorizes the permit holder to continue a long-term ecosystem monitoring program of pinniped species in the South Shetland Islands, Antarctica. The permit holder is authorized to take up to 710 Antarctic fur seals (*Arctophalus gazell*) and 20 leopard seals (*Hydrurga leptonyx*) annually. The animals are captured, measured, weighed, tagged, blood sampled, and have time-depth recorders, VHF transmitters, and platform terminal transmitters attached. A subset of fur seals are given an enema, have a tooth extracted, milk sampled, and are part of a doubly-labeled water study on energetics. A subset of leopard seals are blubber and muscle sampled.

The amendment authorizes the permit holder to increase annual research-related mortality to eight Antarctic fur seals (3 adults and 5 pups) and two leopard seals. Permit conditions are such that research must be stopped when the mortality level is reached. The amendment is intended to allow the continuation of the long-term monitoring studies in the event of greater than anticipated levels of research-related mortality.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 14, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-5055 Filed 3-19-07; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 6, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202-418-5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07-1364 Filed 3-15-07; 4:43 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 13, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202-418-5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07-1365 Filed 3-15-07; 4:43 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 20, 2007

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202-418-5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07-1366 Filed 3-15-07; 4:43 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 27, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT FOR MORE INFORMATION: Eileen A. Donovan, 202-418-5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07-1367 Filed 3-15-07; 4:43 pm]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Deterrence and Escalation Subcommittee to the Chief of Naval Operations. The meeting will consist of discussions of current and future Navy strategy, plans, and policies in support of U.S. deterrence planning, crisis management, and conflict escalation and control.

DATES: The meeting will be held on April 10, 2007, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Boardroom in the CNA Corporation Building, 4825 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Kip Blecher, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703-681-4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 12, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7-5030 Filed 3-19-07; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Use of Binding Arbitration for Contract Controversies

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON), after consultation with the Attorney General as required by 5 U.S.C. 575(c), has adopted a policy that authorizes contracting officers to use binding arbitration procedures for issues in controversy arising under procurement contracts using appropriated and non-appropriated funds.

FOR FURTHER INFORMATION CONTACT: John A. Dietrich, Assistant General Counsel (ADR), telephone 202-685-6990.

SUPPLEMENTARY INFORMATION: The policy is contained in Secretary of the Navy Instruction 5800.15, "Use of Binding Arbitration for Contract Controversies," and is available on <http://doni.daps.dla.mil/SECNAV.aspx> and <http://adr.navy.mil>. The instruction provides interpretive guidance regarding applicable statutes and regulates the internal affairs of the DON by granting authority to contracting officers to use binding arbitration for issues in controversy.

Dated: March 12, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7-5031 Filed 3-19-07; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Television Access; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327C.

Dates: Applications Available: March 20, 2007.

Deadline for Transmittal of Applications: May 4, 2007.

Deadline for Intergovernmental Review: July 3, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: \$2,500,000. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2008 and later years.

Estimated Average Size of Awards: \$500,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

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 purpose of the program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priorities: This competition contains one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Technology and Media Services for Individuals With Disabilities—
Television Access*

Background of Priority

On July 21, 2000, the Federal Communications Commission (FCC) adopted rules to make television more accessible to people with visual disabilities by mandating that a certain amount of programming contain video description. However, in November 2002, a Federal court struck down these rules. Thus, because FCC accessibility rules do not currently require video description, only a limited number of television programs provide video description for individuals with blindness or low vision. For more information about video description, please refer to: <http://www.fcc.gov/cgb/dro/video-description.html>.

The FCC is also responsible for implementing and monitoring the closed captioning requirements of the Telecommunications Act of 1996. In that law, Congress authorized the FCC to adopt exemptions from general captioning requirements. For more information about closed captioning and the exemptions please refer to: <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html>.

Through the following priority, we intend to support projects that will provide video description and captioning of programming that is appropriate for use in the classroom setting for children with disabilities, thereby increasing these children's access to educational video programming.

Statement of Priority: Under this priority, an applicant must describe, or describe and caption, widely available programs that are appropriate for use in the classroom setting for children with disabilities at the preschool, elementary, or secondary level.

To meet the requirements of this priority, an application must—

(a) Include criteria for selecting programs of high educational value that take into account the preferences of educators, students, and parents.

(b) Identify the extent to which the programming to be video described or video described and captioned is widely available.

(c) Identify the total number of program hours the project will make accessible and the cost per hour for description and, if the applicant is proposing both description and captioning, the cost per hour for description and captioning.

(d) For each video program, identify the source of any private or other public

support, and the projected dollar amount of that support, if any.

(e) Demonstrate the willingness of program providers or program owners to permit and facilitate the description or the description and captioning of their programs.

(f) Provide assurances from program providers or program owners stating that programs made accessible under this project will air, and will continue to air during the duration of the grant award, with descriptions or with descriptions and captions.

(g) If the applicant is proposing both description and captioning, provide assurances from program providers or program owners stating that programs captioned under this project would not otherwise be captioned to meet the FCC's captioning requirements, or are specifically exempt from the FCC's captioning requirements.

In addition, projects funded under this priority must—

(a) Establish a consumer advisory group that includes parents and educators. This group must convene at least annually for the purpose of certifying that each program to be described or described and captioned with project funds is of high educational value and is appropriate for use in a preschool, elementary or secondary level classroom for children with disabilities, taking into account the educational needs of students, including intellectual/cognitive and social/emotional needs.

(b) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(c) Identify the anticipated shelf-life and range of distribution of the video programs that is possible without further costs to the project.

(d) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project.

(e) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application from a small business. Applicants must document their status as a small business according to the definition for their business category as provided by the Small Business Administration (SBA) (for more

information see SBA Web site at: <http://www.sba.gov/size/index.html>).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: \$2,500,000. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2008 and later years.

Estimated Average Size of Awards: \$500,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. **Eligible Applicants:** SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching.

3. **Other: General Requirements—**(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must

involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 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.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327C.

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 Grants and Contracts Services Team 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 competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 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 and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: March 20, 2007.

Deadline for Transmittal of Applications: May 4, 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: July 3, 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 competition.

5. *Funding Restrictions:* We reference 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. Television Access-CFDA Number 84.327C, 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 the Television Access-

CFDA Number 84.327C competition 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 84.326, not 84.326A).

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 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 competition 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 84.327C),
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
84.327C), 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 84.327C), 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:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating a Priority as Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary priorities, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary priorities for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

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.

4. *Performance Measures:* Grantees will be expected to submit data on total number of hours of programs captioned or described in the aggregate. No additional data collection or review activities are planned.

VII. Agency Contact

For Further Information Contact: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4067, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7434.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363.

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 15, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7-5047 Filed 3-19-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Center on Response To Intervention; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326E.

Dates: Applications Available: March 20, 2007.

Deadline for Transmittal of Applications: May 4, 2007.

Deadline for Intergovernmental Review: July 3, 2007.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), public charter schools that are LEAs under State law, institutions of higher education (IHEs), other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Estimated Available Funds: \$2,830,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$2,830,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program promotes academic achievement and improves results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically-based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Center on Response to Intervention***Background**

Response to Intervention (RTI) involves maximizing student achievement by monitoring student progress to make data-based instructional decisions for students. While RTI varies in its methodologies, a common model is based on implementation of universal, secondary, and tertiary interventions (Kamps & Greenwood, 2005; Fuchs & Fuchs, 2006; Vaughn, 2003). Universal interventions involve providing high quality core instruction to students in regular education classrooms. Secondary interventions involve more intensive small group instruction, and tertiary interventions are even more intensive and are often provided by an interventionist or special educator.

One of the many benefits of RTI is early identification of students who experience academic or behavioral difficulties. Experts in the field have reached consensus regarding the need to identify children with academic and behavioral difficulties at an early age. Early intervention with these students can either eliminate the need for special education or at least reduce the intensity of the services required. A National Research Council (NRC) report (Donovan & Cross, 2002) confirmed that intervening early, specifically in reading and behavior management, is associated with reduced placement rates of students in special education programs. Specifically, it was found that placement rates in special education were lower in schools where effective reading programs or strong classroom management programs existed than in schools where such programs did not exist. The report concluded that the effectiveness of early intervention was greater than the cumulative effectiveness of interventions provided to students after they had experienced years of failure.

RTI is currently being used and investigated in regular and special education classrooms and is demonstrating promise as a means for early identification of children with disabilities, particularly specific learning disabilities (SLD), as well as students who are at risk of either or both academic or behavioral disabilities (Kamps & Greenwood, 2005; Fuchs & Fuchs, 2006; Vaughn, 2003). RTI also holds promise for children from some racial and ethnic backgrounds who are not progressing in the general education curriculum. Data from the National Assessment of Educational Progress (NAEP) indicate that students from certain racial and ethnic backgrounds

continue to lag behind other students in English, math, and science (Lee, 2006). Over time, the disparity in progress may lead to over-identification or disproportionate representation of this group of students for special education services (Donovan & Cross, 2002). Preliminary data indicate that RTI may reduce the number of instances of inappropriately identified students who are from certain racial or ethnic backgrounds or who are limited-English proficient for special education services (Kamps & Greenwood, 2005; Kamps, Wills, Greenwood, Thorne, Lazo, Crockett, McGonigle, & Swaggart, 2003).

The 2004 amendments to IDEA amended section 613(f) to allow local educational agencies (LEAs) to use up to 15 percent of their Part B funding for early intervening services to support students who struggle academically or behaviorally in a general education environment, but who have not been identified for special education. Additionally, LEAs that significantly over-identify children from particular racial or ethnic backgrounds for special education services must use the maximum amount of their IDEA funding available for early intervening services to provide comprehensive, coordinated early intervening services to children, particularly children in groups that were significantly over-identified (see section 618(d)(2)(B) of IDEA).

Amendments made to IDEA by the Individuals with Disabilities Education Improvement Act of 2004 also explicitly authorize the use of response to scientifically-based research interventions to identify students with SLD. The amendments removed a requirement to find discrepancies between achievement and intellectual ability before identifying a student as having SLD. This requirement often precluded early identification of children in need of special education.

References

Donovan, S. & Cross, C. (2002). *Minority students in special and gifted education*. Washington, D.C.: National Academy Press.

Fuchs, D. & Fuchs, L.S. (2006). Introduction to response to intervention: What, why, and how valid is it? *Reading Research Quarterly*, 41, 92–99.

Kamps, D., & Greenwood, C. R. (2005). Formulating secondary-level reading interventions. *Journal of Learning Disabilities*, 38, 500–509.

Kamps, D., Wills, H., Greenwood, C., Thorne, S., Lazo, J., Crockett, J., McGonigle, J., & Swaggart, B. (2003). Curriculum influences on growth in early reading fluency for students with academic and behavioral risks: A descriptive study. *Journal of Emotional and Behavioral Disorders*, 11, 211–224.

Lee, J. (2006). *Tracking Achievement Gaps and Assessing the Impact of NCLB on the Gaps: An In-depth Look into National and State Reading and Math Outcome Trends*. Retrieved June 27, 2006, from The Civil Rights Project Harvard University Web site: http://www.civilrightsproject.harvard.edu/research/esea/nclb_naep_lee.pdf.

Vaughn, S. (2003). *How many tiers are needed for response to intervention to achieve acceptable prevention outcomes*. Retrieved May 14, 2006, from The National Research Center on Learning Disabilities Web site: <http://www.nrcld.org/symposium2003/vaughn/vaughn.pdf>.

Priority

The Assistant Secretary establishes an absolute priority for a Center on Response to Intervention (Center) to (a) identify, adapt, evaluate, and scale-up RTI models for identifying and serving children with disabilities, particularly SLD; (b) provide technical assistance and disseminate information to SEAs and LEAs to implement comprehensive RTI programs in LEAs and schools; and (c) disseminate information on RTI to parents, service providers, policymakers, and others. SEAs must be the primary targets for the technical assistance activities of the Center. The Center must support States to help them develop the capacity to provide technical assistance to LEAs.

Demonstrated Expertise of Key Staff

To be considered for funding under this priority, an applicant must demonstrate that key staff responsible for fulfilling the activities of the Center have expertise in (a) scientifically-based research practices associated with SLD identification; (b) the use and implementation of RTI and all its components, including screening, progress monitoring, data-based decision-making, procedural safeguards, and multi-tiered interventions; and (c) issues related to disproportionate representation of children based on race or ethnicity. Expertise in these areas may be demonstrated by having refereed publications on respective topics. An applicant may use a team-based approach across sites to capitalize on the knowledge, experience, and qualifications of various key staff who will be responsible for providing technical assistance and disseminating information to SEAs and LEAs. The Assistant Secretary anticipates that this Center will build on the expertise and resources of previously and currently supported Department of Education technical assistance centers, such as the National Research Center on Learning Disabilities (NRCLED), the National Center on Student Progress Monitoring (NCSPM), the Research Institute on

Progress Monitoring (RIPM), the National Center for Culturally Responsive Educational Systems (NCCREST), the Center on Instruction (COI), the Access Center, and the Individuals with Disabilities Education Act 2004-Research for Inclusive Settings (IRIS) Center.

Requirements

To meet the requirements of this priority, the Center, at a minimum, must—

(a) Identify, adapt, evaluate, and scale up evidence-based, school-wide RTI models that identify and serve children with disabilities, particularly SLD, and children at risk of developing a disability, to use as a basis for providing technical assistance to SEAs and LEAs. These models also must be evaluated on the extent to which the models reduce over-identification for special education services based on race or ethnicity and of students who are limited-English proficient;

(b) Assist SEAs in developing the capacity to support local implementation of RTI models that provide comprehensive, coordinated early intervening services to students who are experiencing either or both academic or behavioral difficulties, especially in LEAs that are required to provide early intervening services because of significant disproportionality of students based on race or ethnicity;

(c) Provide technical assistance and disseminate information to SEAs and LEAs on implementing scientifically-based practices for using RTI to improve instruction for all students and identify students with SLD;

(d) Assist SEAs to provide technical assistance to enable LEAs to provide comprehensive, coordinated early intervening services, such as RTI, particularly to LEAs that are required to provide early intervening services because of significant disproportionality of students based on race or ethnicity required under section 618(d) of IDEA;

(e) Communicate, coordinate, and collaborate with the NRCLD, NCSPM, COI, RIPM, NCCREST, Access Center, IRIS, and progress monitoring model demonstration projects funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program to summarize and proactively disseminate reports and documents on research findings and related topics to inform policy and practice related to RTI, including early intervening services to decrease over-identification or disproportionate representation in special education of students based on race or ethnicity;

(f) Communicate, coordinate, and collaborate with the appropriate OSEP-funded centers identified in this priority to develop and disseminate information on RTI, progress monitoring, secondary and tertiary educational and behavioral interventions, and other pertinent matters;

(g) Communicate, coordinate, and collaborate with appropriate OSEP-funded centers identified in this priority to develop and disseminate information for professional development on scientifically-based models of RTI that include progress monitoring for teachers and other school staff;

(h) Conduct national and regional meetings, in collaboration with other centers, to assist SEAs and LEAs in implementing RTI models to provide early intervening services, especially in LEAs with significant disproportionality, and to identify children with SLD;

(i) Coordinate with the NRCLD, NCSPM, RIPM, NCCREST, and Access Center as these projects end to transfer their key responsibilities to the Center and integrate the content from their Web sites to the Center's Web site;

(j) Maintain communication and collaboration with other technical assistance centers and organizations, e.g., Regional Comprehensive Centers, NCLB-IDEA Partnership Project, Regional Resource Centers, and Federal Resource Center, National Association of State Directors of Special Education, Council of Chief State School Officers, Council for Exceptional Children, 100 Black Men of America, National Association for Bilingual Education, and others as appropriate;

(k) Provide funding to at least two graduate or doctoral level students who have concentrations in special education, learning disabilities, or other related areas that have been approved by the Office of Special Education Programs (OSEP) to assist with project related activities; and

(l) Address the needs for information on RTI for all stakeholders including parents, service providers, policy makers, and administrators at the national, State, and local levels through dissemination activities that include the maintenance of a Web site. This Web site must be maintained in a format that meets a government or industry recognized standard for accessibility.

Additional Requirements

The Center also must—

(1) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of SEAs, LEAs, individuals with disabilities, parents, educators,

professional organizations and advocacy groups, researchers, and other appropriate groups to review and advise on the Center's activities and plans. The committee must include membership that represents urban schools. The final advisory committee will be jointly selected by OSEP and the Center;

(2) Budget annually for attendance at a three-day Project Director's meeting in Washington, DC and for a two-day trip to Washington, DC to attend an additional Project Director's meeting and to meet and collaborate with the OSEP Project Officer and other funded projects for purposes of cross-project collaboration and information exchange;

(3) Budget for at least a monthly trip to attend appropriate meetings convened by the Department of Education and other centers and organizations; and

(4) Budget five percent of the grant amount annually to support emerging needs as identified jointly through consultation with the OSEP Project Officer.

Fourth and Fifth Years of Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review team will convene in Washington, DC during the last half of the project's second year. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to changed practices and improved outcomes for children with disabilities and children at risk of developing a disability.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: \$2,830,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$2,830,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, public charter schools that are LEAs under State law, IHEs, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements—*(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 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.

If you request an application from ED Pubs, be sure to identify this

competition as follows: CFDA Number 84.326E.

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 Grants and Contracts Services Team 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 competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A “page” is 8.5” x 11” (on one side only), with 1” margins (top, bottom, and 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 proportional font that is 12-point or larger, or a font that is 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 and certifications; or the one-page abstract, the resumes, the bibliography, references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 20, 2007.

Deadline for Transmittal of Applications: May 4, 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 person listed under *For Further Information Contact*.

Deadline for Intergovernmental Review: July 3, 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 competition.

5. *Funding Restrictions:* We reference 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 Center on Response to Intervention, CFDA Number 84.326E, 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 the Center on Response to Intervention 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 84.326, not 84.326E).

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 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 competition 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 the 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 System Technical Issues with the Grant.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 84.326E),
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
84.326E), 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 84.326E), 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:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected

for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they also have submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

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.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures, which will be used for this competition, focus on: The extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve

educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact:
Grace Zamora Duran, Ed.D., U.S. Department of Education, 400 Maryland Avenue, SW., room 4088, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7328.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363.

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 15, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7-5048 Filed 3-19-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP99-301-152]****ANR Pipeline Company; Notice of Compliance Filing**

March 14, 2007.

Take notice that on March 9, 2007 subject to Section 4 of the Natural Gas Act (NGA) and Part 154 of the Regulations of the Commission, and the Offer of Settlement, Stipulation and Agreement ("Settlement") approved in the above-referenced docket, ANR Pipeline Company (ANR), tendered for filing and approval, copies of Twelfth Revised Sheet No. 190A to include in its Tariff to become effective April 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Philis J. Posey,*Acting Secretary.*

[FR Doc. E7-5020 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER07-501-000]****Birchwood Power Partners, L.P.; Notice of Issuance of Order**

March 14, 2007.

Birchwood Power Partners, L.P. (Birchwood) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Birchwood also requested waivers of various Commission regulations. In particular, Birchwood requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Birchwood.

On March 13, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Birchwood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 12, 2007.

Absent a request to be heard in opposition by the deadline above, Birchwood is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Birchwood, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Birchwood's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Philis J. Posey,*Acting Secretary.*

[FR Doc. E7-5012 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER07-514-000]****G&G Energy, LLC; Notice of Issuance of Order**

March 14, 2007.

G&G Energy, LLC (G&G) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. G&G also requested waivers of various Commission regulations. In particular, G&G requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by G&G.

On March 13, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by G&G should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 12, 2007.

Absent a request to be heard in opposition by the deadline above, G&G is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of G&G, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of G&G's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Philis J. Posey,
Acting Secretary.

[FR Doc. E7-5014 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-320-072]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

March 14, 2007.

Take notice that on March 9, 2007, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission an amendment to a negotiated rate letter agreement between Gulf South and Atmos to correct the agreement's expiration date.

Gulf South states that copies of the filing has served copies of this filing upon all parties on the official service list.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Philis J. Posey,
Acting Secretary.

[FR Doc. E7-5019 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-345-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 14, 2007.

Take notice that on March 9, 2007, Northern Natural Gas Company

(Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of April 9, 2007:

Twelfth Revised Sheet No. 252
Sixth Revised Sheet No. 253

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Philis J. Posey,
Acting Secretary.

[FR Doc. E7-5018 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP07-100-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

March 14, 2007.

Take notice that on March 8, 2007, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP07-100-000, a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization of the Windy Creek pipeline replacement and lowering project on Northwest's Eugene to Grants Pass Lateral, located in Douglas County, Oregon, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Specifically, Northwest proposes to replace approximately 100 feet of existing 10-inch diameter pipeline with approximately 100 feet of new 10-inch diameter pipeline. Northwest states that the new pipeline segment will be installed at a lower depth in Northwest's existing right-of-way and the existing pipeline segment will be abandoned by removal. Northwest asserts that the section of the lateral has become partially exposed by erosion within the banks of Windy Creek, making a replacement necessary to maintain safety and integrity of the lateral. Northwest estimates the cost of the project to be approximately \$300,000.

Any questions regarding the application should be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158-0900, or call at (801) 584-7117.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Commission's

Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Philis J. Posey,*Acting Secretary.*

[FR Doc. E7-5010 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP01-245-022]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 14, 2007.

Take notice that on March 9, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume NO. 1, the tariff sheets listed on Appendix A to the filing, with the proposed effective date of the tariff sheets are March 1, 2007 and April 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Philis J. Posey,*Acting Secretary.*

[FR Doc. E7-5016 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP07-344-000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 14, 2007.

Take notice that on March 9, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 134 and Sixth Revised Sheet No. 135F, to be effective April 8, 2007.

Transco states that the purpose of the instant filing is to update the lists of Buyers in Section 9 of Rate Schedule WSS and Section 8.2 of Rate Schedule WSS-Open Access.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7-5017 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Issuance of Order

March 14, 2007.

Twin Buttes Wind LLC (Docket Nos. ER07-240-000, ER07-240-001 and ER07-240-002); MinnDakota Wind LLC (Docket Nos. ER07-242-000, ER07-242-001, and ER07-242-002); Klondike Wind Power III, LLC (Docket Nos. ER07-287-000 and ER07-287-001)

Twin Buttes Wind, LLC, MinnDakota Wind LLC and Klondike Wind Power III LLC (collectively, the "Applicants") filed applications for market-based rate authority, with an accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity and ancillary services at market-based rates. The Applicants also requested waivers of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On March 13, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part

34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 12, 2007.

Absent a request to be heard in opposition by the deadline above, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of the Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7-5011 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

March 14, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2628-056.

c. *Date Filed:* March 5, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* R. L. Harris Dam.

f. *Location:* The project is located on the Tallapoosa River in Clay and Randolph County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, 600 18th Street North, Birmingham, AL 35203, (205) 257-1403.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502-8674, or e-mail address: shana.high@ferc.gov.

j. *Deadline for filing comments and or motions:* April 13, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-2628-056) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Alabama Power Company is requesting Commission approval to authorize Chimney Cove on Lake Wedowee to construct a fishing pier, boat docks, a boardwalk, and additional seawall for use by residents of the Chimney Cove community. Specific proposed facilities include: six floating dock structures with 12 boat slips each, one floating dock with ten boat slips, two seawalls, in addition to an existing seawall, totaling 1,282 feet, and a boardwalk along the seawall.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room,

located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, or for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at <http://www.ferc.gov> under the "e-Filing" link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7-5015 Filed 3-19-07; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2007.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. *The Bank of New York Mellon Corporation*, New York, New York; to become a bank holding company by acquiring and merging with The Bank of New York Company, Inc., New York, New York, and thereby indirectly acquire The Bank of New York, New York, New York; B.N.Y. Holdings (Delaware) Corporation, Newark, Delaware; The Bank of New York

(Delaware), Newark, Delaware; Mellon Financial Corporation, Pittsburgh, Pennsylvania; Mellon Bank, N.A., Pittsburgh, Pennsylvania; Mellon United National Bank, Miami, Florida; Mellon 1st Business Bank, National Association, Los Angeles, California; and Mellon Trust of New England, N.A., Boston, Massachusetts.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *1st Source Corporation*, South Bend, Indiana; to acquire 100 percent of the voting shares of FINA Bancorp, Inc., Valparaiso, Indiana, and thereby indirectly acquire First National Bank of Valparaiso, Valparaiso, Indiana.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Belvedere SoCal*, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Professional Business Bank, Pasadena, California. In connection with this application, Belvedere Capital Partners II, LLC, and Belvedere Capital Fund II, LP, San Francisco, California, will indirectly acquire up to 58 percent of the voting shares of Professional Business Bank, Pasadena, California.

Board of Governors of the Federal Reserve System, March 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-4980 Filed 3-19-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *PSB Holding Corp.*, Preston, Maryland; to engage *de novo* through its subsidiary, Community Bank Mortgage Corporation, Easton, Maryland, in the origination and sale of residential mortgage loans to the secondary market, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7-4981 Filed 3-19-07; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Preparedness and Response; HHS Public Health Emergency Medical Countermeasures Enterprise Strategy for Chemical, Biological, Radiological and Nuclear Threats

AGENCY: Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The United States faces serious public health threats from the deliberate use of weapons of mass destruction (WMD)—chemical, biological, radiological, or nuclear (CBRN)—by hostile States or terrorists, and from naturally emerging infectious diseases that have a potential to cause illness on a scale that could adversely impact national security. Effective strategies to prevent, mitigate, and treat the consequences of CBRN threats is an integral component of our national security strategy. To that end, the United States must be able to rapidly develop, stockpile, and deploy effective

medical countermeasures to protect the American people. This *HHS Public Health Emergency Medical Countermeasures Enterprise Strategy (HHS PHEMCE Strategy)* establishes the goals and objectives that HHS will employ to ensure that medical countermeasures are available for effective use against the highest priority CBRN threats facing the Nation. The *HHS PHEMCE Strategy* considers the full spectrum of medical countermeasures-related activities, including research, development, acquisition, storage/maintenance, deployment, and utilization. The *HHS PHEMCE Strategy* is consistent with the President's *Biodefense for the 21st Century* and aligned with the National Strategy for *Medical Countermeasures against Weapons of Mass Destruction*.

DATES: This notice is effective as of March 14, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Collier, Policy Analyst, Office of Public Health Emergency Medical Countermeasures, Office of the Assistant Secretary for Preparedness and Response at 330 Independence Ave., SW., Room G640, Washington, DC 20201 or by phone: 202-260-1200.

Introduction

The United States faces serious public health threats from the deliberate use of chemical, biological, radiological, or nuclear (CBRN) weapons of mass destruction (WMD) by hostile states or terrorists, and from naturally emerging infectious diseases that have the potential to cause illness on a scale that could adversely impact national security. The type and magnitude of both CBRN and naturally-occurring threats are evolving. Chemical exposures can result from accidents as well as deliberate releases. Advances in biotechnology support the development of new medical treatments, but also make those same tools more widely available to adversaries who might use them to modify biological organisms with the intention to inflict harm. New diseases, like Severe Acute Respiratory Syndrome (SARS), emerge; and regionally endemic diseases, like West Nile Fever and Rift Valley Fever, are introduced into susceptible populations. Nuclear technologies may proliferate despite international efforts to contain them.

A failure to anticipate these threats or the lack of a capacity to effectively prevent them could leave an untold number of Americans dead or permanently disabled. The United States must be able to effectively develop, stockpile, and rapidly deploy

critical medical countermeasures to prevent, mitigate, and treat the adverse health consequences of threats both natural and manmade. Given the diverse and dynamic nature of these threats, and the expense and time required to develop threat agent-specific medical countermeasures, a strategy must be developed that prioritizes investment and optimizes the ability to protect the Nation.

The Role of the Department of Health and Human Services in Public Health Preparedness

Within the Federal government, the Department of Health and Human Services (HHS) leads the research, development, acquisition, deployment, and use of effective medical countermeasures to protect the civilian population from WMD. This key role was identified in the *National Strategy to Combat Weapons of Mass Destruction*,¹ *Biodefense for the 21st Century*,² and the National Strategy for *Medical Countermeasures against Weapons of Mass Destruction*,³ which together are the President's blueprint for addressing the Nation's CBRN defense programs.

Within HHS, multiple operating and staff divisions work together to develop and implement strategies to prevent and control disease, injury, illness, and disability from terrorist threats and naturally-occurring diseases capable of negatively impacting Government and social systems. In July 2006, HHS created the Public Health Emergency Medical Countermeasures Enterprise (PHEMCE).⁴ The PHEMCE is a coordinated, intra-agency effort led by the Office of the Assistant Secretary for Preparedness and Response⁵ (ASPR) and includes three HHS internal agencies: the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). The mission of the PHEMCE is to: (1) Define and prioritize requirements for public health emergency medical countermeasures; (2) integrate and coordinate research, early and late stage product development, and procurement activities addressing the requirements; and (3) set deployment and use

¹ <http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>.

² <http://www.whitehouse.gov/homeland/20040430.html>.

³ <http://www.whitehouse.gov/news/releases/2007/02/20070207-2.html>.

⁴ **Federal Register**, Vol. 71, No. 129, Thursday, July 6, 2006, Notices.

⁵ Formerly the Office of Public Health Emergency Preparedness; changed to reflect the Pandemic and All-Hazards Preparedness Act enacted on December 19, 2006 (P.L. 109-417).

strategies for medical countermeasures held in the Strategic National Stockpile (SNS).

Many resources throughout HHS have already been coordinated in support of medical countermeasure preparedness. Funding support by the NIH for basic research, product development, and clinical research of CBRN medical countermeasures has grown from \$53 million in Fiscal Year 2001 (FY01) to \$1.8 billion in FY06. Funding for the SNS similarly has grown from \$52 million in FY01 to \$530 million in FY06. Furthermore, on July 21, 2004, President George W. Bush signed into law the Project BioShield Act of 2004 (Project BioShield).⁶ The purpose of Project BioShield is to accelerate the research, development, acquisition, and availability—including through use of the Emergency Use Authorization (EUA)—of safe and effective medical countermeasures to protect the United States from CBRN threats. Project BioShield created a \$5.6 billion special reserve fund for use over 10 years (FY04—FY13) to acquire these medical countermeasures.

During its first two years of implementation, Project BioShield acquisitions were guided by requirements derived from interagency deliberations in 2003 that involved Cabinet-level Departments and the Executive Office of the President. Under this initial strategy, HHS pursued acquisitions for those highest priority threats for which there were candidate products at relatively advanced stages of development. These products included medical countermeasures for anthrax, smallpox, botulinum toxins, and radiological/nuclear agents⁷—the four threat agents initially determined by the Department of Homeland Security (DHS) to pose a material threat to national security.⁸ The relatively

advanced nature of the products pursued resulted from years of earlier investment made in large part by NIH and the Department of Defense (DOD).

In addition to the achievements made to date, more can and must be done. The National Strategy for *Medical Countermeasures against Weapons of Mass Destruction* provides guiding principles to align United States Government (USG) programs and funding mechanisms that support the research, development, acquisition, deployment, and utilization of medical countermeasures for current and future CBRN threats. In accordance with the National Strategy, HHS will continue its commitment to shape and execute a focused medical countermeasures program to protect the Nation's citizens against high priority CBRN threats where medical countermeasures can have the greatest impact. The NIH will continue its existing research and development efforts to identify medical countermeasures for known as well as emerging diseases. HHS will use the Biomedical Advanced Research and Development Authority (BARDA) in the Pandemic and All-Hazards Preparedness Act (Pub. L. 109–417) to provide direct investment in medical countermeasure advanced research and development. Finally, HHS will use the Project BioShield special reserve fund and the Strategic National Stockpile resources to acquire, store, maintain and deploy top priority medical countermeasures.

Medical Countermeasure Preparedness For CBRN Threats: A Two-Stage Approach

To fulfill the mission of the ASPR to lead the Nation in preventing, preparing for, and responding to the adverse health effects of public health emergencies and disasters, HHS through the PHEMCE is undertaking a two-stage approach to planning that aims to solicit stakeholder input and to efficiently integrate the requirements for, and the advanced development and acquisition of, medical countermeasures for priority CBRN threat agents.

Stage One

The first stage is development of this *Public Health Emergency Medical Countermeasures Enterprise Strategy*^{9 10}

States population sufficient to affect national security.

⁹ A draft of this *HHS PHEMCE Strategy* was published in the **Federal Register** on September 8, 2006, for public comment and was presented and discussed at the 2006 BioShield Stakeholders Workshop on September 25–26, 2006. The *HHS PHEMCE Strategy* reflects input received from the stakeholders representing industry, academia, other

(*HHS PHEMCE Strategy*). The *HHS PHEMCE Strategy* establishes the goals and objectives that HHS will employ to ensure that the most appropriate medical countermeasures are developed and acquired for use against the highest priority CBRN threats facing the Nation. This *HHS PHEMCE Strategy* considers the full spectrum of medical countermeasures-related activities, including research, development, acquisition, storage/maintenance, deployment, and utilization.

Stage Two

The second stage in this process is the development of the *HHS PHEMCE Implementation Plan*. This document, to be published in early 2007, will outline the medical countermeasure programs that reflect threat priorities, threat agent characteristics, medical/public health consequence assessments, and the likelihood that effective medical and public health intervention will prevent and mitigate adverse health consequences. The *HHS PHEMCE Implementation Plan* will incorporate valuable lessons learned from the initial implementation of Project BioShield; consider new authorities made available in the Pandemic and All-Hazards Preparedness Act; and outline HHS near-, mid- and long-term goals for research, development, and acquisition of medical countermeasures, consistent with the goals defined in this *HHS PHEMCE Strategy*. The *HHS Implementation Plan* will be reviewed at least biennially and revised to reflect changes in the threat scope and the availability of new or improved countermeasures.

While ASPR leads the execution of the *HHS PHEMCE Implementation Plan*, HHS recognizes that developing, acquiring, and utilizing medical countermeasures to prepare for and respond to CBRN events will require significant resources and unprecedented

⁶ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ090.108.pdf.

⁷ To date, contracts have been awarded using the Project BioShield special reserve fund for the purchase of anthrax therapeutics, anthrax vaccines, botulism antitoxin, a pediatric formulation of potassium iodide (a drug that blocks absorption of radioactive iodine in the thyroid gland), and Calcium- and Zinc-DTPA (two forms of a decorporation agent to remove transuranic radionuclides from the body). The SNS also contains enough smallpox vaccine to protect every American, antibiotics for anthrax, adult (tablet) formulations of potassium iodide, the decorporation agent Prussian Blue, and additional supplies for treating the burn and blast injuries that could be associated with a nuclear event.

⁸ The Project BioShield Act of 2004 requires the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the heads of other agencies, as appropriate, to determine which current and emerging CBRN threats present a material threat against the United

non-governmental organizations, and State, local, and Federal governments. Additional information on the Workshop is available at www.hhs.gov/aspr/ophemc/bioshield/workshop.html.

¹⁰ This *HHS PHEMCE Strategy* excludes pandemic influenza, which is addressed in the *HHS Pandemic Influenza Plan*, a blueprint for pandemic influenza preparation and response that provides guidance to Federal, State, and local policy makers and health departments. The *HHS Pandemic Influenza Plan* includes an overview of the threat of pandemic influenza, a description of the relationship of the *HHS Pandemic Influenza Plan* to other Federal plans, and an outline of key roles and responsibilities during a pandemic. It is aligned with the *National Strategy for Pandemic Influenza*, issued by President George W. Bush on November 1, 2005, and the *Implementation Plan for the National Strategy for Pandemic Influenza*, which guides the Nation's preparedness and response to an influenza pandemic.[0] Additional information is available at www.pandemicflu.gov.

cooperation among many stakeholders, including Federal counterparts outside HHS,¹¹ private industry (domestic and international), State and local governments, frontline first responders and healthcare workers, academia, and the public.

Four Strategic Goals

To address the challenges presented by the diverse CBRN threat spectrum, to mitigate the financial and programmatic risks associated with medical countermeasure development and acquisition, and to ensure that the development and acquisition of medical countermeasures significantly enhances the Nation's response and recovery capabilities, the following four strategic goals and underlying objectives will guide critical funding allocation decisions.

Goal 1. Identify and Prioritize Programs for the Development and Acquisition of Medical Countermeasures

While a primary goal of HHS is to prepare the Nation to prevent and respond to the health effects of natural and manmade disasters, constraints of both time and financial resources do not allow for the development and acquisition of medical countermeasures to prevent and mitigate all threats, in all places, at all times, and for all people. Consequently, several factors must be considered when developing the most appropriate strategies for high priority CBRN threats. The prioritization of medical countermeasure development and acquisition programs that will be delineated in the *HHS PHEMCE Implementation Plan* will be informed by the following three objectives.

Objective 1. Establish the Relative Hierarchy of the Chemical, Biological, Radiological, and Nuclear Threat Classes

In the process of determining the most effective ways to mitigate and treat the effects of the CBRN threats, it is essential to understand that the three threat classes (i.e., chemical, biological, and radiological/nuclear) are distinct in their feasibility of use and in their potential public health consequences. HHS recognizes that the overall strategy for protection against these threats must be broad enough to effectively mitigate the public health impact of a major chemical, biological, radiological, or

nuclear event, while focusing preparations on developing and acquiring medical countermeasures to protect against the threat agents that have the greatest potential to cause catastrophic public health consequences and for which medical intervention will be effective, feasible, and pragmatic. Threat identification and prioritization to inform medical countermeasure development and acquisition is a collaborative effort between HHS and DHS. DHS has the lead in considering the best available intelligence and scientific information to identify and prioritize CBRN threats. DHS uses this as the basis for issuing determinations about which agents present a material threat sufficient to affect national security. DHS then provides HHS with estimates of the numbers of potentially exposed individuals using plausible, high-consequence scenarios for each threat. To inform subsequent medical and public health consequence assessments, HHS combines this data with medical consequence modeling, subject matter expert evaluations, domestic and international intelligence information, and information on current State and local response capabilities. The *HHS PHEMCE Implementation Plan* will consider all of these inputs when establishing the HHS medical countermeasure priorities and requirements.

Objective 2. Prioritize Gaps in the Research, Development, and Acquisition of Medical Countermeasures

HHS is committed to investing in research and development of medical countermeasures that will provide the most benefit for preventing or treating the effects of exposure to CBRN threats. HHS will apply the following specific guidelines and principles when evaluating potential investments.

Medical¹² versus Non-Medical¹³ Countermeasures. HHS will address the relative value of medical countermeasures and non-medical countermeasures, both within each class of threat agent and across all classes of threat agents. The *HHS PHEMCE Implementation Plan* will be developed with the overall goal of creating—through investments in research, development, and acquisitions—a

portfolio that optimizes public health preparedness using the best combined strategies to prevent, mitigate, and treat the effects of a catastrophic CBRN event.

Prevention and Mitigation versus Treatment. HHS will address both medical prevention and medical treatment alternatives for public health preparedness. Given cost/benefit and implementation considerations, *post-event* diagnostics, prophylaxis, and/or treatment are likely to be the preferred strategies for most threats; however, *pre-event* medical countermeasures (such as vaccines) may still be appropriate for some high priority threats.

Acute versus Chronic. Many CBRN agents have the potential to cause acute health consequences. In addition to relieving these acute consequences, early mitigation and treatment may prevent subsequent chronic health effects. The *HHS PHEMCE Implementation Plan*, therefore, will give priority to addressing the acute (immediate to weeks timeframe) medical and/or public health outcomes resulting from CBRN threat agents, while acknowledging that some threats, despite early interventions, may cause long-term health consequences.

Specific versus Broad-spectrum. The USG must be capable of responding to a wide variety of potential challenges, including traditional as well as novel biological agents that are highly communicable, associated with a high rate of morbidity or mortality, and potentially without known countermeasure at the time of discovery. Identified in the National Strategy for *Medical Countermeasures against Weapons of Mass Destruction* is the spectrum of potential biological threat agents that pose such risks. These include threats that are traditional (i.e., naturally occurring microorganisms or toxin products with the potential to be disseminated to cause mass casualties, such as anthrax and plague); enhanced (i.e., a traditional agent that has been modified or selected to circumvent current countermeasures, such as an engineered, antibiotic-resistant, bacterial pathogen[0]); emerging (i.e., a[0] naturally occurring organism that is newly recognized or anticipated to present a public health threat, such as Severe Acute Respiratory Syndrome-associated coronavirus [SARS-CoV][0][0]); or advanced (i.e., a novel organism that has been engineered or newly generated in the laboratory and that could be targeted to bypass traditional countermeasures or produce a more severe or otherwise enhanced spectrum of disease).

Medical countermeasure acquisitions planned in the near-term will continue

¹¹ Partners include Department of Defense (DOD), Department of Homeland Security (DHS), Department of Labor (DOL), Department of Transportation (DOT), Department of State (DOS), Department of Veterans Affairs (DVA), Department of Energy (DOE), and Department of Agriculture (USDA).

¹² Includes both pharmaceutical medical countermeasures (e.g., vaccines, antibiotics, antitoxins) and non-pharmaceutical medical countermeasures (e.g., ventilators, devices, personal protective equipment such as face masks and gloves).

¹³ Includes elements such as contact and transmission interventions, social distancing, and community shielding.

to focus on addressing specific, high-priority threats with specific medical countermeasures. Where available, HHS will pursue development and acquisition of medical countermeasures that address multiple threats, as is the case with the current stockpile of antibiotics that are effective against multiple bacterial threat agents. A key challenge for the *HHS PHEMCE Implementation Plan*, however, will be to define the optimal balance between fixed and flexible defenses¹⁴ to best prepare for the future.

Fixed defenses (the so-called “one bug—one drug” approach) for medical counter-measure development can be time-consuming and expensive. To date, however, this has been the preeminent path for addressing current threats. This approach has been successful in part because it presents industry with clearly defined targets for product development. At the same time, however, the uncertainties associated with the CBRN threat environment require that the *HHS PHEMCE Implementation Plan* support the development of flexible defenses to allow for innovations in medical countermeasure design that may result in enhanced products. For example, the benefit of broad-spectrum pharmaceuticals and platform technologies¹⁵ will extend beyond their ability to counter current biological threat agents and will allow for rapid response to future threats. In addition, development of broad-spectrum medical countermeasures and platform technologies may also contribute to the mitigation and treatment of the health effects associated with chemical and radiological/nuclear threats. Therefore, HHS will support the development of flexible medical countermeasures including broad-spectrum pharmaceuticals and diagnostics, while recognizing that, at least for the immediate future, some threats will require agent-specific medical countermeasures.

The NIH will continue its existing research and development efforts to identify medical countermeasures for known as well as emerging diseases. HHS will use the Biomedical Advanced Research and Development Authority (BARDA) in the Pandemic and All-

Hazards Preparedness Act to provide direct investment in medical countermeasure advanced research and development. Finally, HHS will use the Project BioShield special reserve fund and the Strategic National Stockpile resources to acquire, store, maintain, and deploy top priority medical countermeasures. HHS will work to ensure that its internal agencies, including ASPR, NIH, FDA, and CDC, continue to present industry with clear and comprehensive guidelines for HHS expectations regarding the development, approval, and utilization policies for fixed and flexible defenses.

General versus Special Populations. The *HHS PHEMCE Implementation Plan* will address the medical countermeasure needs of both the general population and those special populations (e.g., children, the elderly, pregnant women, immunocompromised individuals, and persons with disabilities) for whom efficacy or dosing have not been determined, to whom FDA licensure has not been extended, or for whom the use of a countermeasure is medically contraindicated. Given the limited availability of resources, priority will be given to those medical countermeasures that will prevent and treat adverse health effects for the greatest number of individuals. Meanwhile, HHS will continue its dedication to finding treatment and mitigation solutions for high priority threats to all populations.

Concept of Operations. HHS will develop, and select for acquisition, candidate medical countermeasures based on desired product characteristics that are most compatible with the current Concept of Operations (CONOPs) for public health emergency response at the Federal, State, and local levels. For each medical countermeasure, HHS will establish civilian CONOPs, including maintenance, utilization policies, and deployment plans in the context of available consequence mitigation strategies. When feasible, HHS will identify and integrate existing CONOPs developed by its Federal partners.¹⁶ Consistent with previously issued material threat determinations, HHS will define specific medical countermeasure requirements, including product specifications consistent with USG storage plans and operational

capabilities for deployment¹⁷ and utilization by Federal, State, and local authorities. For example, HHS will favor medical countermeasures that people can self-administer (e.g., oral antibiotics) over those that require administration by a health care worker. For those medical countermeasures that do require a health care worker, HHS will favor easily administered medications (e.g., a simple single injection) over medications that require intravenous administration, continuous medical monitoring, or prolonged courses. Preferred medical countermeasures will include products that can be stored at room temperature, have a minimum 5-year shelf-life, and are appropriate for use by the vast majority of the at-risk population.

Domestic versus International. The *HHS PHEMCE Implementation Plan* will focus on medical countermeasures needed to protect the domestic civilian population. In a global emergency, however, the USG may utilize these resources, as feasible and as appropriate, to meet critical international needs.

Objective 3. Establish and Prioritize Near-Term, Mid-Term, and Long-Term Development and Acquisition Programs

HHS will achieve the optimal state of public health preparedness by synchronizing its near-term, mid-term, and long-term investments in the research, development, and acquisition of existing as well as novel medical countermeasures to effectively prevent, mitigate, and treat the dynamic nature of the threat scope. The *HHS PHEMCE Implementation Plan* will address both existing and next generation medical countermeasures. HHS will regularly evaluate, on a case-by-case basis, investment strategies for long-term maintenance and/or replacement of medical countermeasures in the SNS. HHS will establish a research and development portfolio that will meet future top priority countermeasure gaps.

Building on the existing USG infrastructure, HHS will identify and support the critical framework necessary to enable medical countermeasure development, including biocontainment facilities, animal models, workforce training and education, and product manufacturing. HHS will establish strategies that consider the total life-cycle costs¹⁸ of

¹⁴ Relman DA. Bioterrorism—Preparing to Fight the Next War, *NEJM*, 2006, 354(2):113–115. In the context of defense against biological threats, a fixed defense is a medical countermeasure intended for use against a specific organism and not useful in scenarios that employ a different organism.

¹⁵ Platform technologies are methods for developing and producing medical countermeasures that are rapidly adaptable to multiple threats.

¹⁶ DOD will separately develop its medical countermeasure CONOPs for military populations and will work to integrate DOD medical countermeasure requirements and product development plans with HHS strategies for addressing civilian requirements.

¹⁷ Deployment includes the transportation and distribution system (both vehicular equipment and human capital) needed to distribute the medicines and supplies.

¹⁸ Relevant cost elements including development, acquisition, storage, maintenance, deployment,

each medical countermeasure and will employ the following guidelines and principles to evaluate potential investments in the near-term, the mid-term, and the long-term.

Near-term Strategies (FY07–08).

Recognizing the broad spectrum of CBRN threats and the limited resources available, all investments will focus on those threats with the highest possibility for medical mitigation. Currently available medical countermeasures will be considered for acquisition if they meet immediate, critical needs and if they can be deployed effectively under current preparedness plans. HHS will continue to invest in research and development activities to identify additional indications for currently approved¹⁹ products. Furthermore, HHS will continue to support candidate medical countermeasures already in advanced development that have the potential to address current vulnerabilities. These efforts will focus on the highest priority gaps in terms of adverse public health and medical outcomes.

Mid-term Strategies (FY09–13). HHS will monitor advances in medical countermeasure technology and will provide, through a narrowly focused advanced development effort, the support needed to pull promising candidate medical countermeasures through the development pipeline. It will be accepted that some of these candidate countermeasures and platforms may not be deemed suitable for further investment as additional data become available; however, this approach is expected to result in a net expansion of the pool of medical countermeasure candidates. HHS also will work with the private sector to support new technologies for medical countermeasure manufacturing that may be utilized for both CBRN and commercial interests. Furthermore, HHS will support the development of point-of-care assays and diagnostics, and other medical countermeasure products that facilitate a rapid public health response, such as those with needle-less delivery systems or single dose solutions.

Long-term Strategies (FY14–23). HHS will maintain its commitment to providing appropriate resources to address those threat agents deemed by DHS to pose the greatest risks to national security. In addition to these

known dangers, HHS will continue to work to protect the Nation from unknown threats. HHS will also continue its support of the development of novel, broad-spectrum medical countermeasures as well as innovative approaches to countermeasure deployment logistics, including manufacturing processes, delivery systems, storage requirements, and distribution tactics. Maintenance in the SNS of products made with existing technologies will be evaluated in the context of availability of next generation products and of products made with modernized manufacturing technologies. Existing technologies will continue to be evaluated for applicability to producing novel medical countermeasures.

Goal 2. Build Balanced, Effective Programs Across the HHS Public Health Emergency Medical Countermeasures Enterprise

The HHS PHEMCE will build and maintain a balanced and effective medical countermeasure research, development, and acquisition program. Currently, a robust research and early development program exists under the leadership of the NIH. In the coming years, HHS will expand on this foundation to enhance its ability to pursue an aggressive, integrated, and strategic advanced development program using authorities provided in the Pandemic and All-Hazards Preparedness Act. The prioritization of threat-specific medical countermeasures will be reflected in corresponding changes in the NIH's research and development funding allocations. Furthermore, HHS will enhance its ability to pursue an aggressive and strategic advanced development program as part of the comprehensive PHEMCE. ASPR will coordinate biodefense research and development at NIH, CDC, and FDA; synchronize funding streams for advanced development; and utilize scientific capital and technological capability from all Federal government agencies to ensure that the necessary medical countermeasure solutions are available to respond to and minimize critical public health needs.

Similarly, HHS will strengthen its execution of medical countermeasure procurements. It is expanding its acquisition staff and has worked with DHS to streamline the approval process for use of the special reserve fund authorized in the Project BioShield Act of 2004. For current and future medical countermeasures, HHS will continue to establish, in partnership with State and local authorities, CONOPs that include

maintenance, utilization policies, and deployment plans in the context of available consequence mitigation strategies.

Goal 3. Increase Transparency and More Actively Engage the Private Sector

The development of new medical countermeasures requires effective interactions among Government, the private sector, and academia. Private research organizations, pharmaceutical manufacturers, biotechnology companies, and clinical research organizations already have many of the resources and the expertise needed to develop medical countermeasures; however, they have been reluctant to make substantial investments in research and development because of market uncertainties. HHS will clearly and publicly articulate its medical countermeasure development and acquisition priorities, as well as the general timelines associated with addressing these priorities.

HHS will enhance communication between the Federal government and external stakeholders through several mechanisms, including this *HHS PHEMCE Strategy*, the soon-to-be-released *HHS PHEMCE Implementation Plan*, the PHEMCE Stakeholder Workshops, and a dedicated Web site, MedicalCountermeasures.gov. HHS's annual Stakeholder Workshops will educate the public and promote appropriate discussion of these priorities with public and private stakeholders. As needed, HHS will also convene other meetings and workshops with representatives from relevant industries, academia, and other Federal departments and agencies (including the Government and Sector Coordinating Councils involved in the development of the National Infrastructure Protection Plan), international agencies as appropriate, and other interested persons.

In 2007, HHS will launch MedicalCountermeasures.gov, a secure Web site designed to enhance industry's access to and rapid communication with the relevant USG agencies regarding medical countermeasure development. MedicalCountermeasures.gov will provide frequent updates on Federal medical countermeasure activities, and will feature upcoming events, pre-solicitation notices, key Federal resources, announcements, and links to related USG Web sites. Conversely, stakeholders will be able to use MedicalCountermeasures.gov to submit information on their products in development as well as to request meetings with USG departments or agencies.

utilization, industrial waste-base, and disposal of expired items.

¹⁹The term "approved" is used broadly in this report to refer to products and uses that FDA has approved, licensed, or cleared under sections 505, 510(k), and 515 of the Federal Food, Drug, and Cosmetic Act or that FDA has licensed under section 351 of the Public Health Service Act.

As required by the Pandemic and All-Hazards Preparedness Act, HHS will establish the National Biodefense Science Board (NBSB) to provide expert advice and guidance to the HHS Secretary on scientific, technical, and other matters of special interest to HHS regarding current and future CBRN agents, whether naturally occurring, accidental, or deliberate. The membership of the NBSB will be comprised of the Nation's preeminent scientific, public health, and medical experts; Federal officials as the Secretary may determine are necessary to support the functions of the Board; individuals representing the pharmaceutical, biotechnology, and device industries; individuals representing academia; and other members as determined appropriate by the Secretary, including a practicing healthcare professional and a representative from a healthcare consumer organization.

With diligent respect for confidentiality concerns and Federal regulations, HHS will increase the transparency and public visibility of processes by which it selects and acquires medical countermeasures. Acknowledging industry's risky investments of time, energy, and resources, HHS will foster medical countermeasure development by removing or lowering obstacles whenever appropriate, including through the application of liability protections under the Public Readiness and Emergency Preparedness Act (PREP Act)²⁰ and, as appropriate and necessary, more flexible contracting procedures. In addition to granting the HHS Secretary limited antitrust exemption authorities regarding medical countermeasure research and development, the Pandemic and All-Hazards Preparedness Act allows the Secretary to make milestone-based awards and payments to biotechnology companies and pharmaceutical manufacturers.

Goal 4. Develop, Recruit, and Support a World-Class Workforce

A successful PHEMCE relies on a highly qualified and accomplished workforce with appropriate technical training, scientific skills, and business management experience—both within the public and the private sectors. HHS is committed, as is each of its Federal partners in this endeavor, to continued staffing of the PHEMCE with

outstanding professionals and to maintaining a work environment conducive to high performance. The Department will continue to recruit outstanding professionals from both the public and private sectors to build a model program for advanced product development, procurement, and delivery that will provide needed products as efficiently and effectively as possible. HHS will recruit Federal employees (civil service and the U.S. Public Health Service) for their experience, skills, and expertise in research, development, and the regulatory aspects of product development programs, as well as management of such government programs. Highly qualified researchers, clinicians, and managers from academia and private industry will complement their expertise. HHS will facilitate the appointment of these individuals through existing general and senior service programs.

HHS also will develop programs to train professionals at all career stages in the foundations of the PHEMCE, utilizing mechanisms such as fellowships, sabbaticals, internships, and exchange programs. This effort will allow private sector individuals to bring new skills and fresh ideas to the program from the biotechnology and pharmaceutical industries. The Department also will create appropriate career paths to provide PHEMCE staff with opportunities to continue to grow professionally, to retain outstanding staff, and to ensure that excellence remains a PHEMCE hallmark.

HHS will use all available Federal hiring practices and all Pandemic and All-Hazards Preparedness Act authorities to offer compensation that attracts the best human capital to meet its mission and challenges. HHS also will identify qualified individuals with special expertise who are willing to serve on advisory boards or committees that the Secretary determines would contribute to the overall program.

Conclusion

This *HHS PHEMCE Strategy* reflects the new HHS approach to the development, acquisition, and use of medical countermeasures against CBRN threats. It provides strategic direction to the Department, signals the Department's intents and priorities to its Governmental and private partners, and guides the development of the *HHS PHEMCE Implementation Plan*. Consistent with its stated commitment to transparency, predictability, and wide-ranging solicitation of expertise, the Department will continue to engage stakeholders as it develops specific

strategic initiatives to meet its goals and objectives for the advanced development, procurement, and delivery of medical countermeasures. The *HHS PHEMCE Strategy* underscores the commitment by the top leadership of HHS to achieve the vision articulated in the President's *National Strategy for Medical Countermeasures against Weapons of Mass Destruction*. It seeks to craft and execute a robust, integrated, and end-to-end Public Health Emergency Medical Countermeasure Enterprise that provides the Nation with an "all hazards" capability to protect against, respond to, and enable recovery from chemical, biological, radiological, or nuclear attacks upon the public health.

Dated: March 15, 2007.

Gerald Parker,

Principal Deputy Assistant Secretary, Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services.

[FR Doc. E7-5066 Filed 3-19-07; 8:45 am]

BILLING CODE 4150-37-P

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, "Long-Term Field Evaluation (LTFE) Program Concept."

NIOSH is the Federal agency responsible for conducting research and making recommendations for the approval for self-contained, self-rescuer (SCSR) closed circuit escape respirators, Title 42, Code of Federal Regulations (CFR), Part 84.

The LTFE program for self-contained self-rescuers (SCSRs) for miners was initiated more than 20 years ago by the U.S. Bureau of Mines. The objective for the LTFE program is to obtain data to determine the expected performance characteristics of SCSRs used in the mining industry. LTFE program results based on scientific principles can provide useful information to monitor expected SCSR performance and assess possible degradation due to the physical stresses of in-mine use. Of utmost concern is the successful performance of any SCSR that passes its inspection

²⁰ On December 30, 2005, President George W. Bush signed into law the Public Readiness and Emergency Preparedness Act (PREP Act) as part of the 2006 Defense Appropriations Act.

criteria specified by the manufacturer. It is such apparatus that must be relied upon in an emergency.

A copy of the draft document can be found at <http://www.cdc.gov/niosh/review/public/NPPTL-LTFE/>.

ADDRESSES: 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.

Comments may also be submitted directly through the Web site <http://www.cdc.gov/niosh/review/public/NPPTL-LTFE/>.

This document will remain available for comment until April 5, 2007. Comments should reference docket number NIOSH-101 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.

CONTACT PERSON FOR TECHNICAL

INFORMATION: Les Boord, NIOSH Director for National Personal Protective Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 18070, Pittsburgh, PA 15236.

There will also be a public meeting held on March 22, 2007 at the DoubleTree Pittsburgh Airport Hotel, 8402 University Blvd, Moon Township, PA 15108 regarding this topic.

Dated: March 14, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07-1341 Filed 3-19-07; 8:45 am]

BILLING CODE 4163-19-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-229]

Public Health Assessments and Health Consultations Completed October 2006–December 2006

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments and health consultations during the period from October 1, 2006, through December 31,

2006. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments or consultations were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT:

William Cibulas, Jr., PhD, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 498-0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public **Federal Register** on December 14, 2006 [71 FR 75254]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and health consultations are available for public inspection at the ATSDR Records Center, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments and health consultations are often available for public review at local repositories such as libraries in corresponding areas. Many public health assessments and health consultations are available through ATSDR's Web site at <http://www.atsdr.cdc.gov/HAC/PHA/>.

In addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between October 1, 2006, and December 31, 2006, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

Alaska

Elmendorf Air Force Base—(PB2007-104845); December 21, 2006.

Virginia

Naval Support Facility (NSF) Dahlgren (a/k/a Naval Surface Warfare Center—Dahlgren)—(PB2007-100956); October 11, 2006.

Non-NPL Petitioned Sites

South Carolina

Admiral Homes Appliances—(PB2007-102021); November 13, 2006.

Health Consultations Completed or Issued

Between October 1, 2006, and December 31, 2006, health consultations were issued for the sites listed below:

Alabama

Anniston PCB Site—Updated Assessment of PCB Exposures in Anniston, AL; October 16, 2006.

Arizona

Aero Dyne Corporation (Aero Dyne)—District 4 Lone Butte Memorial Area; November 16, 2006.

Arkansas

Remediation of U.S. Forgecraft Corporation Site—95 South 3rd Street; November 27, 2006.

California

Zeneca/Campus Bay—Results of Exposure Investigation of Dust Sampling in Building 240; December 15, 2006.

Colorado

Blood Lead Levels in Children in the Lincoln Park Neighborhood; November 16, 2006.

Blood Levels in the Canon City Vicinity—Exposure Investigation Report; November 16, 2006.

Captain Jack Mill—Evaluation of Exposure of Mine Contaminants through the Surface Soil and Groundwater Pathways; December 12, 2006.

Lead in Dust in Homes in the Lincoln Park Neighborhood; November 16, 2006.

Lead in Indoor Dust, Outdoor Soil, and Blood of Lincoln Park Neighborhood Residents—Exposure Investigation Report; November 16, 2006.

Schlage Lock Company—Evaluation of Tetrachloroethylene Vapor Intrusion into Buildings Located Above a Contaminated Aquifer; November 30, 2006.

Standard Mine NPL Site—Evaluation of Potential Public Health Impact of

Surface Water Contamination;
November 13, 2006.

Connecticut

Contract Plating—Evaluation of
Environmental Data; November 15,
2006.

Florida

Keene Road Landfill—Lake Jewel
Community; November 1, 2006.

Louisiana

Cleve Reber Superfund Site—Post-
Hurricane Groundwater Sampling
Evaluation; November 1, 2006.

Hurricane Response Sampling
Assessment for Madisonville Creosote
Works; October 11, 2006.

Hurricane Response Sampling
Assessment for Old Inger Oil Refinery;
October 11, 2006.

Mallard Bay Landing Bulk Plant—
Post Hurricane Soil Sampling
Evaluation; October 26, 2006.

Plaquemine Area Vinyl Chloride
Groundwater Plume; December 11,
2006.

Massachusetts

Former Zonolite Facility—Wemelco
Way; December 15, 2006.

Michigan

Bendix Corporation Allied
Automotive—Groundwater Discharge to
Lake Michigan; December 22, 2006.

Former Quincy Smelter Site—Review
of Activity-Based Sampling on the
Hancock/Ripley Trail; November 27,
2006.

New York

Endicott Area Investigation—Public
Health Implications of Exposures to
Low-Level Volatile Organic Compounds
in Public Drinking Water; November 30,
2006.

International Business Machines
Corporation (IBM)—Historical Outdoor
Air Emissions in the Endicott Area;
November 17, 2006.

North Carolina

Sigmon's Septic Tank Service Site—
Review of Groundwater Data (2005 EPA
Delineation Investigation); October 12,
2006.

Ohio

Brush Wellman Elmore Plant (a/k/a
Brush Wellman Incorporated); Revised
December 1, 2006.

Former Chevron Refinery (Soil Vapor
Intrusion in Hooven, Ohio); November
27, 2006.

Oregon

National Energy Technology
Laboratory—Albany (Formerly Known
As: Albany Research Center); October
25, 2006.

Rhode Island

Providence High School Parcel B (a/
k/a Former Gorham Site); December 4,
2006.

Virginia

Chesapeake Products Site; November
27, 2006.

Washington

Apple Valley Elementary School—
Evaluation of Soil Contamination;
November 3, 2006.

Dated: March 14, 2007.

Kenneth Rose,

*Acting Director, Office of Policy, Planning,
and Evaluation, National Center for
Environmental Health/Agency for Toxic
Substances and Disease Registry.*

[FR Doc. E7-5029 Filed 3-19-07; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH) Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board)

In accordance with section 10(a)(2) of
the Federal Advisory Committee Act
(Pub. L. 92-463), the Centers for Disease
Control and Prevention announces the
following committee meeting:

Time and Date: 11 a.m.—5 p.m., Eastern
Daylight Saving Time, April 5, 2007.

Place: Audio Conference Call. The USA
toll free dial in number is 1-866-643-6504
with a pass code of 9448550.

Status: Open to the public.

Background: The Advisory Board was
established under the Energy Employees
Occupational Illness Compensation Program
Act of 2000 to advise the President on a
variety of policy and technical functions
required to implement and effectively
manage the new compensation program. Key
functions of the Advisory Board include
providing advice on the development of
probability of causation guidelines which
have been promulgated by the Department of
Health and Human Services (HHS) as a final
rule, advice on methods of dose
reconstruction which have also been
promulgated by HHS as a final rule, advice
on the scientific validity and quality of dose
estimation and reconstruction efforts being
performed for purposes of the compensation

program, and advice on petitions to add
classes of workers to the Special Exposure
Cohort (SEC).

In December 2000, the President delegated
responsibility for funding, staffing, and
operating the Advisory Board to HHS, which
subsequently delegated this authority to the
CDC. NIOSH implements this responsibility
for CDC. The charter was issued on August
3, 2001, renewed at appropriate intervals,
and will expire on August 3, 2007.

Purpose: This Advisory Board is charged
with (a) providing advice to the Secretary,
HHS, on the development of guidelines
under Executive Order 13179; (b) providing
advice to the Secretary, HHS, on the
scientific validity and quality of dose
reconstruction efforts performed for this
program; and (c) upon request by the
Secretary, HHS, advising the Secretary on
whether there is a class of employees at any
Department of Energy facility who were
exposed to radiation but for whom it is not
feasible to estimate their radiation dose, and
on whether there is reasonable likelihood
that such radiation doses may have
endangered the health of members of this
class.

Matters to be Discussed: The agenda for the
conference call includes: Revisit Board
Policy on Sanford Cohen & Associates
(SC&A) Hill Visits; Limiting the Time of
Individual Public Comments; Review of the
Completeness of the Scope of the Board
Reviews; Pantex SEC Issued Raised by Dr.
Fuortes; Individual Board Member
Assignments for Dose Reconstruction
Reviews; Work Group Updates; Discussion of
NIOSH Budget Issues; Schedule of Future
Board Meetings and Calls; and Board
Working Time.

The agenda is subject to change as
priorities dictate. There is no public
comment period, however, written comments
may be submitted. Any written comments
received will be provided at the meeting and
should be submitted to the contact person
below well in advance of the meeting.

For Further Information Contact: Dr. Lewis
V. Wade, Executive Secretary, NIOSH, CDC,
4676 Columbia Parkway, Cincinnati, Ohio
45226, Telephone 513-533-6825, Fax 513-
533-6826.

The Director, Management Analysis and
Services Office, has been delegated the
authority to sign **Federal Register** notices
pertaining to announcements of meetings and
other committee management activities, for
both CDC and the Agency for Toxic
Substances and Disease Registry.

Dated: March 13, 2007.

Elaine L. Baker,

*Acting Director, Management Analysis and
Services Office, Centers for Disease Control
and Prevention.*

[FR Doc. E7-5009 Filed 3-19-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****[Docket No. 2006N-0187]****Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of Health Care Professionals on the Food Safety and Nutrition Information That They Provide to Pregnant Women****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA

has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Health Care Professionals on the Food Safety and Nutrition Information That They Provide to Pregnant Women

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct a survey of health care professionals to determine what information, advice, and recommendations they are offering to pregnant women about the following topics: (1) Methyl mercury and seafood consumption, (2) Listeriosis prevention, (3) weight control and nutrition, (4) dietary supplement usage, (5) food allergies, (6) Toxoplasmosis prevention, and (7) infant feeding practices. FDA is interested in obtaining this data since FDA has recently issued advice for pregnant women about food safety risks and diet risks such as mercury in seafood, Listeriosis, and Toxoplasmosis. ("Food Safety for Moms-to-Be," 2005 and "What You Need to Know about Mercury in Fish and Shellfish," 2004). Data from this survey will be used to evaluate whether health care professionals are aware of this advice and if they are educating their patients about information in the FDA advisories.

FDA will also use this survey to get a better understanding of what resources health care professionals use to stay abreast of current practices for caring for

pregnant women. This will help FDA provide timely recommendations to health care professionals that will reach the largest audience.

A sample of 400 obstetrician/gynecologists, 200 nurse practitioners, 200 nurse midwives, 200 physician assistants, and 200 dietitians from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) will be included in this survey. The sample of nurse practitioners, nurse midwives, and physician assistants will be drawn from those specializing in obstetrics. The samples will be randomly selected from lists obtained from national associations. The survey will be conducted using a mailed questionnaire. Cognitive interviews and a pretest will be conducted prior to fielding the survey.

In the **Federal Register** of June 2, 2006 (71 FR 32095), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment responsive to the comment request.

(Comment) The comment suggests that FDA should expand the respondent universe of the survey to include all categories of health care providers that care for pregnant women.

(Response) FDA agrees that the survey universe should include samples drawn from all categories of health care providers that provide care for pregnant women. The current sampling plan calls for samples of 400 obstetrician/gynecologists, 200 nurse practitioners, 200 certified nurse midwives, 200 physician assistants, and 200 WIC nutrition educators.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours Per Response	Total Hours
1,200—Survey	1	1,200	.167	200.4
75—Pretest	1	75	.167	12.5
16—Cognitive Interview	1	16	.75	12
Total	1	1,291		224.9

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with previous surveys.

Dated: March 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-5046 Filed 3-19-07; 8:45 am]

BILLING CODE 4160-01-S

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, Survival Skills and Ethics.

Date: March 28, 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: 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.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Migraine.

Date: April 10, 2007.

Time: 10 a.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: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-5980, kw470@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 14, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1345 Filed 3-19-07; 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, DNA Looping.

Date: April 18, 2007.

Time: 3:30 p.m. to 4:30 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: Norman Chang, 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) 496-1485. changn@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 13, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1348 Filed 3-19-07; 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, Developmental Infrastructure For Population Research.

Date: April 12-13, 2007.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street, NW., Council Room, Washington, DC 20004.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892. (301) 435-6911. hopmannm@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 13, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1349 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR-D (M2) S Conference Grants.

Date: April 12, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Room 242 Small Conference Room, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John K. Hayes, Scientific Review Administrator, 6707 Democracy Blvd, Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451-3398, hayesj@mail.nih.gov.

Dated: March 13, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1350 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 28, 2007, 9 a.m. to March 30, 2007, 12 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 26, 2007, 72 FR 8387-8389.

The meeting will be held March 26, 2007 to March 27, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: March 14, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1344 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 7, 2007, 9 a.m. to March 9, 2007, 12 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 8, 2007, 72 FR 5985-5988.

The meeting will be held March 29, 2007 to March 30, 2007. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 14, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1346 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The Global Infectious Disease Meeting.

Date: April 10, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892. 301-594-6830. gerendad@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Molecular Imaging.

Date: May 31, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892. 301-435-1179. bradleye@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Medical Imaging Study Section.

Date: June 1, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator and Chief, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892. 301-435-1179. bradleye@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: March 14, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1347 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mental Illness Stigma.

Date: March 19, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.

Date: March 26, 2007.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301-435-1222, nigidas@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 3.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-1351 Filed 3-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Amendment of Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of an amendment of the meeting of the Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) to be held on March 21.

Public notice was published in the **Federal Register** on February 27, 2007, Volume 72, Number 38, page 8760 announcing that the CSAT National Advisory Council would be convening on March 21 and March 22 at 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland. The date and location of the meeting have changed. The meeting will be held at the Hilton Washington DC North/Gaithersburg, Salons D & E, 620 Perry Parkway, Gaithersburg, Maryland on March 21, from 8:45 a.m. to 5 p.m.

The contact for additional information remains as announced.

Dated: March 15, 2007.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E7-5148 Filed 3-19-07; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Privacy Office; Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available six (6) Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between January 1, 2007 and January 31, 2007.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until May 21, 2007, after which they may be obtained by contacting the DHS

Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT:

Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Mail Stop 0550, 601 S. 12th Street, Arlington, VA 22202-4220; by telephone (571) 227-3813, facsimile (866) 466-5370, or e-mail: pia@dhs.gov.

SUPPLEMENTARY INFORMATION: January 1, 2007 and January 31, 2007, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published six (6) Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, <http://www.dhs.gov/privacy>, under the link for "Privacy Impact Assessments." Below is a short summary of each of those systems, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: The Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP).

Component: Department-wide Programs.

Date of approval: January 18, 2007.

The DHS TRIP is a customer service web-based initiative developed as a voluntary program to provide a one-stop mechanism for individuals to request redress who believe they have been (1) denied or delayed boarding transportation due to DHS screening programs, (2) denied or delayed entry into or departure from the United States at a port of entry, or (3) identified for additional (secondary) screening at our Nation's transportation facilities, including airports, and seaports. DHS TRIP provides traveler redress intake and processing support while working with relevant DHS components to review and respond to requests for redress.

System: Custom and Border Protection's Western Hemisphere Travel Initiative (WHTI).

Component: Customs and Border Protection (CBP), DHS.

Date of approval: January 23, 2007.

CBP, in conjunction with the Bureau of Consular Affairs of the Department of State, published in the **Federal Register** a Final Rule to implement the WHTI requirements for air travel on November 24, 2006, at 71 FR 68411. Under the WHTI final rule, effective January 23, 2007, affected travelers entering the United States from a Western Hemisphere country by air must present a passport, Air NEXUS card, or Merchant Mariner Document to CBP officials. This PIA reflects the WHTI

requirements as set out in the final rule and follows the *initial PIA for WHTI* posted on August 11, 2006, at <http://www.dhs.gov/privacy> under the link for "Privacy Impact Assessments", in conjunction with the notice of proposed rulemaking (NPRM). This updated PIA reflects changes made to WHTI based upon changes in policy and amendments to statutory authority as well as in response to comments on the WHTI NPRM.

System: USCIS Naturalization Redesign Test Pilot.

Component: U.S. Citizenship and Immigration Services (USCIS).

Date of approval: January 12, 2007.
USCIS developed the Naturalization Redesign Test Pilot and redesigned the civics and language proficiency test that a lawful permanent resident must take in order to gain citizenship. This PIA is for this new test, which USCIS is currently implementing.

System: Integrated Digitization Document Management Program (IDDMP).

Component: USCIS.

Date of approval: January 5, 2007.
USCIS prepared a PIA for a series of systems comprising the IDDMP. Through the IDDMP, USCIS will digitize its paper-based Alien Files (A-Files) so that the files may be shared more efficiently within the DHS and outside DHS, as appropriate.

System: FEMA National Emergency Management Information System Mitigation Electronic Grants Management system.

Component: FEMA.

Date of approval: January 16, 2007.
FEMA operates the National Emergency Management Information System (NEMIS) Mitigation (MT) Electronic Grants Management (eGrants) system. The eGrants system is an online grant application and grant management system. This PIA is being conducted because personally identifiable information may be included in grant applications made by states or local communities.

System: Web Portal for the Center for Faith-based and Community Initiatives (CFBCI).

Component: Preparedness.

Date of approval: January 10, 2007.
This project creates a web-based portal to enable individuals to register their names and email addresses in order to receive information about the activities of the CFBCI at DHS. The collection of contact information enables the CFBCI to disseminate information to interested parties. Because the contact information qualifies as personally identifiable

information under the E-Government Act of 2002, this PIA has been conducted.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07-1329 Filed 3-19-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before April 19, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W-2606, Sacramento, California, 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT:

Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (telephone: 760-431-9440; fax: 760-431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE-097516

Applicant: Thomas Ryan, Pasadena, California

The applicant requests an amendment to take (capture, handle, and band) the California least tern (*Sterna antillarum browni*), the southwestern

willow flycatcher (*Empidonax traillii extimus*), and the least Bell's vireo (*Vireo bellii pusillus*); and to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with monitoring and other life history studies throughout the range of each species in California, Arizona, and Nevada for the purpose of enhancing their survival.

Permit No. TE-142437

Applicant: Melanie Gogol-Prokurat, Davis, California

The permittee requests a permit to remove/reduce to possession *Calystegia stebbinsi* (Stebbin's morning glory), *Ceanothus roderickii* (Pine Hill ceanothus), and *Fremontodendron decumbens* (= *Fremontodendron californicum* ssp. *decumbens*, Pine Hill flannelbush) from Federal lands in conjunction with scientific studies in El Dorado and Nevada County, California, for the purpose of enhancing their survival.

Permit No. TE-142436

Applicant: Eric Renfro, Redondo Beach, California

The applicant requests a permit to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with surveys throughout the range of the species in San Bernardino and Riverside Counties, California for the purpose of enhancing its survival.

Permit No. TE-126141

Applicant: Craig Stockwell, Fargo, North Dakota

The applicant requests a permit to take (sacrifice) the Mohave tui chub (*Siphateles bicolor mohavensis*) in conjunction with ecological studies in San Bernardino and Kern Counties, California, for the purpose of enhancing its survival.

Permit No. TE-071216

Applicant: Reed Smith, Ventura, California

The applicant requests an amendment to take (harass by survey, locate, and monitor nests) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring and other life history studies in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE-071216

Applicant: Derek S. Smith, Discovery Bay, California

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander

(*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-052745

Applicant: Pierre Fidenci, San Francisco, California

The permittee requests an amendment to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-062907

Applicant: Andrew M. Forde, Camarillo, California

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardii*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-795934

Applicant: Edward C. Beedy, Nevada City, California

The applicant requests a permit to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-098709

Applicant: William D. Gendron, Pomona, California

The applicant requests an amendment to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with surveys throughout the range of the species in San Bernardino and Riverside Counties, California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's

identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: February 7, 2007.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7-5008 Filed 3-19-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-310-0777-XX]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The field tour and meeting will be held Thursday and Friday, May 31 and June 1, 2007, at the Veteran's Memorial Building on Main Street in Burney, California. On May 31, the field tour to a mining operation leaves from the Memorial Building at 10 a.m. and returns at 5 p.m. On June 1, the business meeting runs from 8 a.m. to 3 p.m. Time for public comment is reserved at 11 a.m. on Friday, June 1.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Office manager, (530) 233-4666; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252-5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of

the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and the northwest corner of Nevada. At this meeting, agenda topics will include updates on new resource management plans now under development for northeast California field offices, a report on a management plan for improving sagebrush steppe ecosystems, a report on wind energy proposals, an update on free firewood cutting areas, field office status and accomplishment reports, and an update on a BLM reorganization study. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: March 13, 2007.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 07-1326 Filed 3-19-07; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-01-1020-PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held April 12 & 13, 2007, at the Bureau of Land Management's Lewistown Field Office, 920 NE. Main Street, in Lewistown, Montana.

The April 12 session will begin at 10 a.m. with a 30-minute public comment period. This meeting is scheduled to adjourn at 6:30 p.m.

The April 13 meeting will begin at 8 a.m. with a 30-minute public comment period. This meeting is scheduled to adjourn at 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At this meeting the council will discuss/act upon:

The minutes of their preceding meeting
The Missouri River Breaks National Monument RMP
Livestock grazing regulations
The Bowdoin Draft Environmental Assessment
The Judith Moccasin Travel Plan Update
The development of a subgroup for the Judith Moccasin Travel Plan
The Judith Moccasin Forest Management treatments
Watershed plans in the Lewistown Field Office administrative area
Field managers' updates
The annual work plan for the RAC
The fee proposal for the UMRBNM Interpretive Center
A Forest Service fee proposal
Riparian/cottonwood projects
Weed management; and
Administrative details

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: June Bailey, Lewistown Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457, 406/538-1900.

Dated: March 14, 2007.

June Bailey,

Lewistown Field Manager.

[FR Doc. E7-5007 Filed 3-19-07; 8:45 am]

BILLING CODE 4310--\$S-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-404-408 and 731-TA-898-908 (Review)]

Hot-Rolled Steel Products From Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject full five-year reviews.

EFFECTIVE DATE: March 14, 2007.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective January 11, 2007, the Commission established a schedule for the conduct of the subject full five-year reviews (72 FR 2556, January 19, 2007), in which it determined to exercise its authority to extend the full review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) based on the Department of Commerce's scheduled final determination date of June 22, 2007, for the review concerning the antidumping duty order on hot-rolled steel from the Netherlands. However, on March 1, 2007, the Department of Commerce initiated proceedings to implement the World Trade Organization ("WTO") panel's report consistent with section 129 of the URAA in the antidumping duty investigation concerning hot-rolled steel from the Netherlands (*See Implementation of the Findings of the WTO Panel in U.S. Zeroing (EC): Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures* (72 F.R. 9306)). In its Preliminary Results for the Section 129 Determinations (<http://ia.ita.doc.gov/download/zeroing/20070222-Zeroing-Prelim-Decision-Memo.pdf>), the Department of Commerce preliminarily recalculated the weighted-average dumping margin concerning the antidumping duty order on hot-rolled steel from the Netherlands as follows: "The margin for Corus Staal BV, the sole respondent, decreases from 2.59 percent to zero. Since Corus Staal BV was the only respondent in the investigation, if this margin remains at zero or *de minimis* for the final recalculation, this order will be revoked." The United States has indicated that it will implement the recommendations and rulings of the WTO Dispute Settlement

Body (DSB) by April 9, 2007. In light of Commerce's preliminary determinations in the Section 129 proceedings concerning hot-rolled steel from the Netherlands and in order to ensure that it meets its statutory deadlines, the Commission therefore is revising its schedule for the subject full five-year reviews.

The Commission's new schedule for the full five-year reviews is as follows: the prehearing staff report will be placed in the nonpublic record on July 11, 2007; the deadline for filing prehearing briefs is July 20, 2007; requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 20, 2007; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 25, 2007; a two-day hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 31 and August 1, 2007; the deadline for filing posthearing briefs is August 23, 2007; the final staff report will be placed in the nonpublic record on September 21, 2007; the Commission will make its final release of information on October 2, 2007; and final party comments are due on October 4, 2007.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-5043 Filed 3-19-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-486]

Probable Economic Effect of Providing Duty-Free, Quota-Free Treatment for Imports From Least-Developed Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on February 16, 2007, from the United States Trade Representative (USTR), the

U.S. International Trade Commission (Commission) instituted investigation No. 332-486, Probable Economic Effect of Providing Duty-Free, Quota-Free Treatment for Imports from Least-Developed Countries, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of providing advice on the probable economic effect of providing duty-free, quota-free treatment (DFQF) for imports from least-developed countries (LDCs) on (i) Industries in the United States producing like or directly competitive products and (ii) on U.S. consumers.

DATES:

March 12, 2007: Institution of investigation.

April 3, 2007: Deadline for filing written submissions.

August 16, 2007: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Karl Tsuji, Office of Industries (202-205-3434; karl.tsuji@usitc.gov) or Deputy Project Leader Linda White, Office of Industries (202-205-3427; linda.white@usitc.gov). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202-205-3091; william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819; margaret.olaughlin@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: The USTR's letter states that the United States reached agreement at the WTO Ministerial Conference in Hong Kong in December 2005 to provide DFQF market access to products from the LDCs (as defined by the United Nations), as outlined in the decision on proposal 36

in Annex F of the Hong Kong Ministerial Declaration. The letter states that the United States has announced that it will implement this initiative together with the results of the overall negotiations under the Doha Development Agenda.

In providing its advice, the USTR asked that the Commission consider each article in Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States (HTS) for which U.S. tariffs or quotas will remain after the United States fully implements its Uruguay Round tariff commitments, taking into account preferential tariff treatment currently being provided to LDCs under the Generalized System of Preferences, the African Growth and Opportunity Act, and Caribbean Basin Initiative programs. The USTR asked that the advice be based on the 2002 HTS nomenclature, and trade and tariff rate data for the year 2006. The USTR requested that the advice be provided at the 8-digit HTS level, or the lowest level of aggregation feasible.

As requested, the Commission will transmit its advice to the USTR by August 16, 2007. The USTR indicated that the sections of the Commission's report that analyze the probable economic effects and other information that would reveal any aspect of the Commission's economic effect advice, should be classified as confidential national security information.

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary to the Commission. To be assured of consideration by the Commission, written statements related to the investigation should be submitted to the Commission at the earliest practical date but no later than 5:15 p.m. on April 3, 2007. All written submissions must conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize the filing of submissions with the Secretary by facsimile or electronic means, except

to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000 or edis@usitc.gov).

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets.

All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. The Commission does not intend to issue a public version of its report at this time. Should the Commission issue a public version at a later time, it will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: March 14, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-5042 Filed 3-19-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-589]

In the Matter of Certain Switches and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 4) issued by the presiding administrative law judge ("ALJ")

granting complainant's consent motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT:

Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 7, 2006, based on a complaint filed by ATEN International Co., Ltd. of Taipei, Taiwan, and ATEN Technology, Inc. of Irvine, California (collectively, "ATEN"). 71 FR 70983. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain switches and products containing the same by reason of infringement of various claims of United States Patent No. 7,035,112. The complaint named six respondents: Belkin Corp. of Compton, California; Belkin Logistics, Inc. of Compton, California; Emine Technology Co., Ltd. of Taipei, Taiwan; JustCom Tech, Inc. of San Jose, California; RATOC Systems, Inc. of Osaka, Japan; and RATOC Systems International, Inc. of Santa Clara, California.

On February 9, 2007, ATEN moved to amend the complaint and notice of investigation in order to reflect corporate name changes of two respondents. Specifically, ATEN sought to change Belkin Corp. and Belkin Logistics, Inc. to Belkin International, Inc. and Belkin, Inc., respectively. Respondents consented to ATEN's motion.

On February 20, 2007, the ALJ issued an ID (Order No. 4) granting ATEN's motion to amend the complaint and notice of investigation. No petitions for review were filed.

Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: March 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-5044 Filed 3-19-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 008-2007]

Privacy Act of 1974; Removal of a System of Records Notice

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), United States Marshals Service (USMS) is removing the published notice of a Privacy Act system of records: "Justice/USM-003, United States Marshals Service Prisoner Transportation System," last published in the **Federal Register** on September 6, 1991, at 56 FR 44101.

The notice of USM-003 is obsolete, as the records for USM-003 were incorporated into "Justice/USM-005, U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS)" when USM-005 was first published as a new Privacy Act system of records on February 3, 1992, at 57 FR 4059. USM-005 has been subsequently updated.

Therefore, the notice of "Justice/USM-003, United States Marshals Service Prisoner Transportation System" is removed from the Department's listing of Privacy Act systems of records notices, effective on the date of publication of this notice in the **Federal Register**.

Dated: March 8, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. E7-4960 Filed 3-19-07; 8:45 am]

BILLING CODE 4410-04-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on February 16, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tubitak Uekae, Gebze, Turkey; Conference ConCepts, Inc., San Diego, CA; S.C. Siveco Romania S.A., Bucharest, Romania; Barco, Kuurne, Belgium; Terrestar Networks, Inc., Reston, VA; Twisted Pair Solutions, Inc., Seattle, WA; Object Management Group, Needham, MA; and Iona Technologies, Waltham, MA have been added as parties to this venture.

Also, Ericsson Inc., Plano, TX; Honeywell Defense and Space Electronic Systems, Columbia, MD; Smiths Aerospace, London, United Kingdom; Engenio Information Technologies, Inc., Milpitas, CA; and Systematic Software Engineering A/S, Aarhus, Denmark have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on December 5, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on December 29, 2006 (71 FR 78468).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07-1322 Filed 3-19-07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2007-04; Exemption Application Nos. D-11345, and D-11370]

Grant of Individual Exemptions Involving; D-11342, Mellon Financial Corporation (Mellon); and D-11370, Amendment to Prohibited Exemption (PTE) 2000-58 and (PTE) 2002-41 Involving Bear Stearns & Co. Inc., Prudential Securities Incorporated, et al. to add Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being

granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Mellon Financial Corporation (Mellon), Located in Pittsburgh, PA

[Prohibited Transaction Exemption 2007-04; Exemption Application No. D-11342]

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions in sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 30, 2005, to certain in-kind redemptions (the Redemption(s)) by the Mellon 401(k) Retirement Savings Plan or by any other employee benefit plan sponsored by Mellon or an affiliate (the Plan(s)), of shares (the Shares) of certain proprietary mutual funds in which the Plans were invested as of November 30, 2005 (the Funds), for which Mellon or an affiliate (collectively, referred to also as Mellon) provides investment advisory and other services, provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption—other than customary transfer charges paid to parties other than Mellon;

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities, as such term is defined in Section II, below. Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares,

and accruals on such securities may be distributed in cash;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities of the Funds equal in value to that of the number of Shares redeemed, as determined in a single valuation (using sources independent of Mellon) performed in the same manner and as of the close of business on the same day, in accordance with the procedures established by the Fund pursuant to Rule 2a-4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the board of the Funds that are in compliance with the rules administered by the Securities Exchange Commission (SEC);

(D) Mellon does not receive any direct or indirect compensation or any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, Mellon provides in writing to an independent fiduciary (Independent Fiduciary, as such term is defined in Section II, below), a full and detailed written disclosure of information regarding the Redemption;

(F) The Independent Fiduciary provides written authorization in advance of the Redemption to Mellon, such authorization being terminable at any time prior to the date of the Redemption without penalty to the Plan, provided that the termination is effectuated by the close of business following the date of receipt by Mellon of written or electronic notice regarding such termination (unless circumstances beyond the control of Mellon delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Funds to the Independent Fiduciary and discussions with appropriate operational personnel of the Plan, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Mellon makes a "make-whole payment" to ensure that the dollar value of the interests received by the Plan from the collective investment funds is not diminished by transaction costs nor by valuation differences as a result of the Redemption;

(I) No later than thirty (30) business days after the completion of a Redemption, Mellon or the relevant Funds provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption and the related per Share net asset value and the total dollar value of the Shares held;

(ii) The identity and related aggregate dollar value of each security provided to the Plan pursuant to the Redemption, including each security valued (using sources independent of Mellon) in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the board of the Fund for obtaining current prices from independent pricing services or market-makers;

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(J) The value of the securities and cash received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the relevant Fund at that time;

(K) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(L) Each of the Plan's dealings with the Funds, the principal underwriter for the Funds, or any affiliate thereof, or with Mellon, are on a basis no less favorable to the Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(M) Mellon maintains, or causes to be maintained, for a period of six years from the date of any covered transaction, such records as are necessary to enable the persons described in paragraph (N)(1)(i)-(v), below, to determine whether the conditions described in this Section I have been met, except that:

(i) if the records necessary to enable the persons described in paragraph (N)(1)(i)-(v), below, to determine whether the conditions of this exemption have been met are lost, or destroyed, due to circumstances beyond the control of Mellon, then no prohibited transaction will be considered to have occurred, solely on

the basis of the unavailability of those records; and

(ii) no party in interest with respect to the Plan other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (N) below.

(N)(1) Except as provided in subparagraph (2) of this paragraph (N), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (M), above, are unconditionally available at their customary locations for examination during normal business hours by:

(i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC,

(ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary,

(iii) any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary,

(iv) any employer whose employees are covered by the Plan, and

(v) any employee organization whose members are covered by such Plan;

(2) None of the persons described in paragraphs (N)(1)(ii) through (v) shall be authorized to examine trade secrets of Mellon or the Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Mellon or the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (N)(2) above, Mellon or the Funds shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(A) The term "affiliate" means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is:

(i) Independent of and unrelated to Mellon and its affiliates, and

(ii) Appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Funds to, or for the benefit of, the Plan. A fiduciary will not be independent of, and unrelated to, Mellon if:

(i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with, Mellon;

(ii) Such fiduciary, directly or indirectly, receives any compensation or other consideration in connection with any transaction described herein (except that an Independent Fiduciary may receive compensation from Mellon in connection with the transactions contemplated herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by any decision made by the Independent Fiduciary); or

(iii) More than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Mellon in the fiduciary's current tax year.

(E) The term "Transferable Securities" means securities—

(1) for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule 2a-4 of the 1940 Act; and

(2) that are not:

(i) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933;

(ii) Securities issued by entities in countries that (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(iii) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although liquid and marketable, involve the assumption of contractual obligations,

require special trading facilities, or can be traded only with the counter-party to the transaction to effect a change in beneficial ownership;

(iv) Cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements);

(v) Other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(vi) Securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family," as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Effective Date: This exemption is effective as of November 30, 2005.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 21, 2006 at 71 FR 48781.

Written Comments

The Department received three written comments with respect to the notice of proposed exemption (the Proposal). The comments were submitted by the applicant and by two Plan participants.

The comment by the applicant first raises an issue concerning the scope of exemptive relief provided in the Proposal from sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act.

The applicant had originally requested relief from all of sections 406(a) and 406(b), consistent with prior exemptions for similar in-kind redemption transactions. The Department informed the applicant that the current policy is to provide relief as narrow as possible and requested an explanation of the need for the requested relief; the applicant responded with a letter dated July 14, 2006 focusing on a potential violation of section 406(b)(2). The applicant notes, however, that the Department included language in the Summary of Facts and Representations (the Summary), at Item 4 (71 FR 48784, column 3), describing the in-kind redemptions "as raising the possibility of self-dealing," implying a need for relief from section 406(b)(1), as well. The applicant requests, therefore, that the Department either expand this exemption to include relief from section 406(b)(1) or clarify that the transactions do not raise the possibility of self-dealing. To resolve this issue, the Department has revised the exemption to provide relief from section 406(b)(1) of the Act.

The applicant further notes that the Department has defined "Mellon" in Section I of the Proposal to include Mellon affiliates. However, there are two places requiring revision to avoid reaching affiliates of Mellon affiliates. To resolve this issue, the Department has revised Section I(L) (71 FR 48782, column 1) and the definition of "Independent Fiduciary" at Section II(D) (71 FR 48782, column 2) of the exemption as follows (with underlining

indicating new language and italics for deleted language).

"(L) Each of the Plan's dealings with the Funds, *Mellon*, the principal underwriter for the Funds, or any affiliate thereof, *or with Mellon*, are on a basis no less favorable to the Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;" and

"(D)(iii) More than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Mellon *and its affiliates* in the fiduciary's current tax year."

The applicant also notes certain formatting problems with the two charts in the Summary as printed in the **Federal Register**, such that it is unclear how the information in the first column of the chart related to the information in the second column. To resolve this issue, the Department notes the applicant's corrections as follows. In the first chart (71 FR 48783), under the title "Actively Managed Funds," "Dreyfus LifeTime Portfolios" appears on the same line as "Mellon Stable Value," making it appear as if the two are a single Fund holding \$92.6 million in assets. The \$92.6 million should be attributed solely to the Mellon Stable Value Fund. "Dreyfus LifeTime Portfolios" is the name of a subgroup of Dreyfus Funds that consists of the following three Funds on the list—Income Portfolio, Growth and Income Portfolio and Growth Portfolio. The second chart (71 FR 48784) fails to make clear which Actively Managed Funds are mapped into which recipient basic funds. The following chart shows the mapping:

FUND TRANSFER OR "MAPPING" CHART

Actively managed fund	►	Recipient basic fund
Dreyfus LifeTime Portfolios, Inc. Income Portfolio	►	Daily Liquidity Asset Allocation Fund.
Growth and Income Portfolio Growth Portfolio		
Dreyfus Appreciation Dreyfus Premier Core Value Dreyfus Disciplined Stock	►	Daily Liquidity Stock Index.
Dreyfus Premier Third Century Fund, Inc. Dreyfus Premier Technology Growth Dreyfus Founders Growth Dreyfus Premier New Leaders Dreyfus Founders Discovery Dreyfus Founders Worldwide Growth Dreyfus Premier International Value	►	Daily Liquidity Small Cap Stock Index.
The Boston Company International Small Cap	►	Daily Liquidity International Stock Index.

Finally, the applicant notes that, as printed in the **Federal Register**, footnote 21 erroneously references footnotes 3 and 4, due to the inadvertent failure to adjust the cross-references to reflect the continuation of footnote numbers from

other proposed exemption notices in the same package. To resolve this issue, the Department revises the cross-references in footnote 21 so that the original footnote 3 is now footnote 19 and the original footnote 4 is now footnote 20.

In the second comment, a Plan participant notes his displeasure about the change in investment options offered under the Mellon Plan: (a) The literature describing the change in funds was confusing so that the participant

did not understand the need to take immediate action in order to be able to fully utilize the self-directed brokerage account feature; (b) Following the transfer, the self-directed brokerage account would be permanently unavailable for amounts greater than 50% of his account. Those assets can only be reallocated within the "core" Basic Funds, limiting the potential for investment gains; (c) Public information regarding the Basic Funds is limited—they do not appear in daily/weekly newspapers; (d) The effect of the changes was self-serving, done in the interests of Mellon, because it has required 50% of the Plan's assets to be tied up in Mellon collective funds, increasing Mellon's assets under management. The participant requested a hearing and hoped that Mellon would be forced to rescind the entire transfer of assets to the Basic Funds and to make up any losses to participants.

In the third comment, another Plan participant expressed the following concerns: (a) The Plan trustees should not have engaged in a non-permitted transaction without first obtaining an exemption, as they should have known of the need for an exemption several months in advance; (b) He questioned the need to adhere to an "arbitrary" date that exposed the Plan to potential risk should the exemption not be granted. He questioned whether the rush to complete the transaction was done to benefit outside parties, or perhaps Mellon Plan committee members that served on the boards of other companies with a financial interest in the transactions; (c) He requested that a penalty be imposed that would send a message to the financial/legal community that no financial institution is above the law.

The applicant responds that both commenters misunderstood the nature of the transfers and the reasons underlying the transfers, as well as the nature of the exemption process. As described in the Summary, there were two reasons for the changes in Plan investment options that were made at the end of 2005: (a) To simplify the investment offerings by eliminating the "Actively Managed Funds" category, which overlapped in several respects with the "Basic Funds" category—the third category, a self-directed brokerage window, was not affected; (b) to reduce investment management expenses borne by participants, as Mellon absorbs all the costs for the Basic Funds (as they are Mellon collective investment funds) but did not absorb the internal costs of the Actively Managed Funds.

The applicant also asserts that no financial interest of Mellon, any related

company, or any Plan committee member was served through these changes. To the contrary, the changes were undertaken with the goal of better serving the interests of the Plan participants and beneficiaries, in accordance with the fiduciary responsibilities of the Plan committee, by simplifying investments and reducing costs in the manner described above. In fact, as several of the Actively Managed Funds that were eliminated are advised by Mellon affiliates, those affiliates will receive reduced Plan-related income (to the extent that participants chose to continue to invest in those Funds in the self-directed brokerage account). Furthermore, as the Plan committee members do not serve on the boards of other financial services companies, one commenter's concern that committee members were enriched by the change in fund line-up through their outside board affiliations has no basis in fact.

The applicant adds that information about the Basic Funds is not available in public newspapers because they are collective funds, available only to institutional investors. However, the information is readily available to Plan participants and beneficiaries on Mellon's 401(k) Plan website, the address for which is included in participant statements and other mailings. The website includes fund closing prices for the prior business day and performance information for each fund for the preceding quarter, year-to-date, and for the prior one-year, three-year and five-year periods.

As represented in the Summary, Plan participants were notified of the changes in investment offerings by an announcement (Exhibit E to the application) distributed on or about October 6, 2005. The new fund line-up was to be implemented December 1st, with the increased self-directed account limit available until December 30th. The Plan committee believes that the three-page announcement was clearly written and sufficiently explained that the 50% limitation on investment in the self-directed brokerage window would be suspended only for a limited time period (see the bottom of page 2). Even so, to assure that its employees understood the changes, Mellon provided the same information in several additional ways prior to the December 30th deadline. A list of "Frequently Asked Questions" regarding the changes was posted on the Mellon intranet site, accessible through an "In the Spotlight" section that contains information for employees, and the changes also were the subject of a three-page article in a December

employee newsletter, "EC News." In addition, Mellon Human Resources sponsored "in person" and web-based presentations on the changes, giving employees the opportunity to ask questions of a knowledgeable presenter. As a result, the Plan participants had notice in several formats of what was taking place and almost three months to preserve their investments in the Actively Managed Funds that were being removed as designated investment options.

The applicant states that the fund change deadline of December 1st had already been communicated to the participants and beneficiaries when it became clear that exemptive relief would be necessary, as a result of the discovery by the Plan committee that two of the Fund transfers would have to be made in kind. It would have been detrimental to the interests of the participants and beneficiaries to have delayed the transfers at that point because they had already received the October notices and may have begun to make adjustments or taken (or not taken) other action in light of the upcoming changes. Therefore, the Plan committee decided to proceed and to request retroactive relief. The risks of the exemption's not being granted were on Mellon and the Plan committee, as they, not the Plan, would be liable for any losses or prohibited transaction excise taxes in the event that the Fund transfers were prohibited without coverage under an exemption.

Finally, the applicant explains that the 50% limitation on the investment of a participant's account in the self-directed brokerage window was imposed by the Plan committee when the brokerage window was first added to the Plan in 2001. The committee's view was that the Funds available as designated investment options under the Plan offered a broad range of well-performing and diverse investments and that participants should not be permitted to place more than half of their assets in potentially higher-risk investments. While the number of designated investment options has been reduced as a result of the 2005 changes, it is the committee's view that the remaining Funds still provide a range of well-performing and diverse investments. Therefore, it has kept in place the 50% limitation, subject to the one-time, limited exception to permit participants to preserve their existing investments in the Funds being removed as Plan investment options.

After a careful consideration of the entire record, including the written comments and the applicant's responses thereto, the Department has determined

that a public hearing in this instance is unwarranted and that the proposed exemption should be granted as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693-8557. (This is not a toll-free number.)

Amendment to Prohibited Transaction Exemption (PTE) 2000-58, 65 FR 67765 (November 13, 2000) and PTE 2002-41, 67 FR 54487 (August 22, 2002) Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al. to add Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc. to the Definition of "Rating Agency"

[Prohibited Transaction Exemption 2007-05; Application Number D-11370]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and based upon the entire record, the Department amends the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89-88, 54 FR 42582 (October 17, 1989); PTE 89-89, 54 FR 42569 (October 17, 1989); PTE 89-90, 54 FR 42597 (October 17, 1989); PTE 90-22, 55 FR 20542 (May 17, 1990); PTE 90-24, 55 FR 20548 (May 17, 1990); PTE 90-28, 55 FR 21456 (May 24, 1990); PTE 90-29, 55 FR 21459 (May 24, 1990); PTE 90-30, 55 FR 21461 (May 24, 1990); PTE 90-32, 55 FR 23147 (June 6, 1990); PTE 90-36, 55 FR 25903 (June 25, 1990); PTE 90-39, 55 FR 27713 (July 5, 1990); PTE 90-59, 55 FR 36724 (September 6, 1990); PTE 90-83, 55 FR 50250 (December 5, 1990); PTE 90-84, 55 FR 50252 (December 5, 1990); PTE 90-88, 55 FR 52899 (December 24, 1990); PTE 91-14, 55 FR 48178 (February 22, 1991); PTE 91-22, 56 FR 03277 (April 18, 1991); PTE 91-23, 56 FR 15936 (April 18, 1991); PTE 91-30, 56 FR 22452 (May 15, 1991); PTE 91-62, 56 FR 51406 (October 11, 1991); PTE 93-31, 58 FR 28620 (May 5, 1993); PTE 93-32, 58 FR 28623 (May 14, 1993); PTE 94-29, 59 FR 14675 (March 29, 1994); PTE 94-64, 59 FR 42312 (August 17, 1994); PTE 94-70, 59 FR 50014 (September 30, 1994); PTE 94-73, 59 FR 51213 (October 7, 1994); PTE 94-84, 59 FR 65400 (December 19, 1994); PTE 95-26, 60 FR 17586 (April 6, 1995); PTE 95-59, 60 FR 35938 (July 12, 1995); PTE 95-89, 60 FR 49011 (September 21, 1995); PTE 96-22, 61 FR 14828 (April 3, 1996); PTE 96-84, 61 FR 58234 (November 13, 1996); PTE 96-92, 61 FR 66334 (December 17, 1996); PTE 96-94, 61 FR 68787 (December 30,

1996); PTE 97-05, 62 FR 1926 (January 14, 1997); PTE 97-28, 62 FR 28515 (May 23, 1997); PTE 98-08, 63 FR 8498 (February 19, 1998); PTE 99-11, 64 FR 11046 (March 8, 1999); PTE 2000-19, 65 FR 25950 (May 4, 2000); PTE 2000-33, 65 FR 37171 (June 13, 2000); PTE 2000-41, 65 FR 51039 (August 22, 2000); PTE 2000-55, 65 FR 37171 (November 13, 2000); PTE 2002-19, 67 FR 14979 (March 28, 2002); PTE 2003-31, 68 FR 59202 (October 14, 2003); and PTE 2006-07, 71 FR 32134 (June 2, 2006), each as subsequently amended by PTE 97-34, 62 FR 39021 (July 21, 1997) and PTE 2000-58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002-41, 67 FR 54487 (August 22, 2002) (collectively, the Underwriter Exemptions).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97-03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97-21E (September 10, 1997); ABN AMRO Inc., FAN 98-08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99-31E (December 20, 1999) (supersedes FAN 97-02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01-25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc., FAN 03-07E (June 14, 2003); WAMU Capital Corporation, FAN 03-14E (August 24, 2003); and Terwin Capital LLC, FAN 04-16E (August 18, 2004); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96-62, 61 FR 39988 (July 31, 1996).

I. Transactions

A. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.² For purposes of this

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3-21(c).

² For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such

paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;³ and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does

as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one

or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and

conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer,

including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below

a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be

acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section

860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3-101(i)(2)⁴; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).⁵

(1) Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which

distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) the assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities

evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. "Underwriter" means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96-62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of

the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

- (1) Each Underwriter;
- (2) Each Insurer;
- (3) The Sponsor;
- (4) The Trustee;
- (5) Each Servicer;
- (6) Any Obligor with respect to

obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)-(7).

N. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; FitchRatings, Inc.; Dominion Bond Rating Service Limited, or Dominion Bond Rating Service, Inc.; or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. "Pre-Funding Period" means the period commencing on the Closing Date

and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds

Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that

is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),⁶ as defined under Part V(a) of PTE 84-14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An "in-house asset manager" (INHAM),⁷ as defined under Part IV(a) of PTE 96-23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94-29 and 94-73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James &

Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96-62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

Effective Date: This amendment is effective for transactions occurring on or after April 5, 2006.

For a more complete statement of the facts and representations supporting the Department's decision to amend the Underwriter Exemptions, refer to the notice of proposed exemption that was published on January 24, 2007 in the **Federal Register** at 72 FR 3152.

FOR FURTHER INFORMATION CONTACT:

Wendy M. McColough of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

⁶ PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of \$85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

⁷ PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 14th day of March, 2007.

Ivan Strasfeld

*Director of Exemption Determinations,
Employee Benefits Security Administration,
Department of Labor.*

[FR Doc. E7-4982 Filed 3-19-07; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation, and use of the ERA system.

Date of Meeting: April 4-5, 2007.

Time of Meeting: 9 a.m.-4 p.m.

Place of Meeting: 700 Pennsylvania Avenue, NW., Washington, DC 20408-0001.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at era.program@nara.gov.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks
- Approval of Minutes
- Committee Updates
- Activity Reports
- Adjournment

FOR FURTHER INFORMATION CONTACT: Lewis Bellardo, Deputy Archivist of the

United States and Chief of Staff; (301) 837-1600.

Dated: March 15, 2007.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. E7-5068 Filed 3-19-07; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of open meeting with partially closed session (amended).

SUMMARY: On March 8, 2007, the Secretary published in the **Federal Register** a notice of open meeting with a partially closed session for National Institute for Literacy. This notice amends the March 8, 2007, notice by changing the meeting to a one-day only meeting. This amended notice is appearing in the **Federal Register** less than 15 days before the meeting due to scheduling difficulties within the Agency.

This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Steve Langley at telephone number (202) 233-2043. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: *Open session*—March 28, 2007, from 8:30 a.m. to 5:30 p.m. *Closed session*—March 28, 2007, from 5:30 p.m. to 6 p.m.

ADDRESSES: The National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Steve Langley, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233-2043; e-mail: slangley@nifl.gov.

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the

Workforce Investment Act of 1998, Public Law 105-220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director. The National Institute for Literacy Advisory Board will meet March 28, 2007. On March 28, 2007 from 8:30 a.m. to 5:30 p.m. the Board will meet in open session to discuss strategic planning and the dissemination plan for the National Early Literacy Panel Report.

On March 28, 2007 from 5:30 p.m. to 6 p.m., the Board will meet in closed session to discuss personnel issues. This discussion will relate to the Institute's internal personnel practices, including consideration of the Director's performance and salary. The discussion is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: March 15, 2007.

Sandra L. Baxter,

Director.

[FR Doc. E7-5024 Filed 3-19-07; 8:45 am]

BILLING CODE 6055-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Environmental Assessment and Finding of No Significant Impact for Exemption, in Accordance With 10 CFR 30.11, From NRC Licensing Requirements That May Otherwise Be Applicable With Respect to the Receipt and Disposal of Cesium Contaminated Emission Control Dust Located at the LeTourneau, Inc. Steel Mill in Longview, Texas at the U.S. Ecology Idaho Disposal Facility

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of no significant impact for exemption from NRC regulations pursuant to 10 CFR 30.11.

FOR FURTHER INFORMATION CONTACT:

James Shaffner, Project Manager, Low-Level Waste Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, FSME, U.S. NRC; telephone: (301) 415-5496; fax number: (301) 415-5397; or by e-mail at jas11@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) is considering, pursuant to 10 CFR 30.11, the issuance of an exemption from NRC licensing requirements that would otherwise be associated with U.S. Ecology Idaho's (USEI) receipt and disposal of emission control dust contaminated with minor concentrations of Cesium 137 resulting from the accidental melting of a Cesium sealed source. The contaminated material is the property of LeTourneau Inc., the owner of a steel mill near Longview, TX. A Texas licensee, Earth-Tech, is managing the material on behalf of LeTourneau consistent with Earth-Tech's Texas Radioactive Materials License (LO5449). None of the parties involved in the proposed action are NRC licensees.

Issuance of the proposed exemption, in conjunction with an action by the State of Texas to approve the removal of the wastes from the LeTourneau site, will allow for transfer of the material, by rail car, to USEI's Resource Conservation and Recovery (RCRA) Subtitle C facility near Grand View, Idaho for processing (stabilization) and disposal. Material would be processed and disposed of in accordance with the requirements of USEI's RCRA permit. Pursuant to the proposed exemption, the material, upon its receipt at USEI's disposal facility, would not be subject to

NRC licensing and would not be subject to NRC regulation.

II. Environmental Assessment

Identification of Proposed Action

10 CFR 30.11 provides that “* * * the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part * * * as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.” The proposed action would exempt USEI from NRC licensing requirements contained in 10 CFR Part 30 that would otherwise be associated with the receipt, processing, and disposal of material contaminated with small concentrations (less than 25 picocuries per gram) of Cesium 137, a radioactive byproduct material. This action is in conjunction with a concurrent action by the Texas Department of State Health Services (DSHS) to approve the transfer of the material (per Title 25, Texas Administrative Code § 289.252(cc)(2)(E)) from the LeTourneau site notwithstanding the provisions of Title 25, Texas Administrative Code § 289.202(ff)(20)(A) related to the stabilization of these materials. It would allow the transfer of approximately 250 tons of emissions control dust (K061) from the LeTourneau facility in Longview, Texas to the USEI facility near Grand View, Idaho. Pursuant to the proposed exemption, the material, upon its receipt at USEI's disposal facility, would not be subject to NRC licensing and would not be subject to NRC regulation. USEI would then process (stabilize) the material for disposal at its facility consistent with the requirements of its RCRA Subtitle C permit.

Need for the Proposed Action

This exemption is necessary to allow the timely disposal of 250 tons of K061 material that is slightly contaminated (less than 25 picocuries per gram) with Cs 137 at the USEI disposal facility near Grand View, Idaho, which is permitted under RCRA, Subtitle C. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a timely decision on the proposed exemption that ensures protection of public health and safety and the environment.

Environmental Impacts of the Proposed Action

In its October 27, 2006 letter and technical report, LeTourneau included a description of disposal site characteristics, a description of the

waste, and radiological assessments of potential dose to transport workers, USEI site workers and future occupants of the disposal site after site closure. The NRC staff has reviewed the evaluations performed by LeTourneau, as well as related Texas DSHS correspondence (dated November 14, 2006, and February 1, 2007) in order to determine whether the criteria for granting the exemption are met. Staff has found that the potential doses to members of the public, either through proximity to material in transport, as a worker at the USEI facility, or as a current or future resident around the USEI facility, are less than “a few mrem” and consistent with NRC's policy which would be applicable to NRC licensees regarding 10 CFR 20.2002 approvals. Staff also considered the risk associated with possible transportation accidents associated with the waste material in a readily dispersible form. Staff concludes that risk will be insignificant because of: (1) Low doses associated with low concentrations; and (2) the low accident rate associated with rail transport. Further, the staff has determined that the affected environment and environmental impacts associated with the proposed action will not significantly increase the probability or consequences of accidents.

USEI has received for processing and disposal similar material in the past. No changes are being made in the types of effluents that may be released off of the USEI site, nor is there significant potential for increase in public radiation exposure (for this evaluation USEI workers are considered members of the public). Based on its review, the NRC staff considered the impact of residual radioactivity at the disposal facility. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative impacts, and concludes that the proposed action will not have a significant effect on the quality of the environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the small amounts of radioactive material involved, the environmental impacts of the proposed action are small. Therefore, the only alternative that the staff considered is the no-action alternative, under which the NRC would maintain status quo by refusing to grant this exemption. This would require either leaving the material in place near Longview or sending it to an alternative facility that is permitted to receive it. In the case of the former, projected radiological impacts on members of the public are

projected to be greater than those associated with the proposed action. In the case of the latter, radiological impacts and transportation risks would be similar to those associated with the proposed action with higher implementation costs.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Idaho Department of Environmental Quality and the Texas Department of State Health Services for review on February 5, 2007. Minor comments received from both agencies via e-mail have been incorporated herein or otherwise resolved.

The NRC staff has determined that the transportation of the subject material over preexisting rail transportation routes for disposal at a preexisting facility is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the habitat of such species. Therefore, no further consideration is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts resulting from the proposed action and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action are available electronically in the NRC's Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents associated with this action are:

(1) Letter dated October 27, 2006, from LeTourneau to Texas DSHS and NRC requesting exemptions to allow transfer of material to USEI for processing and disposal. (ML063260540),

(2) Letter dated November 14, 2006, from E. Bailey, Texas DSHS to W. Maier, NRC Region IV requesting NRC determination whether or not wastes may be disposed of at USEI facility and a condition for DSHS approval of waste removal. (ML070540192),

(3) Letter dated February 1, 2007, from E. Bailey, Texas DSHS to W. Maier, NRC Region IV clarifying terms of approval for waste removal. (ML070540194),

(4) Technical Review and Safety Evaluation Report of LeTourneau proposal by NRC staff dated February 22, 2007 (ML070530623),

(5) Title 10, Code of Federal Regulations, part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

If you do not have access to ADAMS, or if there are problems accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference Staff at 1-800-397-4209, 301-415-4737 or e-mail pdr@nrc.gov. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 13th Day of March, 2007.

For the Nuclear Regulatory Commission,
Scott Flanders,
Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management.

[FR Doc. E7-5034 Filed 3-19-07; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Notice of Opportunity for Hearing, and Notice of Intent To Prepare an Environmental Impact Statement and Conduct the Scoping Process for Facility Operating License No. NPF-63 for an Additional 20-Year Period Carolina Power & Light Company Shearon Harris Nuclear Power Plant, Unit 1

The U.S. Nuclear Regulatory Commission (NRC or the Commission)

is considering an application for the renewal of operating license NPF-63, which authorizes the Carolina Power & Light Company (CP&L), doing business as Progress Energy Carolinas, Inc., to operate the Shearon Harris Nuclear Power Plant, (HNP), Unit 1, at 2900 megawatts thermal. The renewed license would authorize the applicant to operate the HNP, Unit 1, for an additional 20 years beyond the period specified in the current license. HNP, Unit 1, is located in Wake County, North Carolina, and its current operating license expires on October 24, 2026.

On November 16, 2006, the Commission's staff received an application from CP&L to renew operating license NPF-63 for HNP, Unit 1, pursuant to Title 10 of the Code of Federal Regulations, Part 54 (10 CFR Part 54). A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on December 11, 2006 (71 FR 71586). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on January 12, 2007, (72 FR 1562).

The license renewal process proceeds along two tracks, one for review of safety issues (10 CFR Part 54) and another for environmental issues (10 CFR Part 51). An applicant must provide the NRC an evaluation that addresses the technical aspects of plant aging and describes the aging management programs and activities that will be relied on to manage aging. In addition, to support plant operation for the additional 20 years, the licensee must prepare an evaluation of the potential impact on the environment. The NRC reviews the application, documents its reviews in a safety evaluation report and supplemental environmental impact statement, and performs verification inspections at the applicant's facilities. If the NRC approves a renewed license, the licensee must continue to comply with all existing regulations and commitments associated with the current operating license as well as those additional activities required as a result of license renewal. The licensee's activities continue to be subject to NRC oversight in the period of extended operation.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been

identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations. In addition, the Commission must find that applicable requirements of Subpart A of 10 CFR Part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for a hearing or a petition for leave to intervene with respect to the renewal of the license. Interested parties must file requests for a hearing or a petition for leave to intervene in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" described in 10 CFR Part 2. Those interested should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 and is accessible through the Internet at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html>. Persons who do not have access to the Internet or who encounter problems in accessing the documents should contact the NRC's PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or via e-mail at PDR@nrc.gov. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. If no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required

under 10 CFR Parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR Parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to: (1) The requester/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requester/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requester/petitioner's interest. The petition must also set forth the specific contentions that the petitioner/requester seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requester/petitioner shall briefly explain the bases of each contention and concisely state the alleged facts or the expert opinion that supports the contention on which the requester/petitioner intends to rely in proving the contention at the hearing. The requester/petitioner must also provide references to those specific sources and documents of which the requester/petitioner is aware and on which the requester/petitioner intends to rely to establish those facts or expert opinion. The requester/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requester/petitioner to relief. A requester/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns), (2) environmental, or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requesters/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requesters/petitioners must jointly designate a representative who shall have the authority to act for the

requesters/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by either: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, hearingdocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at 301-415-1101 (verification number is 301-415-1966).¹ Requesters/petitioners must send a copy of the request for hearing and petition for leave to intervene to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; copies should be transmitted either by facsimile to 301-415-3725 or via e-mail to OGCMailCenter@nrc.gov. Requesters/petitioners must also send a copy of the request for hearing and petition for leave to intervene to the attorney for the licensee, Mr. John H. O'Neil, Jr., Pillsbury Winthrop Shaw Pittman, 2300 N Street, NW., Washington, DC 20037.

Untimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i) through (viii).

In addition, this notice informs the public that the NRC will be preparing an environmental impact statement (EIS) related to the review of the LRA and provides the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In accordance with 10 CFR

¹ If the request/petition is filed by e-mail or facsimile, an original and two copies of the document must be mailed within 2 (two) business days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Attention: Rulemaking and Adjudications Staff.

51.95(c), the NRC will prepare an EIS that will be used as a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the NRC staff intends to hold a public scoping meeting. In addition, as outlined in 36 CFR 800.8(c), "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, CP&L prepared and submitted the environmental report (ER) as part of the LRA. The LRA and the ER are publicly available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from ADAMS. The ADAMS Accession Numbers for the LRA and the ER are ML063350270 and ML063350276, respectively. The public may also view the LRA and the ER on the Internet at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. In addition, the LRA and the ER are available to the public near HNP, Unit 1, at the Eva. H. Perry Library, 2100 Shepherd's Vineyard Drive, Apex, North Carolina 27502.

Alternatives to the proposed action include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95(c) to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with 10 CFR 51.26.

The NRC staff will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, tribal, and Federal Government agencies is encouraged. As described in 10 CFR 51.29, the NRC staff will use the scoping process for the supplement to the GEIS to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or insignificant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to this GEIS.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the NRC will prepare the supplement to the GEIS and any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, CP&L.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold public meetings for the HNP, Unit 1, license renewal supplement to the GEIS, at the New Horizons Fellowship, 820 East Williams St., Apex, North Carolina 27502 on Wednesday, April 18, 2007. There will be two identical meetings to accommodate interested parties. The first meeting will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NRC's license renewal review process; (2) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (3) the

opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions 1 hour before the start of each session at the same location. The staff will not accept formal comments on the proposed scope of the supplement to the GEIS during these informal discussions. For comments to be considered, persons must provide them either at the transcribed public meetings or in writing, as discussed below.

For more information about the proposed action, the scoping process, and the EIS, interested persons should contact the NRC Environmental Project Manager, Mr. Samuel Hernandez, at Mail Stop O-11F1, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852; by telephone at 1-800-368-5642, extension 4049; or via e-mail at shq@nrc.gov. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Hernandez. Members of the public may also register to speak at the meeting within 15 minutes of the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. The NRC will consider public comments in the scoping process for the supplement to the GEIS. If members of the public need special equipment or accommodations to attend or present information at the public meeting, they should contact Mr. Hernandez no later than April 11, 2007, so that the NRC staff can determine if it can accommodate the request.

Members of the public may send written comments on the environmental scope of the HNP, Unit 1, license renewal review to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. The public may also deliver comments to the U.S. Nuclear Regulatory Commission, Mail Stop T-6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked within 60 days after the

date of publication of this **Federal Register** Notice. Electronic comments may be sent by e-mail to the NRC at ShearonHarrisEIS@nrc.gov, and should be sent no later than 60 days after the date of publication of this **Federal Register** Notice, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The public may also view the summary in ADAMS. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public viewing at the above-mentioned addresses, and one copy per request will be provided free of charge, to the extent of supply. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public viewing.

Information about the supplement to the GEIS, and the scoping process may be obtained from Mr. Hernandez at the telephone number or e-mail address given previously.

Dated at Rockville, Maryland, this 14th day of March, 2007.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7-5033 Filed 3-19-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Materials, Metallurgy, and Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy, and Reactor Fuels will hold a meeting on April 3, 2007, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 3, 2007—8:30 a.m. Until the Conclusion of Business.

The Subcommittee will review the NRC staff's proposed revisions to Standard Review Plan Section 4.2, "Fuel Designs." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, representatives of the nuclear industry, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301/415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 14, 2007.

Cayetano Santos,

Acting Branch Chief, ACRS.

[FR Doc. E7-5035 Filed 3-19-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 4, 2007, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 4, 2007, 8:30 a.m.–10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301-415-7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 14, 2007.

Cayetano Santos,

Acting Branch Chief, ACRS.

[FR Doc. E7-5036 Filed 3-19-07; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Seeking Resubmission of Any Comments from the Public Transmitted Prior to March 14, 2007 on the 2005 WTO Ministerial Decision on Duty-Free Quota-Free Market Access for the Least Developed Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Request for resubmission of comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is advising the public of a technical malfunction in the e-mail address contained in the original notice requesting comments on considerations relating to the Decision that Members adopted at the Sixth Ministerial Conference of the World Trade Organization (WTO) in December 2005 on duty-free, quota-free (DFQF) market access for the least-developed countries (LDCs). The original notice was published on January 18, 2007 (**Federal Register** Volume 72, Number 11, pages 2316-2317). Any submission transmitted prior to March 14, 2007 was

not received. The malfunction in the email address has been corrected and the TPSC is requesting the public to resubmit any written comments submitted prior to March 14, 2007.

DATES: Comments are due by April 15, 2007.

ADDRESSES: *Submissions by electronic mail:* FR0704@USTR.EOP.GOV.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT:

General inquiries should be made to the USTR Office of WTO and Multilateral Affairs at (202) 395-6843; calls on individual subjects will be transferred as appropriate. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative (USTR), (202) 395-3475.

Written Submissions: Persons resubmitting comments may either send one copy by fax to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143 or transmit a copy electronically to FR0704@USTR.EOP.GOV, with "Duty-Free, Quota-Free" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. The public is strongly encouraged to submit documents electronically rather than by facsimile. USTR encourages the use of Adobe PDF format to submit attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments should be submitted electronically no later than April 15, 2007.

Business confidential information will be subject to the requirements of 15 CFR 203.6. Any business confidential material must be clearly marked as such and must be accompanied by a non-confidential summary thereof. A justification as to why the information contained in the submission should be treated confidentially should also be

contained in the submission. In addition, any submissions containing business confidential information must clearly be marked "Business Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked at the top and bottom of each page, "Public Version" or "Non-Confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 203.6 will be available for public inspection in the USTR Reading Room, Office of the United States Trade Representative. An appointment to review the file can be made by calling (202) 395-6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m. Monday through Friday.

Dated: March 15, 2007.

Carmen C. Suro-Bredie,

Assistant USTR for Policy Coordination.

[FR Doc. E7-5032 Filed 3-19-07; 8:45 am]

BILLING CODE 3190-W7-P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933; Release No. 8789/ March 14, 2007; Securities Exchange Act of 1934; Release No. 55469/March 14, 2007]

Order Regarding Review of FASB Accounting Support Fee For 2007 Under Section 109 of The Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the "Act") establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as "generally accepted" for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Securities and Exchange Commission ("Commission"). Under Section 109(f) of the Act, the annual accounting support fee shall not

exceed the amount of the standard setter's "recoverable budget expenses." Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 109 of the Act.¹ As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2007. In connection with its review, the Commission also reviewed the proposed budget for the FAF and the FASB for calendar year 2007.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Governmental Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2007 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-5003 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

¹ Financial Reporting Release No. 70.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55459; File No. SR-Amex-2007-28]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Charges for Equities, ETFs, and Nasdaq UTP Securities

March 13, 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 American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 proposes to revise its Equities, Exchange Traded Funds and Trust Issued Receipts ("ETFs"), and Nasdaq UTP Fee Schedules (collectively, the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently revised its Equities, ETFs, and Nasdaq UTP Fee Schedules.³ The Exchange is now proposing to make some additional changes to each of the fee schedules. The Equity Fee Schedule will be amended to (1) clarify that Amex transaction charges assessed for orders routed through the NMS Linkage Plan apply only to orders routed to Amex and not to orders routed from Amex to another market center; and (2) provide that there will be no transaction charge for equities executed at a per-share price below \$1.00. The ETF Fee Schedule will be amended to (1) decrease the rate charged to member firms for customer account transactions from \$0.34 to \$0.30 per 100 shares; (2) eliminate the Value Based Fee currently charged for transactions for the accounts of non-member competing market makers; (3) clarify that Amex transaction charges assessed for orders routed through the NMS Linkage Plan apply only to orders routed to Amex and not to orders routed from Amex to another market center; and (4) provide that there will be no transaction charge for ETFs executed at a per-share price below \$1.00. The Nasdaq UTP Fee Schedule will be amended to provide that there will be no transaction charge for Nasdaq UTP securities executed at a per-share price below \$1.00.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act⁴ regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder⁶ because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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-Amex-2007-28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-28. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See SR-Amex-2007-23 filed on February 22, 2007.

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 19b-4(f)(2).

Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-28 and should be submitted on or before April 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4977 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55460; File No. SR-Amex-2007-30]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Charges for Equities and ETFs

March 13, 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 8, 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 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 proposes to revise Equities and Exchange Traded Funds and Trust Issued Receipts ("ETFs") Fee Schedules (collectively, the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently revised its Equities, ETFs, and Nasdaq UTP Fee Schedules.³ The Exchange is now proposing to make some additional changes to the Equities and ETFs Fee Schedules. The Equity Fee Schedule currently provides a waiver of transaction charges for orders of up to 500 shares entered electronically into the Amex Order File from off the floor ("System Orders"). This transaction charge waiver does not apply to the System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker.⁴ The Exchange is now proposing to extend the transaction charge waiver to System Orders for the accounts of non-member competing market makers. Thus, the Equity Fee Schedule is being amended to eliminate the second and third sentences of Item 3 on the schedule.

The ETF Fee Schedule also provides a waiver of transaction charges for orders entered electronically into the Amex Order File from off the floor. However for ETFs, orders up to 2,400 shares are deemed to be System Orders for which transaction charges are waived. Again, the transaction charge waiver currently does not apply to the System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. The Exchange is now proposing to extend the transaction

charge waiver to System Orders for the accounts of non-member competing market makers. Thus, the ETF Fee Schedule is being amended to eliminate the second and third sentences of Note 1 on the schedule.

The Exchange is also proposing to apply the waiver of transaction charges for System Orders in equities and ETFs for the accounts of non-member competing market makers retroactively, beginning March 1, 2007.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act⁵ regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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 immediately pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6)⁷ 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.⁸

The Commission has determined to waive the 30-day operative delay. The Commission believes that doing so is consistent with the protection of investors and the public interest because eligible parties will be able to obtain the benefit of the fee waivers immediately. Accordingly, the

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

³ See SR-Amex-2007-23 filed on February 22, 2007 and SR-Amex-2007-28 filed on March 1, 2007.

⁴ A competing market maker is defined for purposes of the Equity and ETF Fee Schedules as a specialist or market maker registered as such on a registered stock exchange (other than Amex), or a market maker bidding and offering over-the-counter, in an Amex-traded security.

⁸ Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designed by the Commission. The Commission has determined to waive the five-day pre-filing requirement.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission designates the proposal to be operative upon filing with the Commission.⁹

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 of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2007-30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-30 and should be submitted on or before April 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4978 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55464; File No. SR-Amex-2007-08]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change to Establish a Passive Price Improvement Order for Specialists and Registered Traders

March 13, 2007.

I. Introduction

On January 19, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on February 2, 2007.³ The Commission received one comment letter.⁴ On March 12, 2007, Amex submitted a response to the comment letter.⁵ This order approves the proposed rule change.

II. Description of the Proposal

Amex proposes to amend the rules for its AEMI trading platform⁶ to add a Passive Price Improvement ("PPI") order type. PPI orders are undisplaced

orders that, to execute, would have to be inside the automated best bid and offer of the Exchange (also referred to as the "Amex Published Quote" or "APQ") by at least a tick. They would be the only method for Specialists and Registered Traders to offer price improvement electronically. A Specialist or Registered Trader would have to have at least one active quote on a particular side of a security on the AEMI book to enter and maintain a PPI order in the same security on the same side. A Specialist or Registered Trader that meets this quoting requirement could enter only one PPI order on each side for a security. A PPI order could not form part of the APQ and would be visible only to the entering Specialist or Registered Trader (or his firm).

AEMI would make a PPI order eligible for execution if at least one of the following conditions were met:

1. The Specialist's or Registered Trader's displayed quote is at the APQ on the side of the PPI order that would be executed. In this case, the PPI order would be executed up to (a) the size of the Specialist's or Registered Trader's displayed quote on that side or (b) the size of the incoming order, whichever is smaller.

2. The Specialist's or Registered Trader's displayed quote is one tick away from the APQ on the side of the PPI order that would be executed. In this case, the PPI order would be executed up to (a) half of the size of the Specialist's or Registered Trader's displayed quote on that side or (b) the size of the incoming order, whichever is smaller.

The AEMI system would ignore (*i.e.*, make ineligible for execution against an otherwise marketable aggressing order, without canceling) the remaining size of a PPI order beyond the thresholds described above.⁷ The AEMI system would also ignore a PPI order in the following circumstances:

- The PPI order locks or crosses the automated NBBO or APQ as a result of a change in the automated NBBO or APQ;
- The PPI order equals the APQ on the same side of the market;

⁷ For example, assume that a Specialist's bid for 1,000 shares is part of the Amex best bid and there are no better-priced protected quotations at other trading centers. The Specialist has a PPI order to buy 3,000 shares priced one tick better than the Amex best bid. Assume that an incoming market order to sell 3,000 shares is received by AEMI. The system would execute 1,000 shares against the Specialist's PPI order, and the remainder would execute one tick down at the Amex best bid (based on the Exchange's rules of priority and parity). The remaining size of the PPI order (2,000 shares) is ignored because the PPI order may execute only up to the size of the Specialist's displayed bid at the APQ.

⁹ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Release Act 55179 (January 26, 2007), 72 FR 05091 (February 2, 2007).

⁴ See Letter from Christopher Cornette, Member, Amex, to Florence E. Harmon, Deputy Secretary, Commission, received February 14, 2007.

⁵ See Letter from Claire P. McGrath, Senior Vice President & General Counsel, Amex, to Nancy M. Morris, Secretary, Commission, dated March 12, 2007 ("Amex Response Letter").

⁶ See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006).

- There is a negotiated trade; or
- AEMI's auto-execution functionality is disabled.

In addition, the AEMI system would cancel a PPI order in three circumstances: (1) if the Specialist's or Registered Trader's best quote is withdrawn; (2) at the end of the day; or (3) there is a trading halt in the security.

If there were multiple PPI orders at the same price, the Specialist's PPI order would have priority, and any remaining size of an aggressing order would be executed against Registered Trader PPI orders in time priority. Intermarket sweep orders would be generated as necessary to clear any better-priced protected quotations at other trading centers before executing any PPI orders on the AEMI system.

To reflect the proposed rule change as described above, changes are proposed to the following AEMI rules: Rule 123–AEMI (Manner of Bidding and Offering), Rule 131–AEMI (Types of Orders), Rule 157–AEMI (Orders with More than One Broker), and Rule 170–AEMI (Registration and Functions of Specialists).

III. Summary of Comments and Amex Response

The Commission received one comment letter opposing the proposed rule change. The commenter argued that limiting the use of PPI Orders to Specialists and Registered Traders gives them “an unfair advantage” and thus is not consistent with Section 6(b) of the Act.

The commenter noted that the Specialist would have access to aggressing orders that could be price-improved but Floor Brokers would not. The commenter suggested that there would be many instances where Floor Brokers would be willing to provide price improvement but would not publicly display such interest in order to minimize any potential market impact. The commenter also suggested that PPI Orders could be misused to trade ahead of a Floor Broker's marketable orders instead of providing price improvement.

In its response to comments, Amex asserted that Floor Brokers are able to operate effectively and compete with Specialists and Registered Traders. For example, Amex pointed out that Floor Brokers have the exclusive use of certain order types on AEMI (*e.g.*, percentage orders and reserve orders). Amex also emphasized that the use of PPI Orders would be monitored and policed electronically. Amex stated that its regulatory program would be able to detect possible unfair trading practices. Finally, Amex represented that it “is in

the process of developing the means by which other market participants, including floor brokers, would have the ability to systematically provide such price improvement.”⁸

IV. Discussion and Commission's Findings

After careful consideration, 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.⁹ In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission previously has found similar exchange rules to be consistent with the Act.¹¹ The Commission does not believe that the comment raises any issue that would preclude approval of the current proposal. As the Commission noted in the NYSE Hybrid Approval Order, Specialists today are permitted to offer price improvement to incoming orders in the auction market.¹² In this proposal, Amex seeks to provide its Specialists and Registered Traders with the ability to continue to offer price improvement in an electronic environment, but only if certain conditions are met. A Specialist's or Registered Trader's PPI order is eligible for execution only if its quote on the same side of the market is at or one tick away from the APQ. If the Specialist's or Registered Trader's quotation is at the APQ, a PPI order is eligible to execute up to the same size as its quotation; if it is one tick away from the APQ, the PPI order is eligible to execute up to one half the size of its quotation. A PPI order will be ignored if the Specialist's or Registered Trader's quotation is more than one tick away from the APQ. Thus, a Specialist's ability to benefit from the PPI order is directly correlated with the

extent to which it quotes competitive markets in size. The Commission notes, moreover, that Amex has represented that it “is in the process of developing the means by which other market participants, including floor brokers, would have the ability to systematically provide such price improvement.”¹³

The Commission further notes that a PPI order could execute only against a marketable incoming limit order. An incoming order that is not marketable against a PPI order (or a protected quotation) and that improves the APQ would be quoted as part of the new APQ.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR–Amex–2007–08), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7–5005 Filed 3–19–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55450; File No. SR–BSE–2007–11]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Existing Fee Schedules

March 13, 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 2, 2007, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The BSE has designated this proposal as one changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b–4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

⁸ Amex Response Letter at 1.

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Securities Exchange Act Release Nos. 53539 (March 22, 2006), 71 FR 16353, 16381–82 (March 31, 2006) (“NYSE Hybrid Approval Order”) and 54511 (September 25, 2006), 71 FR 58460 (October 3, 2006).

¹² See 71 FR at 16382.

¹³ Amex Response Letter at 1.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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)(ii).

⁴ 17 CFR 240.19b–4(f)(2).

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 BSE proposes amending the Boston Equities Exchange ("BeX") fee schedule to include a transaction fee to be charged to BSE Members who request a BeX purchase & Sale Blotter reflecting the transaction information related to the execution of a single order, part of which was executed on BeX and part of which was executed at an away Trading Center. The text of the proposed rule change is available at <http://www.bostonstock.com>, at the BSE, 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

On November 20, 2006, the BSE filed BSE-2006-44, a rule filing that amended the existing BSE fee schedule and established a fee schedule for the BeX, a facility of the Exchange. BSE-2006-44 resulted in, among other things, the deletion of all Transaction Fees, Electronic File Access and Processing Fees, and Floor Operation Fees from the BSE fee schedule. The Transaction Fees and Electronic File Access and Processing Fees that were deleted from the BSE fee schedule were transferred to the BeX fee schedule. The purpose of this proposed rule change is to amend the BeX fee schedule to include a transaction fee that was deleted from the BSE fee schedule but not transferred to the BeX fee schedule as a part of BSE-2006-44. Specifically, the BSE fee schedule contained a transaction fee titled "Floor Brokered non-BSE executions." The fee for Floor Brokered non-BSE executions was \$0.0005, or \$0.05 per 100 shares. BSE

Members were charged the Floor Brokered non-BSE execution fee when the Member requested that the information related to the execution of a single order, only a part of which had been executed on the BSE with the remaining portion executed at an away Trading Center, be reflected on a BSE Purchase & Sale Blotter rather than having only the portion executed at the BSE reflected on the BSE Purchase & Sale Blotter. In order to include the information related to the portion of an order executed at the Trading Center other than the BSE on a BSE Purchase & Sale Blotter, in other words, in order to consolidate the transaction information on a single report, the BSE performed the necessary back office operations on behalf of the BSE Member so the transaction information, including the information related to the portion of the order executed at an away Trading Center, would appear on a BSE Purchase & Sale Blotter reflecting the transaction information related to the execution of a single order, part of which was executed on BeX and part of which was executed at an away Trading Center. The fee would now be titled "Non-BeX executed trades" and would appear on the BeX fee schedule. As such, what had been known as the Floor Brokered non-BSE executions fee on the BSE schedule will now appear on the BeX fee schedule as the Non-BeX executed trades fee and will apply in the BeX environment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that it is designated to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of 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-BSE-2007-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2007-11 and should be submitted on or before April 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4976 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55471; File No. SR-NASD-2007-013]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Portfolio Margin

March 14, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 12, 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, II, and III below, which Items have been prepared by NASD. NASD has filed the proposed rule 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 it 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

NASD proposes to amend NASD Rule 2520 to permit members to margin certain products according to a prescribed portfolio margin methodology on a pilot basis. NASD further proposes to amend NASD Rule 2860 to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margin program be furnished to customers using a portfolio margin account.

Below is the text of the proposed rule change. Proposed new rule language is in italics.

* * * * *

2520. Margin Requirements

(a) through (f) No Change.

(g) *Portfolio Margin*

As an alternative to the "strategy-based" margin requirements set forth in paragraphs (a) through (f) of this Rule, members may elect to apply the portfolio margin requirements set forth in this paragraph (g) to all margin equity securities,¹ listed options, security futures products (as defined in Section 3(a)(56) of the Exchange Act), unlisted derivatives, warrants, index warrants and related instruments, provided that the requirements of paragraph (g)(6)(B)(i) of this Rule are met.

In addition, a member, provided that it is a Futures Commission Merchant ("FCM") and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this paragraph (g) to combine an eligible participant's related instruments as defined in paragraph (g)(2)(D), with listed index options, unlisted derivatives, options on exchange traded funds ("ETF"), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) *Monitoring.*—Members must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made,

the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with NASD, or the member's designated examining authority ("DEA") if other than NASD, and submitted to the Commission prior to the implementation of portfolio margining. In performing the risk analysis of portfolio margin accounts required by this Rule, each member shall include in the written risk analysis methodology procedures and guidelines for:

(A) obtaining and reviewing the appropriate account documentation and financial information necessary for assessing the amount of credit to be extended to eligible participants;

(B) the determination, review and approval of credit limits to each eligible participant, and across all eligible participants, utilizing a portfolio margin account;

(C) monitoring credit risk exposure to the member from portfolio margin accounts, on both an intra-day and end of day basis, including the type, scope and frequency of reporting to senior management;

(D) the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate;

(E) the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group;

(F) managing the impact of credit extended related to portfolio margin accounts on the member's overall risk exposure;

(G) the appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded; and

(H) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product.

Moreover, management must periodically review, in accordance with written procedures, the member's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this paragraph (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) *Definitions.*—For purposes of this paragraph (g), the following terms shall have the meanings specified below:

⁹ 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).

⁴ 17 CFR 240.19b-4(f)(6).

(A) The term “listed option” means any equity-based or equity index-based option traded on a registered national securities exchange or automated facility of a registered national securities association.

(B) The term “portfolio” means any eligible product, as defined in paragraph (g)(6)(B)(i), grouped with its underlying instruments and related instruments.

(C) The term “product group” means two or more portfolios of the same type (see table in paragraph (g)(2)(F) below) for which it has been determined by SEC Rule 15c3-1a that a percentage of offsetting profits may be applied to losses at the same valuation point.

(D) The term “related instrument” within a security class or product group means broad-based index futures and options on broad-based index futures covering the same underlying instrument. The term “related instrument” does not include security futures products.

(E) The term “security class” refers to all listed options, security futures products, unlisted derivatives, and related instruments covering the same underlying instrument and the underlying instrument itself.

(F) The term “theoretical gains and losses” means the gain and loss in the value of individual eligible products and related instruments at ten equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:

Portfolio type	Up/down market move (high & low valuation points)
High Capitalization, Broad-based Market Index ² .	+6% / - 8%
Non-High Capitalization, Broad-based Market Index ³ .	± 10%
Any other eligible product that is, or is based on, an equity security or a narrow-based index.	± 15%

(G) The term “underlying instrument” means a security or security index upon which any listed option, unlisted derivative, security future, or broad-based index future is based.

(H) The term “unlisted derivative” means any equity-based or equity index-based unlisted option, forward contract, or security-based swap that can be

valued by a theoretical pricing model approved by the Commission.

(3) Approved Theoretical Pricing Models.—Theoretical pricing models must be approved by the Commission.

(4) Eligible Participants.—The application of the portfolio margin provisions of this paragraph (g) is limited to the following:

(A) any broker or dealer registered pursuant to Section 15 of the Exchange Act;

(B) any member of a national futures exchange to the extent that listed index options, unlisted derivatives, options on ETFs, index warrants or underlying instruments hedge the member's index futures; and

(C) any person or entity not included in paragraphs (g)(4)(A) and (g)(4)(B) above approved for uncovered options and, if transactions in security futures are to be included in the account, approval for such transactions is also required. However, an eligible participant under this paragraph (g)(4)(C) may not establish or maintain positions in unlisted derivatives unless minimum equity of at least five million dollars is established and maintained with the member. For purposes of this minimum equity requirement, all securities and futures accounts carried by the member for the same eligible participant may be combined provided ownership across the accounts is identical. A guarantee pursuant to paragraph (f)(4) of this Rule is not permitted for purposes of the minimum equity requirement.

(5) Opening of Accounts

(A) Members must notify and receive approval from NASD, or the member's DEA if other than NASD, prior to establishing a portfolio margin methodology for eligible participants.

(B) Only eligible participants that have been approved to engage in uncovered short option contracts pursuant to NASD Rule 2860, or the rules of the member's DEA if other than NASD, are permitted to utilize a portfolio margin account.

(C) On or before the date of the initial transaction in a portfolio margin account, a member shall:

(i) furnish the eligible participant with a special written disclosure statement describing the nature and risks of portfolio margining which includes an acknowledgement for all portfolio margin account owners to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account is provided (see NASD Rule 2860(c)); and

(ii) obtain the signed acknowledgement noted above from the

eligible participant and record the date of receipt. (6) Establishing Account and Eligible Positions.

(A) For purposes of applying the portfolio margin requirements prescribed in this paragraph (g), members are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for an eligible participant.

A margin deficit in the portfolio margin account of an eligible participant may not be considered as satisfied by excess equity in another account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained. However, if a portfolio margin account is carried as a sub-account of a margin account, excess equity in the margin account (determined in accordance with the rules applicable to a margin account other than a portfolio margin account) may be used to satisfy a margin deficit in the portfolio margin sub-account without having to transfer any funds and/or securities.

(B) Eligible Products

(i) For eligible participants as described in paragraphs (g)(4)(A) through (g)(4)(C), a transaction in, or transfer of, an eligible product may be effected in the portfolio margin account. Eligible products under this paragraph (g) consist of:

(a) a margin equity security (including a foreign equity security and option on a foreign equity security, provided the foreign equity security is deemed to have a “ready market” under SEC Rule 15c3-1 or a “no-action” position issued thereunder, and a control or restricted security, provided the security has met the requirements in a manner consistent with SEC Rule 144 or a Commission “no-action” position issued thereunder, sufficient enough to permit the sale of the security, upon exercise or assignment of any listed option or unlisted derivative written or held against it, without restriction);

(b) a listed option on an equity security or index of equity securities;

(c) a security futures product;

(d) an unlisted derivative on an equity security or index of equity securities;

(e) a warrant on an equity security or index of equity securities; and

(d) a related instrument as defined in paragraph (g)(2)(D).

(7) Margin Required.—The amount of margin required under this paragraph (g) for each portfolio shall be the greater of:

(A) the amount for any of the ten equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (g)(8) below; or

(B) for eligible participants as described in paragraph (g)(4)(A) through (g)(4)(C), \$.375 for each listed option, unlisted derivative, security future product, and related instrument, multiplied by the contract's or instrument's multiplier, not to exceed the market value in the case of long contracts in eligible products.

(C) Account guarantees pursuant to paragraph (f)(4) of this Rule are not permitted for purposes of meeting margin requirements.

(D) Positions other than those listed in Paragraph (g)(6)(B)(i) above are not eligible for portfolio margin treatment. However, positions not eligible for portfolio margin treatment (except for ineligible related instruments) may be carried in a portfolio margin account, provided the member has the ability to apply the applicable strategy-based margin requirements promulgated under this Rule. Shares of a money market mutual fund may be carried in a portfolio margin account, also subject to the applicable strategy-based margin requirement under this Rule provided that:

(i) the customer waives any right to redeem shares without the member's consent;

(ii) the member (or, if the shares are deposited with a clearing organization, the clearing organization) obtains the right to redeem shares in cash upon request;

(iii) the fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request; and

(iv) the member complies with the requirements of Section 11(d)(1) of the Exchange Act and SEC Rule 11d1-2 thereunder.

(8) Method of Calculation

(A) Long and short positions in eligible products, including underlying instruments and related instruments, are to be grouped by security class; each security class group being a "portfolio." Each portfolio is categorized as one of the portfolio types specified in paragraph (g)(2)(F) above, as applicable.

(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in paragraph (g)(2)(F) above. For purposes of determining the theoretical gains and losses at each valuation point, members shall obtain and utilize the theoretical values of eligible products as described in this paragraph (g) rendered by an approved theoretical pricing model.

(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point. Offsets between portfolios within the eligible product groups, as described in paragraph (g)(2)(F), may then be applied as permitted by SEC Rule 15c3-1a.

(D) After applying the offsets above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(E) In addition, if a security that is convertible, exchangeable, or exercisable into a security that is an underlying instrument requires the payment of money or would result in a loss if converted, exchanged, or exercised at the time when the security is deemed an underlying instrument, the full amount of the conversion loss is required.

(9) Portfolio Margin Minimum Equity Deficiency

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant as described in paragraph (g)(4)(C), declines below the five million dollar minimum equity required, if applicable, and is not restored to at least five million dollars within three business days by a deposit of funds and/or securities or through favorable market action, members are prohibited from accepting new opening orders beginning on the fourth business day, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until,

(i) equity of five million dollars is established, or

(ii) all unlisted derivatives are liquidated or transferred from the portfolio margin account to the appropriate securities account.

(B) Members will not be permitted to deduct any portfolio margin minimum equity deficiency amount from Net Capital in lieu of collecting the minimum equity required.

(10) Portfolio Margin Deficiency

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant, as described in paragraph (g)(4)(A) through (g)(4)(C), is less than the margin required, the eligible participant may deposit additional funds and/or securities or establish a hedge to meet the margin requirement within three business days. After the three business day period, members are prohibited from accepting new opening orders, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin

requirements. In the event an eligible participant fails to hedge existing positions or deposit additional funds and/or securities in an amount sufficient to eliminate any margin deficiency after three business days, the member must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to the account equity.

(B) If the portfolio margin deficiency is not met by the close of business on the next business day after the business day on which such deficiency arises, members will be required to deduct the amount of the deficiency from Net Capital until such time the deficiency is satisfied or positions are liquidated pursuant to paragraph (g)(10)(A) above.

(C) Members will not be permitted to deduct any portfolio margin deficiency amount from Net Capital in lieu of collecting the margin required.

(D) NASD, or the member's DEA if other than NASD, may grant additional time for an eligible participant to meet a portfolio margin deficiency upon written request, which is expected to be granted in extraordinary circumstances only.

(E) Notwithstanding the provisions of subparagraph (B) above, members should not permit an eligible participant to make a practice of meeting a portfolio margin deficiency by liquidation. Members must have procedures in place to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and the member is expected to take appropriate action when warranted. Liquidation to eliminate margin deficiencies that are caused solely by adverse price movements may be disregarded.

(11) Determination of Value for Margin Purposes.—For the purposes of this paragraph (g), all eligible products shall be valued at current market prices. Account equity for the purposes of paragraphs (g)(9)(A) and (g)(10)(A) shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.

(12) Net Capital Treatment of Portfolio Margin Accounts

(A) No member that requires margin in any portfolio account pursuant to paragraph (g) of this Rule shall permit the aggregate portfolio margin requirements to exceed ten times its Net Capital for any period exceeding three business days. The member shall, beginning on the fourth business day,

cease opening new portfolio margin accounts until compliance is achieved.

(B) If, at any time, a member's aggregate portfolio margin requirements exceed ten times its Net Capital, the member shall immediately transmit telegraphic or facsimile notice of such deficiency to the principal office of the Commission in Washington, D.C., the district or regional office of the Commission for the district or region in which the member maintains its principal place of business; and to NASD, or the member's DEA if other than NASD. Notice to NASD shall be in such form as NASD may prescribe.

(13) **Day Trading Requirements.**—The day trading restrictions promulgated under paragraph (f)(8)(B) of this Rule shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided that a member has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under paragraph (f)(8)(B) of this Rule, provided the member has the ability to apply the applicable day trading requirement under this Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A “hedge strategy” for purposes of this Rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Members are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements.

(14) **Requirements to Liquidate**

(A) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry portfolio margin accounts, all portfolio margin accounts with positions in related instruments if the member is:

(i) insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;

(ii) the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(iii) not in compliance with applicable requirements under the Exchange Act or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of eligible participant's securities; or

(iv) unable to make such computations as may be necessary to

establish compliance with such financial responsibility or hypothecation rules.

(B) Nothing in this paragraph (g)(14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

(15) Members must ensure that portfolio accounts are in compliance with Rule 2860.

¹ For purposes of this paragraph (g) of the Rule, the term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

² In accordance with paragraph (b)(1)(i)(B) of SEC Rule 15c3-1a (Appendix A to SEC Rule 15c3-1), 17 CFR 240.15c3-1a(b)(1)(i)(B).

³ See footnote 2.

* * * * *

2860. Options

(a) through (b) No Change.

(c) **Portfolio Margining Disclosure Statement and Acknowledgement**

The special written disclosure statement describing the nature and risks of portfolio margining, and acknowledgement for an eligible participant signature, required by Rule 2520(g)(5)(C) shall be in a format prescribed by NASD or in a format developed by the member, provided it contains substantially similar information as in the prescribed NASD format and has received the prior written approval of NASD.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

Background. Section 7(a) of the Act⁵ authorizes the Board of Governors of the

Federal Reserve System to prescribe the rules and regulations regarding credit that may be extended by broker-dealers on securities to their customers as set forth in Regulation T. Currently, Rule 2520 (Margin Requirements) prescribes minimum maintenance margin requirements for customer accounts held by members based on position or strategy-based margin requirements. This methodology applies prescribed margin percentage requirements to each security position and/or strategy, either long or short, held in a customer's account.

The Board of Governors of the Federal Reserve System in its amendments to Regulation T in 1998 permitted self-regulatory organizations to implement portfolio margin rules, subject to Commission approval.⁶ Accordingly, NASD is filing the proposed rule change to allow members to extend a portfolio margin methodology to eligible participants as an alternative to the current margin requirements.

As further detailed herein, the proposed rule change would amend NASD Rule 2520 on a pilot basis to allow members, subject to specified conditions, to elect to apply a portfolio margin methodology to all margin equity securities,⁷ listed options, security futures products,⁸ unlisted derivatives,⁹ warrants, index warrants, and related instruments.¹⁰ In addition, a member, provided that it is a futures commission merchant (“FCM”) and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, would be permitted to combine an eligible participant's related instruments with listed index options, unlisted derivatives, options on exchange traded funds (“ETF”), index warrants, and underlying instruments¹¹ and compute a margin requirement for such combined products on a portfolio margin basis.

The proposed rule change is substantially similar to recent margin

⁶ See Federal Reserve System, “Securities Credit Transactions; Borrowing by Broker and Dealers”; Regulations G, T, U and X; Dockets Nos. R-0905, R-0923 and R-0944, 63 FR 2806 (January 16, 1998).

⁷ For purposes of the rule, the term “margin equity security” uses the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

⁸ For purposes of the rule, “security futures product” uses the definition at Section 3(a)(56) of the Act.

⁹ For purposes of the rule, the term “unlisted derivatives” is defined in Rule 2520(g)(2)(H).

¹⁰ For purposes of the rule, the term “related instrument” is defined in Rule 2520(g)(2)(D).

¹¹ For purposes of the rule, the term “underlying instrument” is defined in Rule 2520(g)(2)(G).

⁵ 15 U.S.C. 78g.

rule amendments by the New York Stock Exchange ("NYSE") and the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.¹² Consistent with the NYSE and CBOE programs, the proposed rule change would be available as a pilot beginning on April 2, 2007 and ending on July 31, 2007, unless the Commission approves an extension of the pilot or adoption of the program on a permanent basis.

Portfolio Margin. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group¹³ using computer modeling to perform risk analysis using multiple pricing scenarios. These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

Margin Calculation. Under the proposed rule change, a gain or loss on each position in the portfolio would be calculated on each of ten equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. For portfolios of only highly capitalized broad-based indexes, the range would be between a market increase of 6% and a decrease of 8%. For non-highly capitalized broad-based indexes the range would be +/- 10%. For portfolios of equity options, narrow-based index options and/or security futures, the risk-array for computing the portfolio margin requirement would be up/down market moves of +/- 15%.

Options having the same underlying security (or index in the case of an

index option), the underlying security itself, and any related futures, options on futures or security futures products could be combined as a portfolio for purposes of computing a portfolio margin requirement. The Commission approved theoretical options pricing model would be used to derive position values at each valuation point for the purpose of determining the gain or loss.¹⁴ The gains and losses are netted to derive a potential portfolio gain or loss for the point. The margin requirement for the portfolio is the amount of the greatest loss among the calculation points. Certain portfolios would be allowed offsets such that, at the same valuation point, a gain in one portfolio may reduce or offset the loss in another portfolio. The amount of offset allowed between portfolios would be the same as permitted under SEC Rule 15c3-1a for computing a broker-dealer's net capital. The margin requirement for each portfolio would then be added together to calculate the total margin requirement for the portfolio margin account.

In addition, the proposed rule change prescribes a minimum margin requirement of \$.375 for each listed option, unlisted derivative, security futures product, and related instrument multiplied by the contract or instrument's multiplier. This minimum amount of margin ensures that a certain level of margin is required from the customer in the event that the greatest loss among the valuation points is a de minimis amount.

Generally, a customer benefits from portfolio margining in that margin requirements calculated on net position risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, members would no longer be required to compute a margin requirement for each individual position or strategy in a customer's account.

Monitoring and Risk Management. However, as a pre-condition to permitting portfolio margining, the member would be required to establish comprehensive written risk analysis methodology to assess the potential risk to the member's capital over a specified range of possible market movements. In performing the risk analysis, the member would be required to include in the written risk analysis methodology procedures and guidelines for (1) obtaining and reviewing account

documentation and financial information to assess the amount of credit to be extended to eligible participants; (2) the determination, review, and approval of credit limits to each eligible participant, and across all eligible participants, utilizing a portfolio margin account; (3) monitoring credit risk exposure to the member's capital, on both a intra-day and end of day basis, including the type, scope and frequency of reporting to senior management; (4) the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate; (5) the regular review and testing of the procedures by an independent unit; (6) managing the impact of credit extended related to portfolio margin accounts on the member's overall risk exposure; (7) the appropriate response by management when credit extensions have been exceeded; and (8) determining when additional margin may need to be collected.

Members would be required to periodically review their credit extension activities for consistency with their guidelines and determine if the data necessary to apply portfolio margining is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data. The risk analysis methodology must be filed with NASD, or the member's designated examining authority ("DEA") if other than NASD, and submitted to the Commission prior to implementation of portfolio margining. The proposed rule change also requires members to notify and receive approval from NASD or the member's DEA if other than NASD, prior to establishing a portfolio margin methodology for eligible participants.

Eligible Participants. The proposed rule change would permit the following persons to engage in portfolio margining: (1) Any broker or dealer registered pursuant to Section 15 of the Act; (2) any member of a national futures exchange to the extent that listed index options, unlisted derivatives, options on ETFs, index warrants or underlying instruments hedge the member's index futures; and (3) any person approved to engage in uncovered option contracts, and if security futures are to be included in the account, approval for such transactions is also required. However, an eligible participant under category (3) may not establish or maintain positions in unlisted derivatives unless minimum equity of at least five million dollars is established and maintained with the member. If the account of a participant subject to the five million dollar

¹² See Securities Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR-NYSE-2006-13, relating to further amendments to the NYSE's portfolio margin pilot program); Securities Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR-NYSE-2005-93, relating to amendments to the NYSE's portfolio margin pilot program); Securities Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) (SR-NYSE-2002-19, relating to the NYSE's original portfolio margin pilot). See also Securities Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR-CBOE-2006-014, relating to amendments to the CBOE's portfolio margin pilot); Securities Exchange Act Release No. 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005) (SR-CBOE-2002-03, relating to the CBOE's original portfolio margin pilot).

¹³ Products would be grouped into a single portfolio that is based on the same index or issuer.

¹⁴ Currently, the only model that is approved by the Commission is The Options Clearing Corporation's Theoretical Intermarket Margining System (TIMS).

requirement falls below such minimum requirement, it must be restored within three business days. A member would be prohibited from accepting new opening orders beginning on the fourth business day, except for new opening orders entered solely for the purpose of reducing market risk, where the result would be to lower margin requirements.

Margin Deficiencies. Under the proposed rule change, participants would be required to satisfy a margin deficiency in a portfolio margin account within three business days by the deposit of additional funds and/or securities or by the establishment of a hedge that would reduce margin requirements. In the event the deficiency is not satisfied after three business days, the member must liquidate positions to eliminate the deficiency. A member would be required to deduct from its net capital the amount of any margin deficiency not satisfied by the close of business on the next business day after the business day on which the deficiency arises and continuing until the deficiency is satisfied. Members should not permit an eligible participant to make a practice of meeting a portfolio margin deficiency by liquidation and would be required to identify accounts that periodically liquidate positions to eliminate margin deficiencies.

Establishing Account. Members would be permitted to use a specific securities margin account or a sub-account of a margin account clearly identified as a portfolio margin account. The account must be separate from any other securities account. In the event a portfolio margin account is a subaccount of a regular margin account, a member would be allowed to use excess equity in the regular margin account to meet a margin deficiency in the portfolio margin account. In addition, securities, including money market funds, that are not eligible for portfolio margin treatment would be allowed to be carried in a portfolio margin account for their collateral value, subject to the margin requirement applicable in a regular securities margin account.

Day Trading. The day trading restrictions in Rule 2520 would not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided that a member has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity would otherwise be subject to the day trading restrictions. However, if the position or positions day traded were part of a

hedge strategy, the day trading restrictions would not apply. A "hedge strategy" for purposes of the rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Members would be expected to monitor portfolio accounts to detect and prevent circumvention of the day trading requirements.

Net Capital Treatment. The proposed rule change would provide that the aggregate portfolio margin and maintenance requirements may not exceed ten times the member's net capital, as computed under SEC Rule 15c3-1. This requirement places a ceiling on the amount of portfolio margin a broker-dealer can extend to its customers.

Disclosure Document. NASD Rule 2860(b)(11) prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. Under the proposed rule change, members would be required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial transaction in a portfolio margin account. The disclosure would be in a format prescribed by NASD or in a format developed by the member, provided it contains substantially similar information as in the prescribed NASD format and has received the prior written approval of NASD. NASD will issue a Notice to Members to set forth the language required in the written disclosure statement.

NASD has filed the proposed rule change for immediate effectiveness. As noted above, the proposed rule change would establish a pilot program that would begin on April 2, 2007 and end on July 31, 2007 to conform to the time periods of the similar portfolio margin pilot programs of the NYSE and CBOE.¹⁵

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that NASD 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. NASD believes that the proposed rule change will better align the margin requirements with actual risk.

¹⁵ See *supra* note 12.

¹⁶ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

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 foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that NASD has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, or such shorter time as designated by the Commission.¹⁹

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-NASD-2007-013 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ NASD has satisfied the five day pre-filing requirement.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-013. 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 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 Number SR-NASD-2007-013 and should be submitted on or before April 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-4973 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55446; File No. SR-NYSEArca-2006-51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Amendments to Registration Rules of NYSE Arca, Inc

March 12, 2007.

I. Introduction

On November 14, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to amendments to registration rules of the Exchange. NYSE Arca filed Amendment No. 1 to the proposed rule change on January 12, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposed to amend certain NYSE Arca Rules governing registration procedures and ongoing compliance obligations for Options Trading Permit ("OTP") Holders⁴ and employees of OTP Firms⁵ in order to (i) clarify registration procedures and make them consistent with the procedures of other self-regulatory organizations ("SROs") and with the operation of the Central Registration Depository ("CRD") system maintained by the National Association of Securities Dealers, Inc. ("NASD") and (ii) include an additional registration category in connection with the Exchange's new options trading platform, OX.⁶

Specifically, the Exchange proposed to amend Rule 2.5(b)(10)(A) to provide for a new category, the Market Maker Authorized Trader, for individuals who perform market making activity on behalf of an OTP Firm on the OX trading facility. The amendment to that Rule also includes certain exceptions to the examination requirements. The

Exchange also proposed to amend Rule 2.5(c), its waiver standards, so that the Exchange's practices are generally consistent with the criterion in NASD Rule 1070(d) and Supplementary Material .15(1)(b) to NYSE Rule 345. The Exchange also proposed to amend Rule 2.23 to provide manual registration procedures for registration categories (e.g., floor clerk) for which CRD does not provide electronic registration. In addition, the Exchange is consolidating its continuing education requirements in paragraph (d) of Rule 2.23 and deleting the continuing education requirements in Rule 9.27(c) and (d) to avoid needless repetition and risk of inconsistencies. Finally, the Exchange proposes to amend Rules 6.33 and 6.34A(b)(2) to require Market Maker and Market Maker Authorized Trader applicants who have previously successfully completed the required examination but who have not been registered with the Exchange for six months or more to complete an orientation program prescribed by the Exchange.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that clarifying the registration procedures and ongoing compliance obligations and making the registration procedures consistent with the procedures of the other SROs will benefit OTP Holders and employees of OTP Firms by making the registration process easier and more efficient. Furthermore, amending Exchange rules to be generally consistent with the rules of other SROs, market practices, and the operation of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55215 (January 31, 2007), 72 FR 5783 (February 7, 2007).

⁴ See NYSE Arca Rule 1.1(q).

⁵ See NYSE Arca Rule 1.1(r).

⁶ See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 200.30-3(a)(12).

the CRD should help simplify the procedures and administrative matters for OTP Holders and employees of OTP Firms. Finally, the Commission believes that requiring Market Makers and Market Maker Authorized Traders to attend an orientation session when such persons have not been employed in those capacities for six months or more will be beneficial to those persons, the Exchange, and the investing public.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSEArca-2006-51), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4974 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55447; File No. SR-NYSEArca-2006-50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Amendments to Registration Rules of NYSE Arca Equities, Inc.

March 12, 2007.

I. Introduction

On November 14, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to amendments to registration rules of the Corporation. NYSE Arca filed Amendment No. 1 to the proposed rule change on January 12, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7, 2007.³ The Commission received no comments on the proposal. This order

approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposed to amend certain NYSE Arca Equities Rules governing registration procedures and ongoing compliance obligations for Equity Trading Permit ("ETP") Holders⁴ and their registered persons in order to clarify registration procedures and make them consistent with the procedures of other self-regulatory organizations ("SROs") and with the operation of the Central Registration Depository ("CRD") system maintained by the National Association of Securities Dealers, Inc. ("NASD").

Specifically, the Exchange proposed to amend Rule 2.4(c), its waiver standards, so that the Exchange's practices are generally consistent with the criterion in NASD Rule 1070(d) and Supplementary Material .15(1)(b) to NYSE Rule 345. The Exchange also proposed to amend Rule 2.21 to provide manual registration procedures for registration categories (e.g., floor clerk) for which CRD does not provide electronic registration. In addition, the Exchange is consolidating its continuing education requirements in Rule 2.21(d) and deleting the continuing education requirements in Rule 9.27(c) and (d) to avoid needless repetition and risk of inconsistencies.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that clarifying the registration procedures

and ongoing compliance obligations and making the registration procedures consistent with the procedures of the other SROs will benefit ETP Holders and their registered persons by making the registration process easier and more efficient. Furthermore, amending Exchange rules to be generally consistent with other SROs' rules, market practices, and the operation of the CRD should help simplify such procedures and administrative matters for ETP Holders and their registered persons.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NYSEArca-2006-50), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-4975 Filed 3-19-07; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5725]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on April 25, 2007, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958.

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament and international security, and related aspects of public diplomacy. The agenda for this meeting includes classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding nuclear proliferation, space policy, and related aspects of public diplomacy.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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. 55214 (January 31, 2007), 72 FR 5780 (February 7, 2007).

⁴ See NYSE Arca Equities Rule 1.1(n).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

For more information, contact Matthew Zartman, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 736-4244.

Dated: March 2, 2007.

George W. Look,

Executive Director, International Security Advisory Board, Department of State.

[FR Doc. E7-5023 Filed 3-19-07; 8:45 am]

BILLING CODE 4710-27-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 9, 2007

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2007-27527.

Date Filed: March 6, 2007.

Parties: Members of the International Air Transport Association.

Subject:

PTC COMP Mail Vote 528, Resolution 011a Mileage Manual Non-TC Member/Non-Iata Carrier Sectors (Memo 1375).

Intended effective date: 15 March 2007.

Docket Number: OST-2007-27535.

Date Filed: March 7, 2007.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 527—Resolution 010k, TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution between Korea (Rep. of) and China excluding Hong Kong SAR and Macao SAR, Mongolia, Philippines (Memo 1064).

Intended effective date: 15 March 2007.

Docket Number: OST-2007-27564.

Date Filed: March 9, 2007.

Parties: Members of the International Air Transport Association.

Subject:

TC2 Europe-Africa, Expedited Resolution 002dg (Memo 0245).

Intended effective date: 1 April 2007.

Docket Number: OST-2007-27568.

Date Filed: March 9, 2007.

Parties: Members of the International Air Transport Association.

Subject:

PTC COMP Mail Vote 529, Cancellation of Composite Resolutions 001m, 001o,

001w, 002dd, 005aa, 035, 048, 125, 210, 211, 785a (Memo 1377).

Intended effective date: 1 April 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7-5025 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2007-09]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 9, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA-2006-26238] by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

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

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif

Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267-8033, Tyneka Thomas (202) 267-7626, or Frances Shaver (202) 267-9681, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 9, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA-2006-26238.

Petitioner: International Council of Air Shows, Inc.

Section of 14 CFR Affected: 14 CFR 61.3 (a) and (c).

Description of Relief Sought: International Council of Air Shows, Inc., seeks an exemption, to the extent necessary, to allow its pilots to operate civil aircraft without having a pilot certificate or medical certificate in his or her possession during the flight.

[FR Doc. E7-5061 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Nueces County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this revised notice to advise the public that an environmental impact statement (EIS) is being prepared for the proposed U.S. Highway 181 Harbor Bridge replacement/State Highway (SH) 286 (Crosstown Expressway) improvement highway project in Nueces County, Texas, and that the project and study limits described in the May 20, 2005, Notice of Intent (NOI) have been expanded.

FOR FURTHER INFORMATION CONTACT: Donald E. Davis, District Engineer, Federal Highway Administration—Texas Division, 300 East 8th Street, Austin, Texas 78701. Telephone: 512-536-5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT), is preparing an EIS for a proposal to

replace the existing US 181 Harbor Bridge and construct improvements to SH 286 in Nueces County, Texas. The proposed improvements described in the original NOI would involve replacement of the existing Harbor Bridge and approaches where US 181 crosses the Corpus Christi Ship Channel for a roadway distance of approximately 2.25 miles. Since the original NOI was published on May 20, 2005, the project and study limits have been expanded to accommodate added capacity that may include managed lanes or various tolling strategies. The project limits are defined as the limits of the schematic design effort and the study limits are defined as the limits of potential impacts from the proposed action. The new project limits are as follows: the northern limit is the US 181 and Beach Avenue interchange located north of the Corpus Christi Ship Channel but south of the Nueces Bay Causeway; the southern limit is the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit is the Interstate Highway (IH) 37/US 181 intersection with Shoreline Boulevard; and the western limit is the IH 37 and Nueces Bay Boulevard interchange. The new project limits total approximately 7.5 miles in length from north to south along US 181 and SH 286, and 2.1 miles in length from east to west along IH 37. The new study limits are as follows: the northern limit is the US 181 and SH 35 interchange just south of Gregory; the southern limit is the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit is Shoreline Boulevard; and the western limit is the IH 37 and SH 358 (North Padre Island Drive) interchange.

The proposed Harbor Bridge and SH 286 improvements are based on several needs: safety concerns, lack of capacity, connectivity to local roadways, poor level of service and increasing traffic demand. In addition to those needs, the bridge's existing structure also has deficiencies, including high maintenance costs and shipping height restrictions. The improvements to both the Harbor Bridge and SH 286 will address the structural deficiencies and improve safety, connectivity, and level of service, while identifying future plans for the US 181 and SH 286 roadway structure, and the areas served by these two highways.

Alternatives under consideration include (1) Taking no action, and (2) replacing the existing US 181 Harbor Bridge and approach roads, including SH 286, with a facility that meets current highway standards. A Feasibility Study completed in 2003 evaluated four corridor alternatives

along existing alignments—new location alignments and a No-build alternative—resulting in the identification of a recommended study corridor for the bridge replacement component. Capacity improvements and interchange design alternatives will be evaluated along the SH 286 corridor. A reasonable number of alignment alternatives will be identified and evaluated in the EIS, as well as the No-build Alternative, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens. Alternative designs and funding alternatives will include tolling options or new managed lanes.

Impacts caused by the construction and operation of the proposed improvements would vary according to the alternative alignment utilized. Impacts generally would include the following: Impacts to residences and businesses, including potential relocation; impacts to parkland; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts, including impacts to minority and low-income residences; impacts to historic cultural resources; endangered and threatened species and impacts to waters of the U.S. including wetlands from right-of-way encroachment; and potential indirect and cumulative impacts.

A letter that describes the proposed action and a request for comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. In conjunction with the Feasibility Study completed in June 2003, TxDOT developed a public involvement plan, sponsored three citizens' advisory committee (CAC) meetings, held two public meetings, and distributed two newsletters. Initial agency and public scoping meetings were held in June 2005. An agency scoping meeting will be held by TxDOT on May 17, 2007, to brief agency representatives on the revised limits of the project area, introduce project team members, obtain comments pertaining to the scope of the EIS, identify important issues, set goals, and respond to questions. A continuing public involvement program will include a project mailing list, project Web site, project newsletters, a May 17, 2007, public scoping meeting (public notice will be given of the time and place), and numerous informal meetings with interested citizens and stakeholders. In addition, a public hearing will be held

after the publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 14, 2007.

Donald E. Davis,

District Engineer, Austin, Texas.

[FR Doc. 07-1338 Filed 3-19-07; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8916-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8916-A, Reconciliation of Cost of Goods Sold Reported on Schedule M-3.

DATES: Written comments should be received on or before May 21, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622-6688, or at Internal Revenue Service, room 6516, 1111

Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Reconciliation of Cost of Goods Sold Reported on Schedule M-3.

OMB Number: 1545-2061.

Form Number: Form 8916-A.

Abstract: Form 8916-A is a detailed schedule that reconciles the amount of the cost of goods sold reported on Schedule M-3 for the Form 1120, Form 1065, or Form 1120-S.

Current Actions: There are no changes being made to Form 8916-A at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 156,000.

Estimated Time per Respondent: 22 hours, 10 minutes.

Estimated Total Annual Burden Hours: 3,456,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7-4963 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8857**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8857, Request for Innocent Spouse Relief.

DATES: Written comments should be received on or before May 21, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-6688, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Request for Innocent Spouse Relief.

OMB Number: 1545-1596.

Form Number: 8857.

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: the taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Form 8857 is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly

erroneous item attributable to the spouse.

Current Actions: There were 63 lines, 3 pages, and 9,803 words added to the form, due to major changes during revision.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 4 hours, 10 minutes.

Estimated Total Annual Burden Hours: 208,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7-4964 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 10, 2007, at 9:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 231-2365.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, April 10, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201-3205, or you can contact us at <http://www.improveirs.org>. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for additional information.

The agenda will include the following: Various IRS issues.

Dated: March 12, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7-4965 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment,

ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 19, 2007, 1 to 4 p.m., Friday, April 20, 2007, 9 a.m. to 4 p.m., and Saturday, April 21, 2007, 8 to 11 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Thursday, April 19, 2007, from 1 to 4 p.m.; Friday, April 20, 2007, from 9 a.m. to 4 p.m.; and Saturday, April 21, 2007, from 8 to 11 a.m. Central Time, at 211 West Wisconsin Avenue, Milwaukee, WI 53203. You can submit written comments to the Panel by faxing the comments to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53201-3205, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for more information.

The agenda will include the following: Various IRS issues.

Dated: March 12, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7-4966 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted in Raleigh, NC. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 25, Thursday, April 26, and Friday, April 27, 2007.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1-888-912-1227 (toll-free), or 954-423-7977 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, April 25, 2007 from 1 p.m. to 5 p.m. ET, Thursday, April 26, 2007 from 8 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. ET and Friday, April 27, 2007 from 8 a.m. to 12 p.m. ET. For information or to confirm attendance, notification of intent to attend the meeting must be made with Inez De Jesus. Ms. De Jesus may be reached at 1-888-912-1227 or 954-423-7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: March 12, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7-4967 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 19, 2007, Friday, April 20, 2007 and Saturday, April 21, 2007.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held

Thursday, April 19, 2007 from 12:30 p.m. Pacific Standard Time to 4:30 p.m. Pacific Standard Time; Friday, April 20, 2007 from 8 a.m. Pacific Standard Time to 4:30 p.m. Pacific Standard Time; and Saturday, April 21, 2007 from 8 a.m. Pacific Standard Time to 11 a.m. Pacific Standard Time at 950 Hotel Circle North, San Diego, California. The public is invited to make oral comments.

Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or you can contact us at <http://www.improveirs.org>. Due to limited space, notification of intent to participate in the meeting must

be made with Janice Spinks. Miss Spinks can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Dated: March 14, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7-4969 Filed 3-19-07; 8:45 am]

BILLING CODE 4830-01-P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 521/P.L. 110-12

To designate the facility of the United States Postal Service located at 2633 11th Street in Rock Island, Illinois, as the "Lane Evans Post Office Building". (Mar. 15, 2007; 121 Stat. 67)

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